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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-740

Filed 5 November 2024

Duplin County, Nos. 20 CRS 50258-50260

STATE OF NORTH CAROLINA

v.

RASHEED TERON FREEMAN, Defendant.

Appeal by defendant from judgments entered 12 October 2022 by Judge Henry L. Stevens in the Superior Court of Duplin County. Heard in the Court of Appeals 28 August 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Heidi M. Williams, for the State.

Anne Bleyman for defendant-appellant.

DILLON, Chief Judge.

Defendant Rasheed Teron Freeman appeals from judgments entered consistent with a jury's verdicts convicting him of first-degree murder and robbery with a firearm.

I. Background

Evidence at trial tended to show as follows: On 9 January 2020, a female relative of Defendant was allegedly attacked, with sexual motive, by Nikkio Murray, who is the murder and robbery victim in this case. Defendant's relative subsequently informed Defendant of the attack. Later, Defendant texted her: "It's just time to do sum n different."

The next day, when Murray approached Defendant's relative again, she alerted Defendant by text message of her location at a residence in the town of Greenevers and asked Defendant to confront Murray. Defendant's relative left the Greenevers residence before midnight.

At around 1:00 am, Defendant and a friend, a Mr. Pickett, arrived at the Greenevers residence. Murray soon appeared outside. Defendant approached Murray, yelling. Another witness testified that she heard (but did not see) Defendant demand that Murray strip naked, which Murray did without protest. Defendant then led a naked Murray from the Greenevers residence.

At around 4:00 am, Murray arrived naked and alone at his brother's home and told his brother that Defendant and Pickett had forced him to strip at gunpoint. After receiving clothes from his brother, Murray departed from the residence. Shortly thereafter, Murray's brother heard gunshots and saw a black figure walk by his home. Before 5:00 am, Murray was found dead by gunshot wound.

At some point, Defendant returned to the Greenevers residence without Murray and stated to witnesses that he "handled the situation." He also demanded

that Pickett give him a ride to Chinquapin. Pickett later told law enforcement that he felt threatened by Defendant during this ride when Defendant said (in reference to an unrelated prior incident), “Man, Pickett. You know I fought with you. The only reason why I ain’t kill you that night, the night before Les [Pittman] got killed cause you just . . . kept it real, that’s the only reason why you survived.” Pickett and Defendant arrived back at Chinquapin at around 5:00 am.

Law enforcement questioned Pickett, who reluctantly admitted that on 12 January 2020, Defendant called Pickett, admitted that he had killed Murray, and then threatened to blame Pickett for giving him the gun.

Prior to trial, Pickett claimed that he feared testifying against Defendant and, at trial, refused to do so despite a court order. Thus, the trial court granted the State’s motions to declare Pickett an unavailable witness and to publish Pickett’s recorded interviews with law enforcement to the jury despite the Defendant’s objections that it violated his right to confront witnesses under the Sixth Amendment.

Defendant was convicted by the jury of first-degree murder and robbery with a firearm and was sentenced to active terms of imprisonment. He appeals.

II. Analysis

Defendant essentially makes two arguments, which we will address in turn. Both arguments were preserved for appellate review by timely objections from Defendant at trial. Both arguments involve questions of law, which we review *de*

novo. See *State v. Graham*, 200 N.C. App. 204, 214 (2009); *see also*, *State v. Smith*, 186 N.C. App. 57, 62 (2007).

A. Right to Confrontation

Defendant argues that the trial court erred by ruling that he had forfeited his constitutional right to confront Pickett during his trial.

The Confrontational Clause of the Sixth Amendment forbids “the admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 53–54 (2004). However, the United States Supreme Court has further instructed that “one who obtains the absence of a witness by wrongdoing forfeits the constitutional right to confrontation.” *See Davis v. Washington*, 547 U.S. 813, 833 (2006).

In order for this “forfeiture by wrongdoing” doctrine to apply, the State is required to establish that the defendant intended to prevent a witness from testifying. *See Giles v. California*, 554 U.S. 353, 361 (2008). This Court has also found that forfeiture of wrongdoing was established when “the net effect of [the] defendant’s conduct was to pressure and intimidate [a witness] into not appearing in court and testifying[.]” *See State v. Allen*, 265 N.C. App. 480, 489 (2019).

Defendant argues that the State’s burden should be proved by the clear and convincing standard. We note that the United States Supreme Court has not established a standard for establishing forfeiture but did recognize that many courts

employ the “preponderance of the evidence” standard. *Davis*, 547 U.S. at 833 (“We take no position on the standards necessary to demonstrate such forfeiture, but federal courts . . . have generally held the Government to the preponderance-of-the-evidence standard State courts tend to follow the same practice.”). Though the United States Supreme Court has taken no position, our Court has. Specifically, we have held that the State is required to establish forfeiture by a “preponderance of the evidence.” *See Allen*, 265 N.C. App. at 488–89. And in assessing whether the State has met its burden, a trial court is free to make reasonable inferences about the cause of a witness’s refusal to testify based upon the facts and circumstances before it. *See State v. Weathers*, 219 N.C. App. 522 (2012).

In the present case, the trial court entered a detailed written order with findings to support its ultimate determination that Pickett was an unavailable witness. The trial court also determined in its order that the State had established forfeiture by wrongdoing by a preponderance of the evidence.

On appeal, Defendant challenges two findings in that order, findings 78 and 81, as being unsupported by sufficient and competent evidence. These findings are as follows:

78. That outside the presence of the jury Mr. Pickett testified that he **felt threatened** by Defendant and that he is afraid of retribution against him, his family or loved ones citing that his home [had] been broke into and property stolen after he first talked with law enforcement, and that he had been followed.

81. That [Mr.] Pickett also provided that he was **directly threatened** by Defendant when Defendant on the drive back to Chinquapin told Mr. Pickett that the only reason Mr. Pickett was alive after the shooting death of Les Pittman (a totally separate incident) was that Mr. Pickett had been cool about it.

(Emphasis added.) Defendant argues the findings that Pickett “felt threatened” and that Defendant “directly threatened” him are each unsupported. He contends that Pickett “merely testified that [Defendant’s] statement that [Defendant] was not going to kill [Pickett] two years prior to the trial ‘could have been a threat.’” But Pickett did not *confirm* that he regarded Defendant’s statement as a threat.

We conclude that the findings are supported by evidence in the record. For instance, the record shows that Pickett expressed during interview with police that he understood Defendant’s statement during the drive to Chinquapin “as a threat” against his life, that Defendant “threatened [him],” including threatening to “kill [him]” because he knew about the murder, and that Defendant threatened to implicate Pickett as an accomplice. Moreover, a detective on the case testified that after cooperating with law enforcement Pickett reported that he had been followed, that his house was broken into, and that he feared for his and his family’s safety.

Defendant makes essentially three other arguments concerning the trial court’s order. He contends that the trial court improperly relied on the reluctance of other witnesses to testify (when concluding wrongdoing on the part of Defendant) despite the fact that none of those witnesses reported being threatened by Defendant

(and in fact three of them gave reasons for their reluctance to testify other than wrongdoing by Defendant). He contends that three findings (findings 80, 83, and 85) contradict the overall conclusion of the order. And lastly, he contends that even if Defendant's statement in the car on the way to Chinquapin was truly a threat toward Pickett, that "threat" occurred two years before trial, and the statement was about an "unrelated" incident.

It may be that some of these findings, standing alone, would support the trial court's ultimate determination and that some of the findings may even cut against the trial court's ultimate determination. However, the trial court weighed *all* its findings and determined that the State had proven by a preponderance of the evidence that Defendant had forfeited his right to confront Pickett at trial. For instance, though it is true that Defendant's threat to Pickett during their car ride occurred two years before trial, it is up to the trial court to consider the time that had passed and assign weight to that incident. We have reviewed all the findings and conclude that the trial court did not err by determining that the State had met its burden. Regarding Defendant's first argument, the court's reliance on the reluctance of other witnesses in concluding wrongdoing was not improper. Considering Pickett's refusal to testify for fear of his life and the lives of his family, the reluctance and fear of several other witnesses to testify, and the threatening statements that Defendant made to Pickett in the car and over the phone, we agree, based on a preponderance of the evidence, that the net effect of Defendant's conduct was to pressure and

intimidate Pickett into not testifying in court. Thus, Defendant's constitutional right to confront witnesses was not violated.

B. Sufficiency of the Evidence

Defendant next argues that the trial court erred by denying his motions to dismiss Defendant's charges for murder and robbery with a firearm for insufficiency of the evidence at the close of the State's evidence.

In ruling on a motion to dismiss, the trial court must view the evidence in the light most favorable to the State. *See State v. Kemmerlin*, 356 N.C. 446, 473 (2002).

"In order to convict a defendant of premeditated, first-degree murder, the State must prove: (1) an unlawful killing; (2) with malice; (3) with the specific intent to kill formed after some measure of premeditation and deliberation." *State v. Peterson*, 361 N.C. 587, 595 (2007) (citing N.C.G.S § 14-17).

The essential elements of robbery with a dangerous weapon are: "(1) the unlawful taking or an attempt to take personal property from the person or in the presence of another (2) by use or threatened use of a firearm or other dangerous weapon (3) whereby the life of a person is endangered or threatened." *State v. Small*, 328 N.C. 175, 181 (1991) (citing N.C.G.S. § 14-87).

Defendant argues that the evidence that he had committed these crimes was circumstantial and incomplete. Specifically, Defendant argues there is insufficient evidence that he was the person who killed Murray or that he used a gun when he told Murray to strip. He asserts that (1) the last time Defendant and Murray were

seen together, Murray was still alive; (2) no one witnessed Defendant shoot Murray or even possess a gun in Murray's presence; (3) no fingerprint, DNA, or other physical evidence was presented by the State; and (4) law enforcement did not procure a confession from Defendant.

We, however, conclude that there was sufficient evidence, taken in the light most favorable to the State, from which the jury could find that Defendant committed these crimes. *See State v. Barnett*, 368 N.C. 710, 713 (2016) (quoting *State v. Blake*, 319 N.C. 599, 604 (1987)) (instructing the trial court is concerned only with the legal sufficiency of the evidence, not its weight, which is a question for the jury).

Here, the State's evidence shows: (1) that per Defendant's text messages with his female relative, he had a motive and intent to kill Murray, as Murray was rumored to have sexually assaulted Defendant's relative, and Defendant told her that he would "deal with it"; (2) that Defendant had the opportunity to commit the crimes as he knew of Murray's presence at the Greenevers residence on the night of the murder, showing Defendant's purpose in going there; (3) cellphone evidence place Defendant at the location of the crime scene on the night of the murder; (4) multiple witnesses to the crime scene described seeing a short and heavy-set man leaving the area after the shooting, matching Defendant's description; (5) Defendant had access to firearms on the date of the murder; (6) one witness saw Defendant walk away with a naked Murray; (7) Murray had told his brother that Defendant made him strip at gunpoint, and that, Murray's brother said, knowing Murray, Murray would not have

stripped unless he was threatened with a weapon; (7) Defendant admitted to Pickett that Defendant had killed Murray, and threatened to implicate Pickett as an accomplice; and finally, (8) Defendant said to another witness he had “handled the situation” with Murray.

III. Conclusion

We conclude that Defendant received a fair trial, free of reversible error.

NO ERROR.

Judges FLOOD and THOMPSON concur.

Report per Rule 30(e).