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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-110

Filed 16 July 2024

New Hanover County, Nos. 20 CRS 57284, 21 CRS 235, 21 CRS 50486

STATE OF NORTH CAROLINA

v.

MARCUS OREALIUS BELL, Defendant.

Appeal by Defendant from judgment entered 24 August 2023 by Judge Clint D. Rowe in New Hanover County Superior Court. Heard in the Court of Appeals 11 June 2024.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Lauren M. Clemmons, for the State.*

*Drew Nelson for Defendant.*

GRIFFIN, Judge.

Defendant Marcus Orealius Bell appeals from the trial court's judgment entering a jury verdict finding him guilty of intimidating a witness. Defendant contends the trial court erred by denying his motion to dismiss the charge because the State's evidence was insufficient to show Defendant intended to contact and intimidate the witness. We hold the trial court did not err.

## **I. Factual and Procedural Background**

In July 2020, Defendant, forty-eight years old, met Alice<sup>1</sup>, fourteen years old, at a family party. Defendant sent various Facebook and text messages to Alice offering to perform sexual acts on her. Alice's father reported Defendant's behavior to law enforcement. On 1 October 2020, law enforcement arrested Defendant for soliciting a child by computer under N.C. Gen. Stat. § 14-202.3(a) and taking indecent liberties with a child under § 14-202.1. Defendant was released on a secured bond on 2 October 2020, but was later placed in a detention center on 18 January 2021.

On his first day in the detention center, Defendant filled out an "inmate request form." On the front of the form, Defendant selected, "Court information – Release Date, Court Date, Bond etc.," which signified the information would be circulated to the Shift Supervisor. On the back of the form, under the prompt, "[e]xplain in detail below, also include what actions you would like to see taken," Defendant wrote, "You can hold me as long as you want but as soon as I'm released I'm going to kill [Alice] I'm show you how to even the odd. I'm show you. I'm not bullshitting. I put that on her momma!!! DEAD!!!" Defendant further signed the letter with, "Damn right it's me," and dated the letter stating, "F--K EVERY BODY!!!" before actually writing his name below the date.

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<sup>1</sup> We use pseudonyms for juveniles to protect their identities and for ease of reading. *See* N.C. R. App. P. 42(b).

An officer retrieved the inmate request form and gave it to Deputy Charfaurous with the New Hanover County Sheriff's Office. Deputy Charfaurous determined the form to be threatening, reported it to his supervisors, and wrote an incident report.

On 20 January 2021, a warrant for Defendant's arrest was issued for intimidating a witness under N.C. Gen. Stat. § 14-226. Defendant denied sending illicit messages to a minor and threatening to kill Alice. On 24 August 2023, Defendant's trial was held for all three charges. The trial jury found Defendant guilty on all charges. Defendant gave oral notice of appeal in open court. Defendant initially identified five issues on appeal. However, Defendant's intimidation of a witness charge is the only issue raised before this Court for review.

## **II. Analysis**

Defendant argues the trial court erred in denying his motion to dismiss the charge of intimidating a witness because the State's evidence failed to show he intended to contact and intimidate Alice through the submission of an inmate request form. We disagree.

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Shannon*, 230 N.C. App. 583, 585, 750 S.E.2d 571, 573 (2013) (quoting *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007)). "Under a *de novo* review, the [C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008). In reviewing the evidence on appeal, "[t]he Court must consider the

evidence in the light most favorable to the State and the State is entitled to every reasonable inference to be drawn from that evidence.” *State v. Patton*, 290 N.C. App. 111, 120, 891 S.E.2d 335, 341 (2023) (quoting *State v. Teague*, 216 N.C. App. 100, 105, 715 S.E.2d 919, 923 (2011)).

In North Carolina, an individual can be convicted of intimidating or attempting to intimidate a witness through communication of threats, menace or:

[A]ny other manner . . . to intimidate any person who is summoned or acting as a witness in any of the courts of this State, or prevent or deter, or attempt to prevent or deter any person summoned or acting as such witness from attendance upon such court.

N.C. Gen. Stat. § 14-226(a) (2023). “Whether a witness actually receives the threatening communication in question is irrelevant to the crime of intimidating a witness.” *State v. Clagon*, 279 N.C. App. 425, 432, 865 S.E.2d 343, 348 (2021) (internal citation omitted). “The gist of the offense of intimidating a witness is the obstruction of justice.” *Id.* (quoting *State v. Neely*, 4 N.C. App. 475, 476, 166 S.E.2d 878, 879 (1969) (internal citations omitted)). Convictions for intimidating a witness have been upheld in cases where the defendant threatens to “inflict bodily harm on the witness.” *State v. Williams*, 186 N.C. App. 233, 237, 650 S.E.2d 607, 610 (2007).

Here, Defendant’s argument rests on whether he intended to contact and intimidate Alice. Defendant does not argue Alice needed to actually receive and read his inmate request form, the threatening communication. Defendant concedes that, “under North Carolina law, the [S]tate is not required to prove that the targeted

person received the alleged threat.” With the question of delivery or a witness’s knowledge uncontested, we move to the question of Defendant’s intent.

“Intent is seldom provable by direct evidence; as such, circumstantial evidence is commonly—if not necessarily—relied upon to prove state of mind.” *Patton*, 290 N.C. App. at 120, 891 S.E.2d at 341; *see id.* at 121, 891 S.E.2d at 342 (holding the State was not required to introduce evidence of the defendant dissuading the witness from testifying); *see also Clagon*, 279 N.C. App. at 432, 865 S.E.2d at 348 (holding the defendant was properly convicted of intending to threaten and intimidate a witness when he communicated threats about the witness with a third party in a private phone call).

Here, Defendant contends he did not intend to contact or intimidate Alice because the inmate request form was submitted to a law enforcement officer and was more of a “late-night emotional outburst” than a credible threat. We disagree. Defendant knew Alice was the state’s witness in criminal charges against him and was facing potential imprisonment if convicted. After Defendant confessed his desire to kill Alice upon release, he bolstered his statement by assuring he was going to “even the odd.” Defendant further confirmed he was “not bullshitting” and took an oath upon the witness’s mother to carry out his intentions. To clarify his intentions, Defendant wrote “DEAD!!!” under the prompt asking what “actions you would like to see taken.” Defendant repeatedly expressed and confirmed his intention to kill Alice for her role in placing him in prison.

**III. Conclusion**

We hold the State's evidence was sufficient to show Defendant intended to contact and intimidate a witness through the submission of an inmate request form in violation of N.C. Gen. Stat. § 14-226(a). Therefore, the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).