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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-818

Filed 7 May 2024

Guilford County, Nos. 21 CRS 79038–40

STATE OF NORTH CAROLINA

v.

DAYQUINTON LARICKEY BULLOCK

Appeal by defendant from judgment entered 1 February 2023 by Judge Lindsay R. Davis in Guilford County Superior Court. Heard in the Court of Appeals 20 February 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Zach Padget, for the State.

Stanley F. Hammer for defendant-appellant.

ZACHARY, Judge.

Defendant Dayquinton Bullock appeals from the trial court’s judgment entered upon a jury’s verdicts finding him guilty of discharging a firearm into an occupied vehicle in operation, willful and wanton injury to personal property, and misdemeanor child abuse. After careful review, we conclude that Defendant received a fair trial, free from prejudicial error.

I. BACKGROUND

On 16 January 2023, Defendant's case came on for trial in Guilford County Superior Court. The evidence at trial tended to show as follows: Sharice Blane explained that she had an on-again, off-again romantic relationship with Defendant for approximately seven years, during which they had one child together, KB.¹ Defendant agreed to stay overnight with two-year-old KB at Blane's Greensboro home on 23 July 2021, while she attended a comedy show with Natricsha Kirk.

While attending the show, Blane received "weird" and "disturbing" text messages from Defendant, in which he threatened to leave KB unattended in order to work an additional shift at his job. Blane left the comedy show early to go home to KB. Blane got KB out of bed, took her outside, "and tried to put her in the car." As she attempted to secure KB in the car seat, Defendant grabbed Blane's shoulder and told her: "You're not taking my child."

Blane secured KB in the car seat and began to back out of her driveway. As she did, Defendant "pulled out a gun and shot at least three shots into [her] vehicle." Blane, Kirk, and KB were all in the car at the time. According to Blane, she responded by moving her vehicle forward to stop him from shooting, causing him to fall to the ground. After getting up, Defendant tried to leave in his vehicle, but Blane called 9-1-1 and used her vehicle to attempt to block him from leaving the driveway.

¹ We use initials to protect the identity of the alleged victim, who was a minor at the time of Defendant's trial. See N.C.R. App. P. 42(b).

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However, Defendant “proceeded out of the neighbor’s driveway, still pointing a gun[,]” and left.

Greensboro Police Department officers responded to the scene, and Blane and Kirk reported that evening’s events to Officer D. Elston. Officer Elston testified that, as shown on his body camera footage, he found two bullet shell casings in the area where Defendant stood while he was shooting. Officer Elston also observed “at least two bullet holes” in the front of Blane’s vehicle.

Officer Philemon, a crime scene investigator with the Greensboro Police Department, testified that she photographed two empty shell casings and their location in Blane’s yard, a live round of the same caliber that officers also found in her yard, and bullet holes in the front of Blane’s vehicle. Officer Philemon’s photographs and the footage from Officer Elston’s body camera were both admitted into evidence.

At the close of the State’s evidence and at the close of all evidence, Defendant moved to dismiss the charge of discharging a weapon into an occupied vehicle in operation, which the court denied. Additionally, over Defendant’s objection, the court instructed the jury that:

The State contends that [Defendant] fled. Evidence of flight may be considered by you, together with all other facts and circumstances in this case, in determining whether the combined circumstances amount to an admission or show a consciousness of guilt. However, proof of this circumstance is not sufficient, in itself, to establish a defendant’s guilt.

The jury found Defendant guilty of discharging a firearm into an occupied vehicle in operation, willful and wanton injury to personal property, and misdemeanor child abuse. The trial court entered judgment and sentenced Defendant to a term of 59 to 83 months' imprisonment in the custody of the North Carolina Department of Adult Correction. Defendant gave notice of appeal in open court.

II. DISCUSSION

On appeal, Defendant argues that (1) “the trial court erred in denying [his] motion to dismiss the charge of discharging a firearm into a vehicle” because “the State failed to prove an essential element of N.C.G.S. § 14-34.1 . . . that is, the missile velocity of the weapon”; and (2) “the trial court committed reversible error in instructing the jury on [Defendant’s] flight . . . , who left the scene of the alleged offense nearly three hours before it was reported and did not attempt to avoid apprehension.”

A. Denial of Motion to Dismiss

Defendant maintains that “[b]ased on . . . legislative history and settled rules of statutory construction, the muzzle velocity requirement applies to any firearm.” Because “the State failed to prove an essential element of . . . [N.C. Gen. Stat.] § 14-34.1—that the weapon used by Defendant had a 600 per foot muzzle velocity”—Defendant contends that the trial court erred in denying his motion to dismiss the charge of firing a weapon into an occupied vehicle in operation.

While Defendant acknowledges that this Court, in *State v. Small*, concluded

that “the statutory muzzle velocity requirement applie[s] only to barreled weapons[,]” he claims that because “neither the parties nor the panel fully addressed the applicable legislative history of” the 2005 amendment to N.C. Gen. Stat. § 14-34.1, his case is “distinguished” and our panel “is not bound by *Small*[.]” We disagree.

1. Standard of Review

In *State v. Parker*, we explained that the standard for reviewing a trial court’s denial of a criminal defendant’s motion to dismiss is a two-part test that requires substantial evidence, as viewed in the light most favorable to the State:

Upon a criminal defendant’s motion to dismiss, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of the defendant’s being the perpetrator of such offense. If so, the motion is properly denied. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

In reviewing challenges to the sufficiency of evidence, we must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences. Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve.

274 N.C. App. 464, 468, 852 S.E.2d 638, 643–44 (2020) (cleaned up).

2. Analysis

In *State v. Small*, this Court addressed the question of whether N.C. Gen. Stat. § 14-34.1 requires the State to provide substantial evidence of the muzzle velocity of firearms in general, or whether the muzzle velocity requirement applies only to barreled weapons. 201 N.C. App. 331, 340–41, 689 S.E.2d 444, 450 (2009). In *Small*,

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a defendant appealed his conviction under N.C. Gen. Stat. § 14-34.1, arguing that the trial court erred by not granting his motion to dismiss when “the State failed to present evidence that the [non-barreled firearm that he discharged] met the requisite velocity specifications set forth in N.C. Gen. Stat. § 14-34.1(a).” *Id.*

We upheld the defendant’s conviction, determining that his argument was “without merit” because “the plain language of the statute, legislative intent, and previous treatment by North Carolina Courts indicate that the minimum muzzle velocity requirement applies only to ‘barreled weapons’ and not to firearms in general.” *Id.* at 341–42, 689 S.E.2d at 450.

Our decision in *Small* was handed down four years after the legislature’s 2005 amendment to section 14-34.1, and answered the question that Defendant now raises of whether the statutory language regarding the muzzle velocity requirement applies to non-barreled firearms. As a result, we are unpersuaded by Defendant’s contention that the *Small* Court did not “fully address[]” the legislative history of the 2005 amendment in its decision, and that this distinguishes Defendant’s case from *Small*.

Because we rejected Defendant’s argument in *Small*, we are bound by that decision unless and until a higher Court overturns it. *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) (“Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same Court is bound by that precedent, unless it has been overturned by a higher Court.”). Therefore, we hold that the trial court did not err in denying Defendant’s motion to

dismiss.

B. Instruction on Flight

Next, Defendant argues that “the trial court committed reversible error in instructing the jury on flight” because “[t]he flight instruction permitted the jury to draw an adverse inference against [him] because he simply drove away from Blane’s house.” Moreover, he asserts that “[c]onsidering the dearth of evidence presented, there is a reasonable possibility that absent the flight instruction the jury would have reached a different conclusion as to whether the State proved its case beyond a reasonable doubt.”

While we agree that the trial court erred in instructing the jury on flight, we do not find that absent the instruction, the jury would have reached a different result.

1. Standard of Review

We review a trial court’s jury instructions *de novo*. *State v. Pender*, 218 N.C. App. 233, 243, 720 S.E.2d 836, 842, *appeal dismissed and disc. review denied*, 366 N.C. 233, 731 S.E.2d 414 (2012). An erroneous jury instruction requires a new trial where there is a “reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial[.]” *State v. Castaneda*, 196 N.C. App. 109, 116, 674 S.E.2d 707, 712 (2009) (citation omitted). “The defendant has the burden of demonstrating prejudice.” *Id.*

“[T]he relevant inquiry concerns whether there is evidence that [the] defendant left the [crime scene] *and* took steps to avoid apprehension.” *State v. Levan*, 326 N.C.

155, 165, 388 S.E.2d 429, 434 (1990) (emphasis added). Moreover, “evidence of flight does not create a presumption of guilt but is only some evidence of guilt which may be considered with the other facts and circumstances in the case in determining guilt.” *State v. Irick*, 291 N.C. 480, 494, 231 S.E.2d 833, 842 (1977).

2. Analysis

In *State v. Taylor*, the North Carolina Supreme Court upheld a trial court’s instruction on flight when evidence showed that a defendant, who allegedly shot multiple victims, “hurriedly left the crime scene without rendering assistance to the homicide victim” and, after driving to a hospital to treat his accomplice’s injuries, “misled hospital staff regarding the location of the incident and misled investigating officers regarding his role in the incident.” 362 N.C. 514, 540, 669 S.E.2d 239, 262 (2008), *cert. denied*, 558 U.S. 851, 175 L. Ed. 2d 84 (2009).

By contrast, in *State v. Holland*, this Court concluded that the trial court erred in instructing on flight where the State’s only evidence that the defendant tried to avoid apprehension was that he visited the homes of his accomplice and girlfriend after leaving the crime scene. 161 N.C. App. 326, 330, 588 S.E.2d 32, 36 (2003). Nonetheless, we determined that the error was not prejudicial to the defendant “in light of the remaining evidence . . . including the identification of [the] defendant as the perpetrator of the crimes charged[.]” *Id.*

In the instant case, the State offered no evidence about Defendant’s behavior after leaving the crime scene, such as, as Defendant notes, “where [he] traveled . . .

or the circumstances surrounding his arrest.” The absence of such evidence makes it difficult to conclude that Defendant “took steps to avoid apprehension.” *Levan*, 326 N.C. at 165, 388 S.E.2d at 434. Furthermore, while the State’s evidence that Defendant exited the crime scene by driving through a neighbor’s driveway is indicative of Defendant’s eagerness to leave, it does not show that Defendant took steps to avoid apprehension, even when viewed in the light most favorable to the State. Accordingly, the trial court erred by instructing the jury on flight.

Nevertheless, Defendant has not shown that he was prejudiced by the jury’s instruction. “A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” N.C. Gen. Stat. § 15A-1443(a) (2023).

There is ample other evidence from which the jury could find Defendant guilty of discharging a firearm into an occupied vehicle in operation, willful and wanton injury to personal property, and child abuse. *See Taylor*, 362 N.C. at 540–41, 669 S.E.2d at 262. Blane and Kirk identified Defendant “as the perpetrator of the crimes charged[.]” *Holland*, 161 N.C. App. at 330, 588 S.E.2d at 36. The State supplemented their testimony with police testimony, body camera footage, photographs of the crime scene, and forensic evidence. Additionally, the trial court “correctly informed the jury that proof of flight was not sufficient by itself to establish [Defendant’s] guilt[.]”

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Taylor, 362 N.C. at 541, 669 S.E.2d at 262. “Nothing else appearing, we assume the jury followed the court’s instructions” *State v. Demick*, 288 N.C. App. 415, 433, 886 S.E.2d 602, 616 (2023) (cleaned up).

Based on the foregoing, Defendant failed to show that had the trial court declined to instruct the jury on flight, “there is a reasonable possibility that . . . a different result would have been reached at trial[.]” *Castaneda*, 196 N.C. App. at 116, 674 S.E.2d at 712 (citation omitted). Therefore, we conclude that there was no prejudicial error.

III. CONCLUSION

For the reasons stated herein, we conclude that Defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges GORE and GRIFFIN concur.

Report per Rule 30(e).