NO. COA08-108

NORTH CAROLINA COURT OF APPEALS

Filed: 15 July 2008

STATE OF NORTH CAROLINA

v. Forsyth County
Nos. 05 CRS 57925
RODNEY LAMONT INGRAM 06 CRS 07521

Appeal by defendant from judgment entered 11 July 2007 by Judge Henry E. Frye, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 30 June 2008.

Attorney General Roy Cooper, by Assistant Attorney General Scott K. Beaver, for the State.

William D. Spence, for defendant-appellant.

MARTIN, Chief Judge.

Defendant Rodney Lamont Ingram was convicted by a jury of assault with a deadly weapon with intent to kill inflicting serious injury and possession of a firearm by a convicted felon. He appeals from judgment entered upon the jury verdict.

The State presented evidence at trial which tended to show that on 10 June 2005, Darius Scales was at the Rolling Hills apartment complex in Forsyth County visiting his cousin. Scales was sitting on a car in the parking lot talking with friends when he heard two doors "shut." Scales looked up and saw defendant and

another man walking towards him. Scales testified that a month prior, he and defendant had gotten into a fight over a girl. Defendant started talking to Scales, telling him, "You know it ain't over, you know what I come here for." Scales stated that "he knew what [defendant] came for because he wouldn't take his hand out of his pocket." Defendant then pulled a chrome pistol out of his right front pocket and shot Scales in the stomach. Defendant pointed the gun at Scales again and pulled the trigger. The gun clicked but did not fire. Scales ran around the car and tripped and fell. Meanwhile, defendant and the man he was with got into a car and drove off. Scales identified defendant as the shooter. Scales was treated at Baptist Hospital. A physician testified that his injury was "very serious." Defendant offered evidence of an alibi.

Defendant first contends the trial court erred by denying his motion to dismiss for insufficiency of the evidence. Defendant argues that the State failed to present sufficient evidence that defendant intended to kill Scales, that Scales suffered a serious injury, and that defendant was the perpetrator of the two offenses. 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. *See 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) (citing *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991)).

We first consider defendant's contention that there was insufficient evidence that he intended to kill Scales. Defendant claims that the evidence offered to support the assertion that he intended to kill Scales was speculative. We are not persuaded.

> 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, Scales testified that defendant approached him and stated: "You know it ain't over, you know what I come here for." Defendant then pointed a gun at Scales and shot him in the midsection. After shooting Scales, defendant pointed the gun at Scales a second time and pulled the trigger, but the gun was either empty or misfired.

Based on this evidence, in the light most favorable to the State, we conclude that a jury could reasonably infer that defendant assaulted Scales with an intent to kill.

We next consider defendant's contention that the injuries suffered by Scales were not serious. A "serious physical injury" has been defined as an injury "that cause[s] great pain and suffering." *State v. Phillips*, 328 N.C. 1, 20, 399 S.E.2d 293, 303, *cert. denied*, 501 U.S. 1208, 115 L. Ed. 2d 977 (1991). Our Supreme Court has stated:

> Whether a serious injury has been inflicted depends upon the facts of each case and is generally for the jury to decide under appropriate instructions. A jury may consider such pertinent factors as hospitalization, pain, loss of blood, and time lost at work in determining whether an injury is serious. Evidence that the victim was hospitalized, however, is not necessary for proof of serious injury.

State v. Hedgepeth, 330 N.C. 38, 53, 409 S.E.2d 309, 318 (1991).

In the instant case, Scales testified that the gunshot wound caused him "excruciating pain." As a result of the assault, Scales required immediate treatment at a hospital. Doctors operated on Scales to determine the severity of his injuries, and Scales received thirty-six staples to close the wound. Dr. James Hoth, the doctor who treated Scales, described the injury as "very serious" and required surgery within twenty minutes of Scales' arrival at the hospital. We conclude that this evidence, when taken in the light most favorable to the State, was sufficient for a jury to determine that the wounds suffered by Scales constituted a serious injury.

We next consider defendant's contention that there was insufficient evidence presented to establish his identity as the perpetrator of the two offenses. Defendant argues that Scales' testimony was uncorroborated, and notes that Scales later signed a paper stating that defendant did not shoot him. Defendant further argues that there was no physical evidence linking him to the crime. Therefore, defendant asserts that Scales' testimony identifying defendant as the perpetrator "is in the nature of 'inherently incredible' and so patently unreliable that it would not be safe to rest a conviction thereon." We do not agree.

Here, Scales testified that he had known defendant since Scales was a "little boy." Scales further testified that the parking lot where the shooting occurred was "lit up to where even at nighttime you can see anything." He testified that he could see the face of the person who shot him, and identified defendant as the shooter.

Officer R. K. Griffin of the Winston-Salem Police Department also described the parking lot as "well lit." Officer Griffin testified that when he interviewed Scales in the hospital the evening after the shooting, Scales told Officer Griffin that he and defendant grew up together; that they had an altercation approximately three weeks prior to the shooting; and that defendant had pulled out a gun and shot him. Officer Griffin additionally testified that Scales identified defendant as the shooter in a photographic lineup.

Defendant claims that Scales' testimony alone was insufficient

to prove the offense. However, "[t]he general rule is that the testimony of a single witness will legally suffice as evidence upon which the jury may found a verdict." *State v. Vehaun*, 34 N.C. App. 700, 704, 239 S.E.2d 705, 709 (1977) (internal quotation marks omitted), *cert. denied*, 294 N.C. 445, 241 S.E.2d 846-47 (1978). Furthermore, upon a motion to dismiss, "[t]he 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." *State v. Robinson*, 355 N.C. 320, 336, 561 S.E.2d 245, 256 (citations omitted), *cert. denied*, 537 U.S. 1006, 154 L. Ed. 2d 404 (2002). Accordingly, in the light most favorable to the State, a reasonable mind could conclude from the evidence that defendant was the perpetrator of the two offenses. *Cross*, 345 N.C. at 717, 483 S.E.2d at 434. Accordingly, the assignment of error is overruled.

Finally, defendant argues that the trial court committed plain error by instructing the jury that a pistol is a deadly weapon. "A plain error is one so fundamental as to amount to a miscarriage of justice or which probably resulted in the jury reaching a different verdict than it otherwise would have reached." *State v. Carroll*, 356 N.C. 526, 539, 573 S.E.2d 899, 908 (2002)(internal quotation marks omitted), *cert. denied*, 539 U.S. 949, 156 L. Ed. 2d 640 (2003). It is to be applied cautiously and only in the exceptional case where the error is so prejudicial, that justice cannot have been done. *See State v. Baldwin*, 161 N.C. App. 382, 388, 588 S.E.2d 497, 503 (2003) (citing *State v. Odom*, 307 N.C. 655, 660,

300 S.E.2d 375, 378 (1983)).

Here, Scales described the weapon used by defendant as a "chrome pistol." This Court has held that a pistol is a deadly weapon *per se*. *State v. Bagley*, ___ N.C. App. ___, ___, 644 S.E.2d 615, 623 (2007). Therefore, we conclude that the court's instruction that the weapon used by defendant was a deadly weapon was not error, much less plain error. Accordingly, we find no error.

No error.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).