IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1218

Filed: 5 May 2015

STATE OF NORTH CAROLINA

v.

Lenoir County
No. 12 CRS 51477

ANTHONY B. BRYANT

Appeal by defendant from judgment entered 3 June 2014 by Judge Benjamin Alford in Lenoir County Superior Court. Heard in the Court of Appeals 17 April 2015.

*Attorney General Roy Cooper, by Assistant Attorney General Benjamin J. Kull, for the State.*

*Peter Wood for defendant-appellant.*

TYSON, Judge.

Anthony B. Bryant ("Defendant") appeals from judgment entered upon a jury verdict finding him guilty of misdemeanor communicating threats. Defendant was sentenced to a term of 120 days' imprisonment.

## I. Background

Defendant lived next door to the victim, Billy Allen Raspberry ("Mr. Raspberry"). On 22 May 2012, Defendant was sitting on his front porch when Mr. Raspberry returned home from work. As Mr. Raspberry walked toward his home,

Defendant called out, "I will kick your ass . . . you pot-belly [m— f—]." Defendant called Mr. Raspberry a "bitch" and further threatened, "I'm going to come off my porch and I'm going to drag your fat ass down the street." Mr. Raspberry testified he ignored Defendant and went into his house. Defendant stood on the edge of his porch and continued saying "more things." Concerned Defendant might act on his threats, Mr. Raspberry filed a police report. Mr. Raspberry testified that he felt threatened for himself and his family due to Defendant's statements.

## II. Issues

Defendant's sole argument on appeal is that the trial court erred by denying his motion to dismiss the charge of communicating threats. He argues the State failed to present substantial evidence that a reasonable person would have thought that he was likely to carry through with his threats. We disagree.

## III. Standard of Review

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (citation and quotation marks omitted), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "In making its determination, the trial court must consider all evidence

admitted, whether competent or incompetent, in the light most favorable to the State." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). In so doing, "[a]ny contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered." *State v. Miller*, 363 N.C. 96, 98, 678 S.E.2d 592, 594 (2009) (citation omitted).

## IV. Analysis

Defendant challenges the State's evidence regarding the third element of the offense of communicating threats: whether "[t]he threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out[.]" N.C. Gen. Stat. § 14-277.1(a) (2013). Defendant argues that the State failed to present sufficient evidence that a reasonable person would have believed he would carry out his threats. Mr. Raspberry testified that Defendant often made similar threats to him in the past. Mr. Raspberry went inside his house after being threatened and left his granddaughter playing in the yard with her grandmother while Defendant remained on his front porch. Defendant asserts that the State's evidence only rose to a suspicion of guilt, because he had never acted on his previous threats. Defendant also contends Mr. Raspberry's actions show that he did not believe Defendant would carry out his threats.

Defendant's reliance on evidence that he never acted on numerous prior threats, or that Mr. Raspberry's actions belie his testimony that he felt threatened,

is unavailing. Defendant's evidence, at best, merely contradicts Mr. Raspberry's direct testimony of his belief that Defendant was likely to carry out his threats. Defendant argues the trial court should not have considered Mr. Raspberry's testimony when it ruled on Defendant's motion to dismiss. *Miller*, 363 N.C. at 98, 678 S.E.2d at 594. We disagree.

The clear threats made by Defendant, coupled with Mr. Raspberry's testimony that he believed Defendant would carry out those threats, were sufficient to overcome Defendant's motion to dismiss and to allow the charge of communicating threats to go to the jury.

## V. Conclusion

We overrule this argument. We hold Defendant received a fair trial, free from prejudicial errors he preserved, presented, and argued.

NO ERROR.

Judges BRYANT and DIETZ

Report per Rule 30(e).