NO. COA09-1480

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

STATE OF NORTH CAROLINA

v. Pitt County
No. 08 CRS 53890

JAMES EARL CHAPMAN

By writ of *certiorari* from judgment entered 27 October 2008 by Judge Stafford Bullock in Pitt County Superior Court. Heard in the Court of Appeals 14 June 2010.

Attorney General Roy Cooper, by Assistant Attorney General Hilda Burnett-Baker, for the State.

Thomas R. Sallenger for defendant-appellant.

STEELMAN, Judge.

The trial court did not err in denying defendant's motion to dismiss the charge of discharging a weapon into occupied property. Even assuming that the trial court erred in admitting hearsay testimony by Officer Leggett, defendant cannot show, under N.C. Gen. Stat. § 15A-1443(a), a reasonable possibility that a different result would have been reached at trial.

I. Factual and Procedural Background

In April 2008, Alfraser Bullock (Bullock) lived at Summer Place, apartment number 16, with his wife, twin teenage daughters, and ten-year-old son. James Earl Chapman (defendant) lived in the

apartment next door. The two apartments shared a front porch. Defendant played his music loud. Defendant would sometimes comply with Bullock's request to turn down the music, and, other times, Bullock would call the police.

At 5:30 p.m. on 12 April 2008, Bullock returned home from his job as a warehouse worker. Bullock's wife, three children, cousin, and cousin's girlfriend were at his apartment when he arrived. That night, defendant's music was so loud that the children could not hear the television. Around 10:00 p.m., Mrs. Bullock told her husband to ask defendant to turn down his music. Bullock approached defendant who was on the front porch drinking and partying with his girlfriend. Bullock asked defendant, "Could you please turn down the music?" Defendant responded, "This is my m_ _ _ _ _ f_ _ _ _ _ _ house. I don't have to turn a d_ _ _ thing down." Bullock told defendant to turn down the music or he would call the police.

When Bullock turned to walk away, defendant got up from his chair and made a move toward Bullock. Bullock grabbed defendant and "slammed him on the porch." Bullock's wife and cousin came out to the porch because they heard the commotion. Bullock's wife and cousin pulled Bullock away from defendant. Defendant lunged at Bullock who again slammed defendant on the porch.

Bullock's wife and cousin told Bullock to come inside the apartment. Bullock, along with his wife and cousin, went into the Bullocks' apartment and closed the door. Bullock sat down in a chair. Mrs. Bullock went to the bedroom with their children. Two

minutes later, there was a knock on the door and the sound of a gunshot. A white cloud of smoke exploded beside Bullock's head where the bullet hit the sheetrock. Bullock did not see who shot through his door. Mrs. Bullock yelled "you've been shot!" Bullock suffered flesh wounds from bullet fragments that landed in his chest. Mrs. Bullock called the police.

Officers Adam Leggett, Charles Walker and Shawn Moore of the Greenville Police Department responded to the call for shots fired in the area of the Summer Place Apartments. Officers Leggett and Walker approached defendant on the porch. The officers told the Bullocks to close their front door and that the officers would attend to them later. Officer Moore joined Officers Leggett and Walker on the porch. Officer Leggett asked defendant "what was going on?" A female then exited the adjoining apartment, pointed directly at defendant, and said, "he was doing the shooting." Officer Leggett asked defendant if this was true. Defendant said, "yes, they were trying . . . to fight me." Officer Walker heard defendant say that he shot the hole in the door. Officers Leggett and Moore detained defendant.

The officers searched defendant's person for weapons and then assisted the Bullocks in the adjoining apartment. Officer Leggett observed the hole in the door and the wall. Officer Walker took several photographs of the door and the drywall in the apartment where the bullet had entered. Officer Leggett saw quite a few people in the apartment where the shooting had occurred. The officers found Bullock injured by a bullet fragment. Bullock and

his wife told Officer Leggett that defendant and Bullock had an argument over defendant playing music too loudly; that there had been a physical altercation between Bullock and defendant; and that shortly after they returned to their apartment, shots were fired into their apartment.

Officer Leggett asked for and received defendant's consent to search his residence for any type of weapon. The search of defendant's residence yielded a .22 caliber rifle. The officers determined that the .22 caliber rifle had not been used in the shooting. Officer Leggett believed that the hole in the door was made by a smaller caliber weapon. No other weapons were located in defendant's apartment, on defendant's person, or in the area surrounding the apartment.

On 9 June 2008, defendant was indicted for the felony of discharging a firearm into occupied property, the common law misdemeanor of going armed to the terror of the people, and the misdemeanor of assault with a deadly weapon. The trial court dismissed the charges of going armed to the terror of the people and assault with a deadly weapon. On 30 October 2008, a jury found defendant guilty of discharging a weapon into occupied property. Defendant was sentenced to 61-83 months in prison. This Court allowed defendant's petition for writ of *certiorari* on 16 June 2009.

II. Sufficiency of the Evidence

In his first argument, defendant contends that the trial court erred by denying his motion to dismiss based on insufficiency of the evidence. We disagree.

A. Standard of Review

The standard for ruling on a motion to dismiss "is whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990) (citation omitted). Substantial evidence is that relevant evidence, which a reasonable mind might accept as adequate to support a conclusion. *State v. Patterson*, 335 N.C. 437, 449-50, 439 S.E.2d 578, 585 (1994) (citation omitted). In ruling on a motion to dismiss, the trial court must consider all of the evidence in the light most favorable to the State, and the State is entitled to all reasonable inferences, which may be drawn from the evidence. *State v. Davis*, 130 N.C. App. 675, 679, 505 S.E.2d 138, 141 (1998) (citation omitted).

B. Discharge of Firearm into Occupied Property

The elements of the offense of discharging a weapon into occupied property "are (1) the willful or wanton discharging (2) of a firearm (3) into any building (4) while it is occupied." *State v. Jones*, 104 N.C. App. 251, 258, 409 S.E.2d 322, 326 (1991). Defendant's argument on appeal is limited to whether the State presented sufficient evidence that defendant was the perpetrator of the crime.

The State's evidence showed that defendant and Bullock were involved in a physical altercation; that after the altercation, defendant saw the Bullocks go into their apartment; that two minutes later, shots were fired into the Bullocks' front door; that defendant was standing on the common porch when police arrived; and that defendant admitted, in front of three police officers, that he shot through the Bullocks' front door. This was sufficient evidence that defendant was the perpetrator of the shooting for the case to be submitted to the jury. The trial court properly denied defendant's motion to dismiss.

This argument is without merit.

III. Testimony of Officer Leggett

In his second argument, defendant contends that the trial court erred in allowing Officer Leggett to testify on redirect examination that two people told him that defendant had shot through the Bullocks' apartment door. We disagree.

Defendant asserts the officer's testimony was inadmissible hearsay under Rule 801(c). Defendant also asserts that the admission of this testimony violated his constitutional right to confrontation. However, defendant only objected to Officer Leggett's testimony based on hearsay grounds and did not raise the constitutional question. Constitutional issues not raised and passed upon at trial will not be considered for the first time on appeal. *See State v. Muncy*, 79 N.C. App. 356, 364, 339 S.E.2d 466, 471 (citation omitted), *disc. review denied*, 316 N.C. 736, 345 S.E.2d 396 (1986). Defendant has not properly preserved his

constitutional argument for review. Our review is thus limited to whether the trial court erred in overruling defendant's objection to Officer Leggett's testimony based upon hearsay.

During cross-examination, defense counsel asked Officer Leggett, "you did not interview any witnesses who are here today that said they saw [defendant] shoot into the door, did you?" Officer Leggett answered, "That are not present in the courtroom, no." After defense counsel concluded his cross-examination, the prosecutor conducted a redirect examination of Officer Leggett as follows:

> Q. Mr. Stroud asked you if anybody was in the courtroom today who told you they saw the shooting. Did two people tell you they saw him shoot the gun?
>
> A. Yes.
>
> MR. STROUD: Objection. Hearsay.
>
> THE COURT: Sustained.
>
> MS. ROBB: Judge, may we approach on that?
>
> THE COURT: Yes.
>
> (Unrecorded bench conference.)
>
> THE COURT: On that ruling, I will reverse myself. Overruled.
>
> MS. ROBB: Could you repeat that.
>
> THE COURT: On that ruling I will reverse myself - - on that prior ruling I will reverse myself. Overruled.
>
> MS. ROBB: Sorry, sir. I meant the witness.
>
> THE COURT: Oh. Very well.
>
> Q. Did you hear--did you--did you hear--did anybody give you statements that they, in

fact, had seen--did two people give you statements that they had seen the defendant shoot into the residence?

A. Yes.

MS. ROBB: That's all I have, Judge.

The following occurred upon defense counsel's re-cross of Officer Leggett:

Q. Well, Officer Leggett, if that's true, where are their statements?

A. The - - the first person that I spoke to was on the traffic stop. At that time, we're --we were trying to gather information. Someone is saying that yeah, they were shooting. They give me a--a general direction. I'm not really concerned with that person at that point. I'm trying other [sic] find out where the shooter is, where the shooting occurred, if anyone's hurt. That's my main priority.

Q. Are you saying that you don't have the statements?

A. No. I do not. I didn't have time to take a statement.

Q. Okay. And are those people here today?

A. No.

Q. Did you subsequently try to find them?

A. I did, and in that retrospect, I didn't take down their information, but not for this case, no.

Q. Well, if you didn't take down their information, then how did you try to find them?

A. I'm saying I have not - - I have not been able to do that for this case.

Q. Oh, I understand. Okay. All right. So they're not here?

A. No.

The North Carolina Rules of Evidence define "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801(c) (2009). Out-of-court statements offered for purposes other than to prove the truth of the matter asserted are not hearsay. *State v. Call*, 349 N.C. 382, 409, 508 S.E.2d 496, 513 (1998). More particularly, statements are not hearsay if they are admitted for the purpose of explaining the subsequent conduct of the person to whom the statement was directed. *State v. Coffey*, 326 N.C. 268, 282, 389 S.E.2d 48, 56 (1990) (citation omitted).

Even assuming *arguendo* that Officer Leggett's testimony constituted hearsay, we conclude that defendant has failed to satisfy his burden of demonstrating that the jury would have reached a different result had the evidence not been admitted. *See State v. Sills*, 311 N.C. 370, 378, 317 S.E.2d 379, 384 (1984); N.C. Gen. Stat. 15A-1443(a) (2009). The great weight of the other evidence presented at trial leads us to conclude that the same result would have been reached even if it was error to admit this testimony. As noted above, two minutes after defendant saw the Bullocks enter their apartment, shots were fired into the apartment, and defendant admitted to the officers that he shot into the Bullocks' apartment. Defendant has failed to demonstrate prejudicial error in light of the overwhelming evidence of his guilt. *Sills*, 311 N.C. at 378-79, 317 S.E.2d at 384-85.

NO ERROR.

Judges HUNTER, ROBERT C. and BRYANT concur.

Report per Rule 30(e).