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NO. COA09-867

NORTH CAROLINA COURT OF APPEALS

Filed: 7 September 2010

STATE OF NORTH CAROLINA

v. | Wake County No. 07CRS031073

RASHAAN ALI,
Defendant.

Appeal by defendant from judgment entered on or about 20 November 2008 by Judge R. Allen Baddour, Jr. in Superior Court, Wake County. Heard in the Court of Appeals 13 January 2009.

Attorney General Roy A. Cooper, III, by Special Deputy Attorney General Mark A. Davis, for the State.

Marilyn G. Ozer, for defendant-appellant.

STROUD, Judge.

Rashaan Ali ("defendant") appeals from his conviction for first degree murder. Defendant presents three issues for this Court's review: (1) whether defendant was prejudiced by the trial court's jury selection procedure; (2) whether the trial court erred in allowing lay witness Shawn Taylor's testimony; and (3) whether the trial court erred in denying defendant's motion to dismiss and his motion to set aside the verdict. Because defendant was not prejudiced by the trial court's jury selection procedure, the lay witness did not give an inadmissible opinion regarding defendant's

intentions, and there was substantial evidence to support the charges against defendant, we find no error.

I. Background

The State's evidence tended to show that around the end of April 2007 Jesus Barrera was holding $60,000 to $69,000 for Francisco Mejia and Manuel Arias[1]. Mr. Barrera testified that after receiving this large amount of money he wanted take it and return to Mexico. However, Mr. Barrera did not go to Mexico with the money but had his brothers return at least a portion of it to Mr. Mejia and Mr. Arias.

On 1 May 2007, Mr. Barrera and Fredi Arroyo went to the apartment of Milagros Ortega on 4401 Green Road in Raleigh, North Carolina. While at the apartment Omar Sandoval dropped by to visit Ms. Ortega and saw Mr. Barrera at the apartment. Around 9 p.m. there was a knock at the door. Ms. Ortega answered the door and it was Mr. Mejia, whom she identified as "El Patchi." Mr. Mejia walked into the apartment and pointed out Mr. Barrera, who was sitting in the living room. Then a man rushed into the apartment, pointing a gun at Mr. Barrera; he was described as African American, muscular, bald, with a beard, and wearing a white t-shirt and was identified at trial as defendant. Mr. Barrera grabbed at the gun in defendant's hand and they began struggling in the middle

[1] Mr. Barrera referred to Mr. Mejia and Mr. Arias collectively as "the Columbian[,]" even though Mr. Arias was the only one that was from Columbia. Mr. Mejia was also known as and referred to by other witnesses as "El Patchi."

of the living room. Ms. Ortega's sister, Martha Ortega testified that during this struggle between defendant and Mr. Barrera, she saw defendant's gun fire one shot, hitting Milagros Ortega's thirteen-year-old daughter Gelnirys "Haneedy" Ortega between the eyes. As Mr. Barrera was struggling with defendant, he could see a second African American man, "skinny" with dreadlocks, standing in the doorway holding a gun. Evidence was presented at trial that at the time of the incident, Ian Wattley "co-defendant Wattley" had "cornrows" in his hair. Ms. Ortega was also shot in the neck as she grabbed for her two-year-old son Yandel Ortega who had been knocked down during the struggle between defendant and Mr. Barrera. Mr. Barrera stated that defendant stopped wrestling with him when he realized that Haneedy had been shot.

At the scene, police discovered one 9mm shell casing at the entrance of the apartment and one .380 caliber shell casing on the floor near the kitchen area. Police also found one bullet on the floor at the scene and recovered another bullet at the bottom of a wall, lodged between a baseboard and the carpet. Dr. John D. Butts, the Chief Medical Examiner in Chapel Hill, NC, performed the autopsy on Haneedy Ortega. It was Dr. Butt's medical opinion that Haneedy Ortega died as the result of a gunshot wound to the inner corner of her right eye, which resulted in an exit wound in the back of her head.

Shawn Taylor testified that he lived in Augusta, Georgia but ever since 2003 he had visited Raleigh two or three times a month to purchase and sell marijuana. Around the end of April 2007, Mr.

Taylor was in Raleigh with co-defendant Wattley and they had met with defendant at a motel in Raleigh. Mr. Taylor also met with Mr. Arias to buy some marijuana. At some point defendant, Mr. Taylor, and co-defendant Wattley went to get something to eat at the Cookout restaurant on Capital Boulevard; while at Cookout, Mr. Taylor received a call from Mr. Arias instructing him to go to the Food Lion parking lot on Capital Boulevard in Raleigh. At Food Lion, Mr. Taylor, defendant, and co-defendant Wattley met Mr. Mejia and Mr. Sandoval and followed them to an apartment complex on Green Road about five minutes from the Food Lion, arriving around 8:05 or 8:10 p.m. After Mr. Taylor backed his car into a parking space at the apartment complex, Mr. Mejia walked up to Mr. Taylor's car and laid a gun in the back seat of the car next to defendant. Mr. Taylor, defendant, and co-defendant Wattley got out of the car with Mr. Mejia and Mr. Sandoval. Eventually, Mr. Taylor got back in his car because he did not want to "be involved with whatever might have been going on[.]" Mr. Taylor testified that it was his "personal opinion" that they were at the apartment complex to intimidate someone to get Mr. Mejia's money. Mr. Taylor stated that Mr. Mejia was "jumpy" and repeating something "about a guy and some money[,]" but he "couldn't really understand him because he talked[ed] fast." Co-defendant Wattley also got back in the car with Mr. Taylor. Defendant, Mr. Mejia and Mr. Sandoval walked away towards the apartments. At some point, Mr. Taylor told co-defendant Wattley to go check on defendant to see "what was taking so long[,]" and co-defendant Wattley got out of the car and walked

off. Mr. Taylor then heard a gunshot and commotion at the corner of the parking lot. Co-defendant Wattley and defendant returned to the car and they all left the apartment complex. The next morning Mr. Taylor took defendant to New Jersey and then returned to Georgia with co-defendant Wattley, dropped him off, and went back home. Mr. Taylor later learned that he was wanted by the Raleigh Police Department in connection with his involvement in the events of 1 May 2007 and turned himself in around 12 May 2007. As part of a 9 January 2008 plea agreement, Mr. Taylor pled guilty to accessory after the fact to robbery with a dangerous weapon in connection with his involvement in these events.

On 26 June 2007, defendant was indicted for one count of first degree murder in the death of Gelnirys "Haneedy" Ortega. Defendant was tried during the 27 October 2008 Criminal Session of Superior Court, Wake County before the Honorable R. Allen Baddour, Jr. Defendant's trial was joined with that of co-defendant, Ian Wattley. Defendant did not present any evidence at trial. Co-defendant Wattley also did not present any evidence at trial. On 10 November 2008, a jury found defendant guilty of first degree murder based on the predicate crime of felony breaking and entering with the intent to commit extortion. Defendant was sentenced to life in prison without parole. Defendant gave notice of appeal in open court.

II. Jury Selection Procedure

Defendant first argues that the trial court's jury selection procedure infringed upon "his right to a fair determination of his

guilt or innocence and his . . . rights to a fair trial and an unbiased jury" as guaranteed by the United States and North Carolina Constitutions. However, as defendant did not raise these constitutional arguments before the trial court, we will not consider them on appeal. *See State v. Gainey*, 355 N.C. 73, 110, 558 S.E.2d 463, 486 ("[C]onstitutional questions not raised before the trial court will not be considered on appeal."), *cert. denied*, 537 U.S. 896, 154 L.Ed. 2d 165 (2002); N.C.R. App. P. 10(b)(1). Defendant next contends that the trial court committed prejudicial error when it failed to follow the statutory procedure for jury selection for joint trials enumerated in N.C. Gen. Stat. § 15A-1214. Defendant did not object to the trial court's jury selection process at trial. However, "'when a trial court acts contrary to a statutory mandate . . . the right to appeal the court's action is preserved, notwithstanding defendant's failure to object at trial.'" *State v. Jaynes*, 353 N.C. 534, 544-45, 549 S.E.2d 179, 189 (2001) (citation omitted), *cert. denied*, 535 U.S. 934, 152 L.Ed. 2d 220 (2002). Therefore, defendant's argument as to the trial court's statutory error is preserved for appellate review.

N.C. Gen. Stat. § 15A-1214 sets forth the following jury selection procedure for co-defendants in a joint trial:

> (d) The prosecutor must conduct his examination of the first 12 jurors seated and make his challenges for cause and exercise his peremptory challenges. If the judge allows a challenge for cause, or if a peremptory challenge is exercised, the clerk must immediately call a replacement into the box. When the prosecutor is satisfied with the 12 in the box, they must then be tendered to the defendant. Until the prosecutor indicates his

> satisfaction, he may make a challenge for cause or exercise a peremptory challenge to strike any juror, whether an original or replacement juror.
>
> (e) Each defendant must then conduct his examination of the jurors tendered him, making his challenges for cause and his peremptory challenges. If a juror is excused, no replacement may be called until all defendants have indicated satisfaction with those remaining, at which time the clerk must call replacements for the jurors excused. The judge in his discretion must determine order of examination among multiple defendants.
>
> (f) Upon the calling of replacement jurors, the prosecutor must examine the replacement jurors and indicate satisfaction with a completed panel of 12 before the replacement jurors are tendered to a defendant. Only replacement jurors may be examined and challenged. This procedure is repeated until all parties have accepted 12 jurors.

N.C. Gen. Stat. § 15A-1214 (2007).

The record indicates that the trial court failed to follow the procedural mandates of N.C. Gen. Stat. § 15A-1214 during jury selection. On three separate instances, following the State's indication that it was satisfied with the panel of twelve potential jurors and defendant's counsel's questioning of jurors, challenges for cause, or use of peremptory challenges to remove some of those jurors, the trial court in error called replacement jurors without first giving counsel for co-defendant Wattley an opportunity to examine the remaining prospective jurors. Even though the trial court committed a statutory error by not following the procedural mandates of N.C. Gen. Stat. § 15A-1214, defendant is not entitled to a new trial unless he can "show prejudice in addition to a statutory violation[.]" *State v. Garcia*, 358 N.C. 382, 406, 597

S.E.2d 724, 743 (2004) (citation omitted), *cert. denied*, 543 U.S. 1156, 161 L.Ed. 2d 122 (2005). Therefore, "defendant must prove that a reasonable possibility exists that, had the error not been committed, a different result would have been reached at trial." *Id.* at 407, 597 S.E.2d at 743 (citing N.C. Gen. Stat. § 15A-1443(a)). We note that "[t]he intended result of jury selection is to empanel an impartial and unbiased jury." *Id.* In evaluating whether a defendant was prejudiced by the trial court's jury selection procedure, this Court weighs the following factors: "jury bias, the inability to question prospective jurors, inability to assert peremptory challenges, [or] any other defect which had the likelihood to affect the outcome of the trial." *State v. Love*, 177 N.C. App. 614, 623, 630 S.E.2d 234, 241, *disc. review denied*, 360 N.C. 580, 636 S.E.2d 192 (2006). The burden is on defendant to show prejudice resulting from the trial court's error. N.C. Gen. Stat. § 15A-1443 (2007).

Defendant argues that the trial court's jury selection procedure was biased towards co-defendant Wattley, as defendant was forced to use his peremptory challenges while co-defendant Wattley's counsel "had the advantage of having over a day to watch and listen to the prospective jurors without being required to exercise peremptories." Defendant argues that this error permitted co-defendant Wattley to save "his peremptory challenges for jurors demonstrating less blatant bias[,]" which resulted in a jury that was biased against him as he was convicted of a harsher crime than co-defendant Wattley. However, defendant points us to little

evidence in the record that would indicate he was prejudiced by this error or that "had the error not been committed, a different result would have been reached at trial." *Garcia*, 358 N.C. at 407, 597 S.E.2d at 743.

Defendant argues that three potential jurors that were biased against him--Ms. McDonald, Mr. Foreman, and Mr. Pate. However, defendant admits that none of these jurors actually served on the jury. Defendant makes no specific contention that any of the jurors who ultimately served on the jury were biased against him. The record shows that defense counsel was given the opportunity to question each prospective juror for potential bias against his client. However, defendant fails to point us to any instance following the exhaustion of his peremptory challenges in which he unsuccessfully asserted a challenge for cause based on potential juror bias. Although defendant points out that defendant's trial counsel did inform the trial court on two occasions that defendant was out of peremptory challenges, neither time did defense counsel challenge the juror for cause or raise any specific concerns of bias towards any potential juror being examined. Defendant concedes that "the difference in the final make up of the jury cannot be measured or recreated." Therefore, defendant has failed to show any jury bias. He had the ability to question the prospective jurors, albeit not always in the proper order as set forth by N.C. Gen. Stat. § 15A-1214. Defendant did have the "inability to assert peremptory challenges," *Love*, 177 N.C. App. at 623, 630 S.E.2d at 241, as to at least two jurors for whom he might

have done so, but he failed to demonstrate that these jurors may have been biased. Defendant has not demonstrated "any other defect which had the likelihood to affect the outcome of the trial." *Id.* Based upon the factors as set forth by *Love*, defendant has failed to carry his burden of showing prejudice by the trial court's error. *See* N.C. Gen. Stat. § 15A-1443. Therefore, defendant's argument is overruled. Although the trial court's deviation from the procedural requirements for jury selection set by our General Assembly did not result in prejudice towards defendant in this instance, we admonish the trial court to adhere to the mandates of N.C. Gen. Stat. § 15A-1214 to insure that co-defendants tried at the same time have equal opportunity to question potential jurors.

III. Lay Opinion

Defendant, citing *State v. Hurst*, 127 N.C. App. 54, 62-63, 487 S.E.2d 846, 853 (1997), *cert. denied*, 523 U.S. 1031, 140 L.Ed 2d 486 (1998) and *State v. Vines*, 93 N.C. 493, 496 (1885), contends next that the trial court committed prejudicial error when it allowed lay witness Shawn Taylor to testify that it was defendant's intent to intimidate someone in order to get Mr. Mejia's money when they arrived at the apartment complex on 1 May 2007. Defendant contends that the trial court's admission of this evidence was in error as this information could only have been based on hearsay statements from Mr. Mejia or Mr. Arias. Defendant argues that this evidence was prejudicial because the jury found defendant guilty of murder "based on the victim's death during the perpetration of felony breaking and entering with the intent to commit

extortion[,]" and the only evidence of extortion was Mr. Taylor's testimony regarding defendant's intent. Defendant points to the following testimony from witness Mr. Taylor as impermissible opinion regarding defendant's intentions on the day in question:

> State: Mr. Taylor . . . you testified there were five people outside in that parking lot?
>
> Mr. Taylor: Uh-huh, yes.
>
> Q: And you all met at the Food Lion a few minutes before?
>
> A: Yes.
>
> Q: And [Mr. Mejia] drove the car, and you followed?
>
> A: Yes.
>
> Q: And after this gun getting passed back and forth, you returned and at this time spent in the parking lot, you returned to your car?
>
> A: Yes.
>
> Q: And why was it you returned to your car, Mr. Taylor?
>
> A: Because I didn't want--didn't want anything have to do with anything that was going on.
>
> Trial Court: Sir, if you'll speak up, please.
>
> A: I didn't want to have anything to do with what was going on.
>
> Q: Mr. Taylor, in your opinion, what was about to happen?
>
> Defense Counsel: Objection, speculation and hearsay.
>
> Trial Court: Overruled.

> A: In my opinion, money was about to get retrieved.
>
> Q: Mr. Taylor, in your opinion, why were you there? Why -- why was this group of folks there?
>
> A: For intimidation purposes.
>
> Q: To do what?
>
> A: Help--help [Mr. Mejia] get the money.

A trial court's admission of lay witness opinion testimony is reviewed for an abuse of discretion. *State v. Washington*, 141 N.C. App. 354, 362, 540 S.E.2d 388, 395 (2000), *disc. rev. denied*, 353 N.C. 396, 547 S.E.2d 427 (2001). "Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citation omitted). A lay witness's testimony is "limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue." N.C. Gen. Stat. § 8C-1, Rule 701 (2007). "[A] witness's opinion of another person's intention on a particular occasion is generally held to be inadmissible." *State v. Sanders*, 295 N.C. 361, 369-70, 245 S.E.2d 674, 681 (1978) (citing *State v. Patterson*, 288 N.C. 533, 220 S.E.2d 600 (1975), *death sentence vacated*, 428 U.S. 904, 49 L.Ed. 2d 1211 (1976); *Ballard v. Ballard*, 230 N.C. 629, 55 S.E.2d 316 (1949); *State v. Vines*, 93 N.C. 493 (1885)).

In context, Mr. Taylor's testimony expressed his opinion about what he thought was about to happen next and was rationally based

on his perceptions and his knowledge of the other individuals. *See* N.C. Gen. Stat. § 8C-1, Rule 701. Mr. Taylor had previously testified that he knew or was associated with Mr. Arias, Mr. Mejia, defendant, and co-defendant Wattley through his involvement in buying and selling marijuana in Raleigh. Mr. Taylor testified that he, defendant, and co-defendant Wattley followed Mr. Mejia and Mr. Sandoval from the Food Lion to the apartment complex. Mr. Taylor described his observations of the other participants' actions and appearances: going to the apartment, Mr. Mejia bringing a gun to defendant, and that Mr. Mejia was "[r]eal jumpy, edgy." Mr. Taylor assessed the situation based upon all that he knew about the individuals and what he had seen and returned to the car "[b]ecause I didn't want to, you know, be involved with whatever might have been going on, and I didn't know enough to be, you know, sitting there dealing with it." Mr. Taylor further explained that he thought they were at the apartment complex to intimidate someone in order to get Mr. Mejia's money. Mr. Taylor's opinion was rationally based on his observations and his knowledge that the other individuals were involved in the illegal drug trade, that Mr. Mejia handed the gun to defendant, and that Mr. Mejia was jumpy and edgy. Mr. Taylor's testimony was also helpful to the jury to show why Mr. Taylor returned to the car and did not follow the others into the apartment. *See* N.C. Gen. Stat. § 8C-1, Rule 701.

As to defendant's claims that Mr. Taylor was testifying regarding defendant's intentions, the above-quoted testimony makes no mention of defendant's intent on the evening in question, nor

did Mr. Taylor single defendant out or mention him by name. Mr. Taylor also did not make any reference to statements made by Mr. Mejia or Mr. Arias. Rather, in context, Mr. Taylor was explaining what he thought was going to happen next and his actions--getting back in his car--based on his perceptions. It is true that the jury could infer from all of the evidence, including Mr. Taylor's testimony, that defendant intended to extort money from someone, but this was not based upon any hearsay statements by either defendant or any other participant in the crime. Accordingly, we find that the cases cited by defendant in support of this argument inapplicable as they address a lay witness's opinion of another person's intention on a particular occasion. *See State v. Hurst*, 127 N.C. App. 54, 62-63, 487 S.E.2d 846, 853 (1997) (affirming a trial court's denial of defendant's request to admit a lay witness opinion into evidence as it was "a statement of her opinion that the defendant may not have originally intended to participate in the plan" to rob and kill the victim), *cert. denied*, 523 U.S. 1031, 140 L.Ed 2d 486 (1998); *State v. Vines*, 93 N.C. 493, 496 (1885) (affirming the trial court's refusal to allow a lay witness to testify that he believed the shooting of the victim was an accident). Therefore, we find that the trial court did not abuse its discretion in allowing this testimony.

Defendant also argues that the admission of Mr. Taylor's testimony as noted above resulted in the violation of defendant's right to due process and a fair trial under the United States and North Carolina Constitutions. As defendant did not raise these

constitutional claims before the trial court, he has not preserved these arguments for appellate review. *See Gainey*, 355 N.C. at 110, 558 S.E.2d at 486; N.C.R. App. P. 10(b)(1).

IV. Motions to Dismiss and Set Aside the Verdict

Defendant contends lastly that the trial court "abused its discretion when it denied [his] motions to dismiss the first degree murder charge and to set aside the verdict." Contrary to defendant's contentions that an abuse of discretion standard should be applied, it is well settled that "[t]his Court reviews the denial of a motion to dismiss for insufficient evidence *de novo*." *State v. Robledo*, 193 N.C. App. 521, 525, 668 S.E.2d 91, 94 (2008) (citation omitted). Our Supreme Court has stated that "[i]n ruling on a motion to dismiss, the trial court must determine whether there is substantial evidence of each essential element of the crime and whether the defendant is the perpetrator of that crime." *Harris*, 361 N.C. at 402, 646 S.E.2d at 528 (citation omitted). "Substantial evidence is that amount of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion." *State v. Corn*, 303 N.C. 293, 296, 278 S.E.2d 221, 223 (1981) (citation and quotation marks omitted). "A case should be submitted to a jury if there is any evidence tending to prove the fact in issue or reasonably leading to the jury's conclusion as a fairly logical and legitimate deduction." *State v. Harris*, 361 N.C. 400, 402-03, 646 S.E.2d 526, 528 (2007) (citation and quotation marks omitted). "When considering a motion to dismiss, if the trial court determines that a *reasonable* inference of the

defendant's guilt *may* be drawn from the evidence, it must deny the defendant's motion and send the case to the jury even though the evidence may also support reasonable inferences of the defendant's innocence." *State v. Alexander*, 337 N.C. 182, 187, 446 S.E.2d 83, 86 (1994) (citation and quotation marks omitted). "[C]ontradictions and discrepancies [in the evidence] are for the jury to resolve and do not warrant dismissal[.]" *State v. Powell*, 299 N.C. 95, 99, 261 S.E.2d 114, 117 (1980). "In ruling upon a motion to dismiss, the trial court must consider the evidence in the light most favorable to the State, allowing every reasonable inference to be drawn therefrom." *State v. James*, 321 N.C. 676, 686, 365 S.E.2d 579, 586 (1988) (citation omitted). "The standard of review of a trial court's denial of a motion to set aside a verdict for lack of substantial evidence is the same as reviewing its denial of a motion to dismiss, i.e., whether there is substantial evidence of each essential element of the crime." *State v. Duncan*, 136 N.C. App. 515, 520, 524 S.E.2d 808, 811 (2000) (citation omitted).

Defendant was convicted of first degree murder based on the shooting-death of victim Haneedy Ortega while perpetrating felony breaking and entering with the intent to commit extortion. "The essential elements of felonious breaking or entering are (1) the breaking or entering (2) of any building (3) with the intent to commit any felony or larceny therein." *State v. Litchford*, 78 N.C. App. 722, 725, 338 S.E.2d 575, 577 (1986) (citing N.C. Gen. Stat. § 14-54(a)). N.C. Gen. Stat. § 14-118.4 (2007) states that a

person is guilty of the crime of extortion if that person "threatens or communicates a threat or threats to another with the intention thereby wrongfully to obtain anything of value or any acquittance, advantage, or immunity . . . ." *See State v. Greenspan*, 92 N.C. App. 563, 567, 374 S.E.2d 884, 886 (1989) ("The definition of extortion in G.S. 14-118.4 covers any threat made with the intention to wrongfully obtain 'anything of value or any acquittance, advantage, or immunity.'").

Here, evidence shows that defendant entered Ms. Ortega's apartment without the consent of any of the residents of that apartment. Evidence was presented that Mr. Barrera was holding money for Mr. Mejia and Mr. Arias, as they believed he had not returned all of the money to them. Mr. Sandoval saw Mr. Barrera in Ms. Ortega's apartment on the day in question. Mr. Sandoval returned to the apartment complex later that evening with Mr. Mejia, Mr. Taylor, defendant, and co-defendant Wattley. As discussed above, Mr. Taylor testified that he thought that they were at the apartment complex to intimidate someone to get Mr. Mejia's money and that Mr. Mejia said something about a guy and some money. Mr. Mejia gave defendant a gun in the parking lot of the apartment. Mr. Mejia entered Ms. Ortega's apartment and pointed out Mr. Barrera, and defendant entered the apartment pointing a gun at Mr. Barrera. Considering this evidence in the light most favorable to the State, *James*, 321 N.C. at 686, 365 S.E.2d at 586, it was reasonable to infer that when defendant rushed into Ms. Ortega's apartment with a gun pointed at Mr.

Barrera, it was his intention to threaten Mr. Barrera in order to get money. *Alexander*, 337 N.C. at 187, 446 S.E.2d at 86; *see* N.C. Gen. Stat. § 14-118.4. Martha Ortega testified that she saw defendant shoot Haneedy in the eye. Mr. Taylor testified that defendant told him that his gun did fire, as the gun felt warm. Dr. John D. Butts testified that Haneedy Ortega died as the result of a gunshot wound to her right eye. Considering this evidence in the light most favorable to the State, *James*, 321 N.C. at 686, 365 S.E.2d at 586, the evidence supports a reasonable inference that defendant fatally shot Haneedy Ortega during his attempt to extort money from Mr. Barrera. *Alexander*, 337 N.C. at 187, 446 S.E.2d at 86. As there was sufficient evident of the essential elements of the crimes of which defendant was convicted and that defendant was the perpetrator of the crimes, *Harris*, 361 N.C. at 402, 646 S.E.2d at 528, the trial court properly denied defendant's motion to dismiss and motion to set aside the verdict. *Duncan*, 136 N.C. App. at 520, 524 S.E.2d at 811.

Defendant argues that the jury verdicts as between defendant, who received a conviction for first degree murder, and co-defendant Wattley, who received a conviction for involuntary manslaughter, were inconsistent because there was conflicting evidence regarding which defendant fired the fatal bullet. However, this Court has previously stated that "criminal verdicts as between two or more defendants tried together need not demonstrate rational consistency." *State v. Bullard*, 82 N.C. App. 718, 723, 347 S.E.2d 874, 876-77 (1986) (overruling defendant's argument that it was

error for the trial court to deny his motion to set aside the verdict and a motion for a new trial because of "an inconsistent jury verdict which found his co-defendant, . . . not guilty of kidnapping or first degree rape while the same jury found defendant guilty of second degree rape"). Therefore, we are not persuaded by defendant's argument.

Defendant finally contends that "[a]llowing the jury to deal with the problem of scarce evidence by compromising on distribution of verdicts between two joined defendants violates North Carolina' [sic] statute [sic] on joinder and federal and state constitutional rights to due process and a fair trial" and he should be granted a new trial. Although defendant states that this verdict violated North Carolina statutes on joinder, he fails to cite any cases, statutes or make any substantive argument supporting this claim. Additionally, defendant did not raise any constitutional claims based on the "distribution of verdicts" to the trial court in his motions to dismiss or for a new trial and to set aside the verdict. Therefore, defendant has not preserved these constitutional arguments for appellate review. *See Gainey*, 355 N.C. at 110, 558 S.E.2d at 486; N.C.R. App. P. 10(b)(1).

V. Conclusion

As defendant was not prejudiced by the trial court's jury selection procedure, the lay witness did not give an impermissible opinion testimony regarding defendant's intentions, and the trial court properly denied defendant's motions to dismiss and to set aside the verdict, we find no error.

NO ERROR.
Judges BRYANT and ELMORE concur.

Report per Rule 30(e).