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NO. COA11-32
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA

v.

Anson County
No. 08 CRS 51033

BOBBY LEON LITTLE

Appeal by defendant from judgment entered 23 August 2010 by Judge Joseph Crosswhite in Anson County Superior Court. Heard in the Court of Appeals 18 August 2011.

Attorney General Roy Cooper, by Assistant Attorney General Charles E. Reece, for the State.

Geoffrey W. Hosford, for defendant-appellant.

CALABRIA, Judge.

Bobby Leon Little ("defendant") appeals from a judgment entered upon a jury verdict finding him guilty of second degree murder. We find no error.

I. Background

On 20 June 2008, defendant's brother-in-law Roger Rorie ("Rorie") and William Chandler Thompson ("Thompson") picked up

defendant and drove to various locations in Wadesboro, North Carolina. The three men consumed alcohol and socialized during this time. Eventually, they returned to Rorie's automobile in order to drive home.

While they were traveling back to their respective homes, defendant told Thompson that he "didn't appreciate [Thompson] calling [defendant's] wife [a] name." Defendant and Thompson began arguing in a heated manner until Rorie intervened. Defendant later tried to reinitiate the argument, but Thompson ignored him.

When the men arrived in Thompson's driveway, their earlier argument escalated into a physical altercation in the back seat of Rorie's automobile. When the altercation ended, defendant exited the vehicle and began walking towards the road to his home. Suddenly, defendant shouted "hey" and then fired a shot at Thompson, striking him in the chest. Defendant then ran back towards his home, yelling "Come on, M-F, come on." Thompson died as a result of the gunshot wound.

Sergeant Jimmy Williams ("Sgt. Williams"), Deputy Mike Boger ("Deputy Boger"), and Deputy Josh Beam ("Deputy Beam") of the Anson County Sheriff's Office ("the Sheriff's Office") responded to the shooting. When Sgt. Williams arrived, a male

eyewitness informed him that defendant had shot Thompson and returned to his home. Sgt. Williams and Deputy Boger then went to defendant's home.

Sgt. Williams knocked on defendant's door and asked for defendant. Defendant came outside and Sgt. Williams placed him in handcuffs and asked what happened. Defendant responded, "I was tired of him beating on me." Sgt. Williams advised defendant to not say anything else about the shooting.

Sgt. Williams next asked defendant if he had any weapons on him. Defendant replied, "No, I threw it behind the building," and then led officers to the gun's location. Deputy Boger then sat with defendant while they waited for another officer to take defendant to the Sheriff's Office. While they were waiting, defendant continued to speak about the incident, despite warnings from Deputy Boger that he should not discuss the incident further.

At the Sheriff's Office, defendant was interrogated by Special Agent Justin Godfrey ("Agent Godfrey") of the State Bureau of Investigation. Prior to speaking with defendant about the shooting, Agent Godfrey informed defendant of his *Miranda* rights. Defendant made several ambiguous statements to Agent Godfrey regarding his right to an attorney. Nonetheless,

defendant executed a written waiver of his *Miranda* rights and allowed Agent Godfrey to interrogate him regarding the shooting. The entire exchange between defendant and Agent Godfrey was recorded.

Defendant was subsequently indicted for first degree murder. On 11 March 2010, defendant filed a motion to suppress, *inter alia*, his statements to Agent Godfrey. After a hearing, the trial court entered an order denying defendant's motion.

Beginning 9 August 2010, defendant was tried by a jury in Anson County Superior Court. During the trial, the State presented a recording of Agent Godfrey interrogating defendant. This recording was played in the presence of the jury without objection. After all of the evidence had been presented, the trial court instructed the jury on the applicable law. This included an instruction on flight, over defendant's objection.

On 23 August 2010, the jury returned a verdict finding defendant guilty of the lesser-included offense of second degree murder. The trial court sentenced defendant to a minimum of 240 months to a maximum of 297 months in the North Carolina Department of Correction. Defendant appeals.

II. Defendant's Statements to Agent Godfrey

Defendant argues that the trial court erred by denying his

motion to suppress defendant's statements to Agent Godfrey. Specifically, defendant contends that Agent Godfrey continued to question him after he unequivocally and unambiguously asserted his right to counsel. We disagree.

While defendant made a motion to suppress his statements to Agent Godfrey prior to trial, at trial his counsel specifically stated that he did not object to the recording of defendant's interrogation being played in the presence of the jury. "[A] pretrial motion to suppress evidence is not sufficient to preserve for appellate review the issue of whether the evidence was properly admitted if the defendant fails to object at the time the evidence is introduced at trial." *State v. Barden*, 356 N.C. 316, 332, 572 S.E.2d 108, 120 (2002). Since defendant neither objected to the admission of this evidence at trial nor argues on appeal that the admission of this evidence constituted plain error, defendant has waived appellate review of this issue. This argument is overruled.

III. Jury Instructions on Flight

Defendant argues that the trial court erred by instructing the jury on flight. We disagree.

An instruction on flight is appropriate where there is some evidence in the record reasonably supporting the theory that defendant fled after commission of the

crime[.] The relevant inquiry concerns whether there is evidence that defendant left the scene of the [crime] and took steps to avoid apprehension. If we find some evidence in the record reasonably supporting the theory that defendant fled after commission of the crime charged, the instruction is properly given. . . .

State v. Ethridge, 168 N.C. App. 359, 362-63, 607 S.E.2d 325, 327-28 (2005) (internal quotations and citations omitted).

In the instant case, the State presented evidence that after shooting Thompson, defendant immediately ran from the scene without offering Thompson aid. In addition, defendant initially attempted to conceal the gun by throwing it behind an outbuilding near his home. Finally, defendant made no attempt to speak with law enforcement until they arrived at his home. This was sufficient evidence to support a jury instruction on flight. See *State v. Eubanks*, 151 N.C. App. 499, 503, 565 S.E.2d 738, 741 (2002) (evidence was sufficient to support a flight instruction when the defendant (1) left the scene without rendering aid or assistance to the victim; (2) disposed of his weapon; and (3) "did not voluntarily contact . . . or turn himself into [law enforcement] but, rather, merely cooperated with their investigation once he was contacted"). This argument is overruled.

IV. Conclusion

Although defendant made a pretrial motion to suppress his statements to Agent Godfrey, he did not object to the audio of the interview being introduced at trial. Thus, he failed to preserve the issue for appellate review. There was sufficient evidence presented at trial to support a jury instruction on flight. Defendant received a fair trial, free from error.

No error.

Judges ELMORE and STEELMAN concur.

Report per Rule 30(e).