NO. COA03-1678

NORTH CAROLINA COURT OF APPEALS

Filed: 19 October 2004

STATE OF NORTH CAROLINA

v.

DALLAS EUGENE CLARK

Onslow County
Nos. 02 CRS 56365-67, 56470

Appeal by defendant from judgments entered 3 April 2003 by Judge Gary E. Trawick in Onslow County Superior Court. Heard in the Court of Appeals 18 October 2004.

Attorney General Roy Cooper, by Special Deputy Attorney General E. Burke Haywood, for the State.

Appellate Defender Staples Hughes, for defendant-appellant.

LEVINSON, Judge.

On 10 December 2002, defendant Dallas Clark was indicted on three counts of attempted murder, two counts of assault with a deadly weapon with intent to kill, one count of assault with a deadly weapon with intent to kill inflicting serious injury, and one count of discharging a weapon into occupied property. The case was tried at the 31 March 2003 Criminal Session of Onslow County Superior Court.

The evidence presented at trial tended to show the following: On 14 June 2002, Armando Lanclos, Jamal Davenport, Joshua Meadows

and Todd Hill drove to the Party Zone, a club on Highway 24 in Jacksonville, North Carolina. At approximately 3 or 3:30 a.m., a group comprised of the defendant, Antonio Hill, Ernest Rhodes, Tavon Brown, Tristin McElroy and Angelo Brown entered the club. The two groups were familiar and cordial with each other. A short time after the second group arrived, the club closed and the two groups of men left the club. In the parking lot, Antonio Hill and Lanclos had a brief disagreement, but the matter did not escalate.

Before leaving, Rhodes pulled up in a van alongside Lanclos' green Dodge Caravan. The two groups made plans to meet up later. Meanwhile, Davenport had to urinate and decided to do so in between the two vans. As he started to do so, defendant stuck his head out of the window and asked Davenport what he was doing. Davenport got into Lanclos' van without urinating. As he got into the van, Lanclos told Davenport that defendant had said something, but he could not understand because the music was too loud.

Rhodes pulled his van out of the parking lot onto Highway 24, and Lanclos pulled out behind him. As Lanclos' van passed the van driven by Rhodes, defendant leaned out of the van and shot at Lanclos' van. The first bullet caused the driver's side window to shatter. The glass hit Meadows in the face and knocked him unconscious, and the bullet hit Lanclos in the neck and he slumped over on the steering wheel. Defendant fired a second shot that hit Lanclos in the back, and Lanclos slumped over to the passenger side seat. Davenport took hold of the wheel and drove the van to the hospital.

After the shooting, Rhodes stopped the van, which was owned by defendant, and everybody got out. Antonio Hill took the gun from defendant and threw it away. The defendant then drove the van away at a fast rate of speed. The remainder of the group went to the hospital and told police what had happened.

Defendant testified that he had been drinking on the night of the shooting, and that he was drunk. Defendant denied intentionally shooting at Lanclos' van or knowing who was in the van. Defendant stated that he simply heard a bang and a light flash, grabbed his gun and started shooting. Defendant stated that he remembers firing about five times.

Defendant was convicted of two counts of assault with a deadly weapon with intent to kill, one count of assault with a deadly weapon with intent to kill inflicting serious injury, and discharging a weapon into occupied property. Defendant appeals from judgments and sentences entered upon these convictions.

We first consider whether there was sufficient evidence that defendant assaulted the victims with an intent to kill. Defendant cites his testimony that he did not know that the victim was in the van next to him, the fact that he had been drinking, and argues that he did not intend to assault the victims with an intent to kill.

After careful review of the record, briefs and contentions of the parties, we find no error. To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense. *State v. Cross*, 345 N.C. 713, 716-17, 483

S.E.2d 432, 434 (1997). "'Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.'" *Id.* at 717, 483 S.E.2d at 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)). When reviewing the sufficiency of the evidence, "[t]he trial court must consider such evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom." *State v. Patterson*, 335 N.C. 437, 450, 439 S.E.2d 578, 585 (1994)(citation omitted).

Defendant contends that there was insufficient evidence that he intended to kill the victims.

> An intent to kill is a mental attitude, and ordinarily it must be proved, if proven at all, by circumstantial evidence, that is, by proving facts from which the fact sought to be proven may be reasonably inferred. The nature of the assault, the manner in which it was made, the weapon, if any, used, and the surrounding circumstances are all matters from which an intent to kill may be inferred. Moreover, an assailant must be held to intend the natural consequences of his deliberate act.

State v. Grigsby, 351 N.C. 454, 457, 526 S.E.2d 460, 462 (2000) (citations and internal quotation marks omitted). Here, prior to the shooting, several witnesses heard defendant refer to Lanclos and state that he did not like light-skinned black people with dredlocks, this indicating a possible motive for the assault. Moreover, the circumstances of the assault permit a reasonable inference that defendant possessed an intent to kill. The State's evidence tends to show that defendant leaned out of his van as it pulled alongside the Lanclos' van and deliberately fired several

shots at it, emptying the pistol and hitting the van multiple times. *See State v. Cain*, 79 N.C. App. 35, 47, 338 S.E.2d 898, 905 (1986)("The requisite 'intent to kill' can be reasonably inferred by the defendant's use of a .357 magnum revolver, fired numerous times."). Afterwards, defendant fled the scene. Furthermore, he showed little remorse when he learned Lanclos would be paralyzed from the neck down, telling an investigator the day of the shooting, "I don't care. F--- him. It's only my first offense anyways, and I have a lawyer." Based on all the evidence, considered in the light most favorable to the State, a jury could reasonably conclude that defendant assaulted the victims with an intent to kill. Accordingly, the assignment of error is overruled.

Defendant next argues that the trial court erred by instructing the jury on transferred intent. Defendant contends that the evidence tended to show that if the defendant intended to kill anyone, it was Lanclos, and thus an instruction on transferred intent served only to confuse the jury. Defendant argues that there was no evidence of an intent to kill a person other than Lanclos. We are not persuaded.

Our Supreme Court has stated:

> under the doctrine of transferred intent, it is immaterial whether the defendant intended injury to the person actually harmed; if he in fact acted with the required or elemental intent toward someone, that intent suffices as the intent element of the crime charged as a matter of substantive law.

State v. Hales, 344 N.C. 419, 427, 474 S.E.2d 328, 332 (1996) (citation and internal quotation marks omitted). Here, the

instruction was proper because there was evidence that Jamal Davenport may have been defendant's intended victim. Davenport was in the car with the victim, and there was evidence that defendant was angry at Davenport for urinating on his van. Although defendant contends that the trial court's instruction on transferred intent was "flawed" because it failed to specify an intended victim, "[i]t is not necessary that someone be named in the trial court's instructions." *State v. Davis*, 349 N.C. 1, 38, 506 S.E.2d 455, 476 (1998). Thus, the jury was properly instructed on the doctrine of transferred intent. Accordingly, we find no error.

No error.

Judges TIMMONS-GOODSON and CALABRIA concur.

Report per Rule 30(e).