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NO. COA14-260
NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

STATE OF NORTH CAROLINA

v.

Davidson County
Nos. 10 CRS 4180; 55741

PHILLIP SCOTT BAKER

Appeal by defendant from judgment entered 6 September 2013 by Judge W. David Lee in Davidson County Superior Court. Heard in the Court of Appeals 10 September 2014.

Attorney General Roy Cooper, by Special Deputy Attorney General I. Faison Hicks, for the State.

Jarvis John Edgerton, IV, for defendant-appellant.

CALABRIA, Judge.

Phillip Scott Baker ("defendant") appeals from a judgment entered upon jury verdicts finding him guilty of first degree murder and robbery with a dangerous weapon. We find no error.

On 31 July 2010, Chad Newsome ("Newsome") and Gary Wilson ("Wilson") travelled together to an abandoned home located at 117 Dacotah Street in Lexington, North Carolina, in order to

purchase drugs from LeCourtney Murphy ("Murphy"). When they arrived at the house, they were met by defendant, who indicated that only Newsome was permitted to enter the house. Newsome agreed and went into the house with defendant to conduct the transaction while Wilson waited outside. A few minutes later, Wilson heard gunshots from inside the house. Wilson ran to obtain assistance from a nearby home. While Wilson was away, Newsome drove himself to a nearby hospital, where he died from complications resulting from two gunshot wounds to the chest.

Officer Christopher Giordano ("Officer Giordano") of the Lexington Police Department ("LPD") arrived at the scene and determined from a witness that the shooting had occurred at the house at 117 Dacotah Street. Officer Giordano and two other LPD officers then entered that location and determined it was unoccupied. Officer Giordano began to search for any witnesses in the area. He quickly came into contact with Wilson, who told Giordano that he had come to 117 Dacotah Street with Newsome and then fled when he heard gunshots. Officer Giordano reentered the house and discovered, *inter alia*, scattered currency, an empty handgun magazine and shells, an empty black bag, and blood.

On 2 August 2010, Daquon Littles ("Littles"), who lived one

block away from the abandoned home, provided a statement to law enforcement. According to the statement, on the day of the shooting, Littles saw defendant and Murphy arrive together in front of his apartment. Defendant walked off, carrying a black bag. Murphy spoke briefly with Littles and then left. Murphy was subsequently arrested and charged with robbery and first degree murder in connection with Newsome's death. He then provided law enforcement with a statement implicating defendant as the shooter. According to Murphy's statement, he had been contacted by Newsome on 31 July 2010, regarding the purchase of a pound of marijuana. However, he did not personally possess marijuana in that quantity, and as a result, he contacted defendant seeking to supplement his supply. When both Murphy and defendant pooled their marijuana supply together, the amount was still less than one pound. Defendant then suggested that they rob Newsome instead.

According to Murphy, defendant had placed a gun in Murphy's black bag, which he then took to meet with Newsome. Sometime later, defendant came running back to Murphy and told him to drive away. Defendant had blood on his clothing. During their escape, defendant confessed to Murphy that he had shot Newsome twice during a struggle in the abandoned home.

Defendant was arrested and indicted for first degree murder and robbery with a dangerous weapon. On 26 August 2013, defendant was tried by a jury in Davidson County Superior Court. At the close of the State's evidence, defendant made a motion to dismiss, which was denied. Defendant then presented his own evidence. Defendant did not renew his motion to dismiss at the close of his own evidence or at the close of all the evidence.

On 6 September 2013, the jury returned verdicts finding defendant guilty of first degree murder and robbery with a dangerous weapon. The trial court arrested judgment on the robbery with a dangerous weapon conviction and sentenced defendant to life imprisonment without the possibility of parole for the first degree murder conviction. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by denying his motion to dismiss because the State failed to present substantial evidence that defendant was the individual who robbed and shot Newsome. We disagree.

As an initial matter, we note that both parties agree that defendant failed to preserve this issue for appellate review. Pursuant to N.C.R. App. P. 10(a)(3) (2013), when a defendant makes a motion to dismiss

after the State has presented all its evidence and has rested its case and that

motion is denied and the defendant then introduces evidence, defendant's motion for dismissal or judgment in case of nonsuit made at the close of State's evidence is waived. Such a waiver precludes the defendant from urging the denial of such motion as a ground for appeal.

This is precisely the scenario that occurred in the instant case. While defendant moved to dismiss the charges against him at the close of the State's case, he failed to renew this motion after he presented his own evidence. As a result, he has waived appellate review of this issue. See *id.*

Nonetheless, defendant requests that this Court invoke N.C.R. App. P. 2 (2013), which permits our appellate courts to suspend the appellate rules in order to "prevent manifest injustice to a party," so that we can address the merits of his argument. "The Supreme Court and this Court have regularly invoked N.C.R. App. P. 2 in order to address challenges to the sufficiency of the evidence to support a conviction." *State v. Gayton-Barbosa*, 197 N.C. App. 129, 134, 676 S.E.2d 586, 590 (2009). After careful consideration, we likewise invoke our authority under N.C.R. App. P. 2 to review defendant's argument regarding the sufficiency of the evidence in this case.

"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 (2000) (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)). "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).

In the instant case, defendant challenges whether the State presented sufficient evidence that he was the perpetrator of the robbery and murder. Defendant contends that the State's case against him relied primarily on defendant's extrajudicial confession to Murphy, and that this alleged confession was not supported by corroborating evidence. Defendant is mistaken.

It is well established that "a naked extrajudicial confession, uncorroborated by other evidence, is not sufficient to support a criminal conviction. The State must at least produce corroborative evidence, independent of defendant's confession, which tends to prove the commission of the charged crime." *State v. Ash*, 193 N.C. App. 569, 574, 668 S.E.2d 65, 69 (2008) (internal quotations and citations omitted). "Under the *corpus delicti* rule, the State may not rely solely on the

extrajudicial confession of a defendant, but must produce substantial independent corroborative evidence that supports the facts underlying the confession." *State v. Smith*, 362 N.C. 583, 588, 669 S.E.2d 299, 303 (2008). The *corpus delicti* rule is satisfied "if the accused's confession is supported by substantial independent evidence tending to establish its trustworthiness, including facts that tend to show the defendant had the opportunity to commit the crime." *State v. Parker*, 315 N.C. 222, 236, 337 S.E.2d 487, 495 (1985).

In the instant case, the State presented substantial evidence, beyond defendant's confession to Murphy, that defendant was the individual who robbed and murdered Newsome. Murphy testified that he personally saw defendant place a handgun in a black bag similar to the one recovered at the scene of the murder. Littles testified that he saw defendant carry a black bag with him as he walked toward the abandoned home. Wilson testified that he and Newsome were met at the abandoned home by defendant, and that a few minutes after Newsome went inside with defendant, he heard gunshots. Furthermore, Newsome had been shot twice, consistent with defendant's confession. Finally, Murphy testified that he and defendant fled together after the murder. Taking this evidence in the light most

favorable to the State, this is sufficient evidence to corroborate defendant's confession such that the case was properly submitted to the jury. See *Ash*, 193 N.C. App. at 575, 668 S.E.2d at 70 (holding that the defendant's confession to murder and robbery was corroborated by ballistics evidence recovered from the scene of the murder, as well as by evidence that the defendant hid in hotel rooms, in an attempt to avoid detection). This argument is overruled.

Defendant received a fair trial, free from error.

No error.

Judges ELMORE and STEPHENS concur.

Report per Rule 30(e).