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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-239

Filed 6 February 2024

Wilson County, Nos. 18 CRS 53149-50 and 19 CRS 358

STATE OF NORTH CAROLINA

v.

SHONTEZ BARNES, Defendant.

Appeal by defendant from judgment entered 12 May 2022 by Judge William D. Wolfe in Wilson County Superior Court. Heard in the Court of Appeals 29 November 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Brian D. Rabinovitz, for the State.*

*Hynson Law, PLLC, by Warren D. Hynson, for the defendant.*

DILLON, Chief Judge.

Defendant Shontez Barnes appeals from judgment entered upon a jury's verdict convicting him of first-degree murder for the deaths of Elliott Barnes and Redmond Barnes and of possession of a firearm by a felon. We conclude that Defendant received a fair trial, free of reversible error.

I. Background

On 1 September 2018, Elliott attended a birthday party for the child of his friend, Nikita. Afterwards, Elliott and Nikita walked to his apartment complex so Elliott could sell cocaine to her and a few other acquaintances. The group met in the yard outside the complex. Defendant was also present.

After three men bought drugs from Elliott, Defendant asked to speak with him. The two walked inside to talk. Nikita testified that she then heard multiple gunshots and saw Elliott run out apartment C (where he lived with his mother) and fall off the porch. Then, as she was leaving the premises, Nikita saw Redmond on the front steps of apartment D. Redmond had been shot and was dead.

Elliott's mother testified that right before Elliott was shot, he ran into her apartment from apartment D (located next door) and was attempting to shut the door when he was shot in the back. She testified that she could see a hand with a black fingerless glove holding the firearm. She also testified that she had seen Defendant earlier in the day with the same black gloves on.

When officers arrived on the scene, Defendant was lying on the roof of the apartment building, holding a gun. When officers commanded him to drop his weapon, he threw it off the roof.

Both the firearm and glove were tested by the State Crime Lab, and a forensic expert testified at trial that Defendant's DNA was a major contributor on both items. The gun contained a blood stain with one unknown minor contributor, and the glove had two unknown minor contributors.

A jury found Defendant guilty of possession of a firearm by a felon, as well as first-degree murder for the deaths of Elliott and Redmond. Defendant appeals.

## II. Analysis

### A. Admission of Expert Testimony

Defendant first argues that the trial court erred by admitting the testimony of a certain forensic scientist called by the State, because the court did not determine that the testimony was reliable, as required by N.C. R. Evid. 702(a) (2021). This scientist from the State Crime Lab was qualified without objection as an expert in forensic firearms examination. She examined the firearm that Defendant threw off the roof and the bullets recovered from Elliott's and Redmond's bodies. She testified that the bullets recovered from the bodies matched the revolver that was recovered from the crime scene.

Defendant did not object to the admission of this testimony at trial. Thus, we are bound by plain error review. *State v. Lawrence*, 365 N.C. 506, 516, 732 S.E.2d 326, 333 (2012).

Even assuming (an issue we do not decide) that the trial court erred by not intervening when the State's expert was testifying, we conclude that Defendant has failed to establish plain error based on the other evidence offered at trial connecting Defendant to the murders. First, we note Defendant's unprompted inculpatory statements made in custody, including, "thou shall not shed innocent blood," and "they were not innocent". Defendant also stated several times that he made a

mistake, that he was tricked by the devil, and that “they” set him up.

Also, the testimonies from several witnesses and a video of Defendant show that Defendant was wearing gloves like the glove Elliott’s mother testified was worn by the shooter. Defendant hid from law enforcement on the roof of the apartments immediately after the murders, which, when considered with the additional facts and evidence, is evidence supporting his guilt. *See State v. Myers*, 309 N.C. 78, 87, 305 S.E.2d 506, 511 (1983). And Defendant was found with a firearm at the scene. Defendant’s attempt to evade law enforcement, coupled with the fact that he was found with a gun, provides additional evidence of his consciousness of guilt.

There was evidence showing that Elliott and Redmond were killed within moments of each other, in approximately the same location; Defendant was present with Elliott right before the gunfire began; Elliott was shot between apartments D and C; and Redmond was shot moments after on the porch outside apartment D. And Elliott’s mother testified at trial that she saw Defendant standing in the doorway of apartment D, which is where Elliott was running from, and where Redmond was shot.

Thus, given the other substantial evidence indicating Defendant’s guilt, we conclude that Defendant has failed to meet his burden of showing that “absent the error the jury would have probably reached a different verdict.” *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334.

#### B. The State’s Closing Argument

Next, Defendant argues that the trial court erred when it failed to intervene

*ex mero motu* when the State made the following statement in closing argument:

Ladies and gentlemen, this is a very simple, straightforward case. If you're confused on why you're here listening to a trial, that's great, because you've been paying attention. Why are we here? Because he doesn't want to take responsibility for what he did. He got caught red handed and now we're pointing the finger at everybody else.

Defendant argues that this was an improper comment on his right to trial by jury.

We disagree.

It is clear from the context that the State's comment to the jury - "Why are we here?" - did not refer to Defendant's right to trial by jury. Instead, the State appeared to be arguing that the issue of Defendant's guilt was simple and straightforward. Thus, the comment was not an impermissible comment on Defendant's constitutional rights, and did not qualify as "extreme impropriety on the part of the prosecutor" which is required to trigger a trial court's obligation to intervene *ex mero motu*. *State v. Cummings*, 353 N.C. 281, 297, 543 S.E.2d 849, 859 (2001). Accordingly, we conclude that Defendant received a fair trial, free of reversible error.

NO ERROR.

Judges MURPHY and GORE concur.

Report per Rule 30(e).