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NO. COA06-576

NORTH CAROLINA COURT OF APPEALS

Filed: 21 November 2006

STATE OF NORTH CAROLINA

v.

Cleveland County  
No. 04 CRS 52375  
04 CRS 7528

TAZ TEMORIO BLACK

Appeal by defendant from judgments entered 9 November 2005 by Judge James W. Morgan in Cleveland County Superior Court. Heard in the Court of Appeals 13 November 2006.

*Attorney General Roy Cooper, by Special Deputy Attorney General Sharon Patrick-Wilson, for the State.*

*Allen W. Boyer for defendant-appellant.*

LEVINSON, Judge.

Taz Temorio Black (defendant) was found guilty of assault with a deadly weapon with intent to kill inflicting serious injury and of possession of a firearm by a felon.

The State presented evidence tending to show the following: on 6 April 2004, Julian Hopper gave two young males, whom he identified as Josh Morris and defendant, a ride in his automobile. Hopper drove while Josh Morris sat in the front passenger seat and defendant sat directly behind Hopper in the back seat. Hopper stopped the vehicle to let the men out near their stated destination. Hopper looked in the mirror and saw the back door

open but he did not see defendant exit the vehicle. As Morris stood at the passenger side doorway thanking Hopper for the ride, gunshots fired and bullets struck Hopper in his upper back right shoulder and in the center of his shoulder from the neck to his arm joint. Hopper turned around to look for defendant. A third shot fired, shattering the driver's side window and striking Hopper in the face. A third bullet struck Hopper's bicep two inches above his elbow. Hopper saw defendant and Josh Morris "high-tailin' it down the street." Hopper saw nobody else. Hopper sought assistance from the residents of a nearby house. Hopper spent a week in the hospital as a result of the shooting. The bullets still remain in his body.

By his sole assignment of error, defendant contends the court erred in denying his motion to dismiss for insufficient evidence.

Upon a motion to dismiss the court determines whether there is substantial evidence to establish each element of the offense charged and to identify the defendant as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651 (1982). The court considers the evidence in the light most favorable to the State, giving it the benefit of every reasonable inference that may be drawn from the evidence. *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). The State's evidence is to be considered as true, and conflicts and discrepancies in the evidence are to be disregarded. *State v. Mize*, 315 N.C. 285, 290, 337 S.E.2d 562, 565 (1985). Whether the evidence is direct, circumstantial or both, if there is substantial evidence to support

a finding that the defendant committed the charged offense, then the case is for the jury and the motion to dismiss should be denied. *State v. Locklear*, 322 N.C. 349, 358, 368 S.E.2d 377, 382-83 (1988). However, if the evidence only raises conjecture or suspicion as to the existence of any element of the offense or the identity of the perpetrator, then the motion to dismiss should be allowed even though the suspicion is strong. *State v. Malloy*, 309 N.C. 176, 179, 305 S.E.2d 718, 720 (1983).

Defendant contends the evidence is insufficient to establish he perpetrated the offenses. He argues that while there may have been evidence to show he had the opportunity to shoot Hopper, there is insufficient evidence to show he had a weapon or a motive to harm Hooper.

Hopper identified defendant as the person who shot him. He further testified on cross examination that defendant, while in the back seat, shot him in the back and then got out of the vehicle and shot him through the window in the face. Other evidence supports Hopper's identification of defendant as the perpetrator. Two of the bullets lodged in Hopper's back from the neck to his right shoulder, consistent with gunshots being fired from a direction behind Hopper's seat. Defendant and Josh Morris fled from the scene after the shots were fired and neither returned to render any assistance to the wounded Hopper. Josh Morris introduced defendant to Hopper by the name of "Anthony Morris," a name other than defendant's real name. Hopper did not see any persons other than defendant and Josh Morris in the vicinity at the time of the

shooting.

We conclude the foregoing evidence is sufficient to withstand the motion to dismiss, and therefore overrule defendant's assignment of error.

No error.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).