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NO. COA11-794  
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

STATE OF NORTH CAROLINA

v.

Onslow County  
Nos. 09 CRS 54843-44

JARRELL DAMONT WILSON

Appeal by Defendant from judgments dated 23 November 2010 by Judge Jack W. Jenkins in Onslow County Superior Court. Heard in the Court of Appeals 14 November 2011.

*Attorney General Roy Cooper, by Assistant Attorney General Sandra Wallace-Smith, for the State.*

*Glover & Petersen, P.A., by Ann B. Petersen, for Defendant.*

STEPHENS, Judge.

Defendant Jarrell Damont Wilson was indicted on two counts of murder. Wilson pled not guilty to the charges and was tried by a jury in Onslow County Superior Court, the Honorable Jack W. Jenkins presiding.

The evidence presented at trial tended to show the following: On 17 July 2009, Wilson shot and killed Gabriel Ape and Christopher Watts. Prior to the shooting, Wilson had

received threats from Watts and Ape. Further, Ape had demanded \$60 from Wilson because Wilson broke Ape's friend's telephone. On the evening of the shooting, Watts and Ape approached Wilson in the parking lot outside a club while Wilson was in his car, banged loudly on the car window, and demanded \$60 from Wilson. Ape then punched Wilson through an open window. Wilson drove away from Ape and Watts, but then stopped the car and exited with a gun. As the three met near Wilson's car, a friend of Wilson's attempted to intercede and give Ape the money he demanded. Ape refused the money and he and Watts rushed at Wilson; Wilson testified that Ape was wearing a set of brass knuckles. As Ape and Watts approached Wilson, Wilson fired his weapon once at each man. Watts and Ape died as a result of gunshot wounds inflicted by Wilson.

The jury found Wilson guilty of two counts of first-degree murder and two counts of second-degree murder. The trial court imposed two concurrent sentences of life imprisonment without parole for the first-degree murder convictions and arrested judgment on the second-degree murder convictions. Wilson gave notice of appeal in open court.

On appeal, Wilson first argues that the trial court erred by instructing the jury on flight because "the evidence did not support this instruction." We disagree.

"A trial court may properly instruct on flight where there is some evidence in the record reasonably supporting the theory that the defendant fled after the commission of the crime charged." *State v. Lloyd*, 354 N.C. 76, 119, 552 S.E.2d 596, 625 (2001) (citation and internal quotation marks omitted). "However, mere evidence that defendant left the scene of the crime is not enough to support an instruction on flight. There must also be some evidence that defendant took steps to avoid apprehension." *Id.* at 119, 552 S.E.2d at 625-26 (citation and internal quotation marks omitted).

The evidence relevant to Wilson's flight tended to show the following: After the shooting, Wilson immediately drove away from the crime scene without rendering any assistance to, or obtaining medical aid for, Ape and Watts. Wilson left the scene with his car lights extinguished, nearly hitting a witness who had to "jump back away" in order to avoid being struck. Further, Wilson concealed the murder weapon underneath the carpet of his car to avoid detection. Finally, Wilson discarded the wristband given to him by the club where Ape and Watts were

shot. In our view, this evidence was sufficient to support the trial court's instruction on flight. *Cf. Lloyd*, 354 N.C. at 119-20, 552 S.E.2d at 626 (holding that an instruction on flight was appropriate where the defendant, after shooting the victim, left the crime scene hurriedly without providing medical assistance to the victim and soon thereafter called the police to turn himself in); *State v. Anthony*, 354 N.C. 372, 425, 555 S.E.2d 557, 591 (2001) (holding that flight instruction was proper where the evidence showed that after shooting the victim, "defendant immediately entered his car and quickly drove away from the crime scene without rendering any assistance to the victims or seeking to obtain medical aid for them."), *cert. denied*, 536 U.S. 930, 153 L. Ed. 2d 791 (2002). Wilson's argument is overruled.

Wilson next argues that the trial court erroneously excluded Wilson's testimony regarding threats communicated by Ape to third parties. The relevant portion of Wilson's testimony is excerpted below:

[Defense counsel:] All right. Prior to that time, had -- when [Ape] says he wants his \$60, had you received any threats from him?

[Wilson:] Yes.

[Defense counsel:] And who told you the threats?

[Wilson:] Well, his [] mom.

[Prosecutor]: Objection to what [his]

mom said.

[Defense counsel]: I'm not asking what was said, I'm asking who told him.

[Prosecutor]: He hasn't laid the groundwork.

THE COURT: I'm going to sustain that.

[Defense counsel:] How did you know there were threats against you?

[Wilson:] The landlord --

[Prosecutor]: Objection to what he heard from the landlord.

THE COURT: I'm going to sustain that and direct the jurors to disregard that, as well.

Wilson contends that it was prejudicial error "to exclude [the evidence] because [the evidence] was relevant to the issue of [] Wilson's state of mind at the time of the shooting." We are unpersuaded.

Because Wilson made no offer of proof to the trial court regarding the substance of Ape's threats communicated to Wilson by Ape's mother and Wilson's landlord, the only ruling by the trial court upon which Wilson may predicate error is the ruling excluding evidence of who communicated Ape's alleged threats to Wilson. See N.C. Gen. Stat. § 8C-1, Rule 103(a)(2) (2009). Assuming the exclusion of such evidence was erroneous, we cannot conclude that Wilson has satisfied his burden of showing that any error was prejudicial. See *State v. Murphy*, 100 N.C. App. 33, 41, 394 S.E.2d 300, 305 (1990) (noting that the burden is on the defendant not only to show error but to show that the error

was prejudicial); *see also* N.C. Gen. Stat. § 15A-1443(a) (2009) (providing that an error is prejudicial if there is a reasonable possibility that, had the error not been committed, a different result would have been reached at trial). Based on the circumstances regarding Wilson's conduct before, during, and after his shooting of Ape and Watts, along with the fact that Wilson was permitted to testify about receiving threats from Ape and about Watts' reputation as "a fighter" and Ape's reputation for fighting "a lot," we cannot conclude that absent the trial court's exclusion of evidence of who communicated Ape's alleged threats, there is a reasonable possibility a different result would have been reached at trial. Wilson's argument is overruled.

We conclude that Wilson received a fair trial, free of prejudicial error.

NO PREJUDICIAL ERROR.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).