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NO. COA01-1234

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

STATE OF NORTH CAROLINA

v.

Robeson County
No. 95 CRS 005117
95 CRS 005118

ROSCOE GOINS

Appeal by defendant from judgments dated 1 March 2000 by Judge Jerry Cash Martin in Superior Court, Robeson County. Heard in the Court of Appeals 12 June 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General James Peeler Smith, for the State.

Carlton M. Mansfield for defendant-appellant.

McGEE, Judge.

Roscoe Goins (defendant) was convicted by a jury of two counts of first degree murder on 24 February 2000. He was sentenced to two terms of life imprisonment without parole. The evidence presented by the State tended to show that defendant had been in a relationship with Barbara Deese (Deese), and the two had lived together for at least four years up until a few days before the death of Deese on 19 March 1995. The couple had one child together. The two fought regularly, both verbally and physically. Deese had planned to leave defendant because of the way defendant treated her and because he threatened to kill her.

On the evening of her death, Deese had been riding around with her sister, a friend, and two men. One of the men was James Robert Owens (Owens). The State offered testimony from Deese's sister and a neighbor that defendant was angry and was looking for Deese during the evening. Defendant saw Deese and Owens in a car together at the apartment defendant and Deese had shared. He became angry and threatened to kill them. Eventually, Deese and Owens rode around alone. The two went to a convenience store, where they were seen by defendant. Defendant pulled his car behind the car Owens was driving. Defendant approached the car, shot both Owens and Deese, and left.

Defendant testified that he recognized Deese sitting in a car at a convenience store. Defendant stated he tried to get Deese to come home so they could talk about things. Defendant stated he did not know Owens, but that Owens threatened to kill him. Defendant saw Owens fumbling around in the console of Owen's car, and defendant thought Owens was reaching for a gun. Defendant grabbed his rifle and fired two shots at Owens. One bullet hit Owens, and the other bullet hit Deese. Defendant left to call the police. He then threw his rifle into a river.

Defendant argues the trial court erred in denying his motion to dismiss the charges against him due to insufficiency of the evidence. Defendant specifically contends the State did not introduce evidence of premeditation and deliberation. We disagree.

Before ruling on a motion to dismiss, the trial court "must determine only whether there is substantial evidence of each

essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Crawford*, 344 N.C. 65, 73, 472 S.E.2d 920, 925 (1996). "Evidence is substantial if it is relevant and adequate to convince a reasonable mind to accept a conclusion." *State v. Parker*, 354 N.C. 268, 278, 553 S.E.2d 885, 894 (2001). "In determining whether there is evidence sufficient for a case to go to the jury, the 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 the evidence." *State v. Neal*, 109 N.C. App. 684, 686, 428 S.E.2d 287, 289 (1993).

Defendant argues the State did not present evidence of deliberation and premeditation. Furthermore, defendant argues he established through his own testimony that he acted in self defense. Defendant testified he thought he saw Owens fumbling for a weapon, and defendant shot Owens first. Defendant testified Deese was accidentally struck by a bullet.

However, there was evidence in the record from which a reasonable juror could conclude defendant acted with premeditation. The State offered testimony that Deese was leaving defendant because defendant had threatened to kill her. The State also offered testimony that earlier in the evening defendant was angry and was looking for Deese. Evidence was presented that indicated defendant saw Deese and Owens in a car together earlier that night at the apartment; he became angry and threatened to kill them. There was evidence that defendant was driving around that night with a rifle and ammunition, and that after the murder occurred,

defendant threw the rifle into a river. The State offered evidence that defendant initiated the confrontation by pulling up behind Owens' car and preventing Owens' exit. We stress the "trial court must resolve any contradictions in the evidence in the State's favor. The trial court does not weigh the evidence, consider evidence unfavorable to the State, or determine any witness' credibility." *Parker*, 354 N.C. at 278, 553 S.E.2d at 894 (citations omitted). As a result, we conclude there was substantial evidence before the trial court for the trial court to deny defendant's motion to dismiss and to submit the charges of first degree murder to the jury.

No error.

Judges McCULLOUGH and BRYANT concur.

Report per Rule 30(e).