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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1101

Filed: 16 June 2020

Gaston County, No. 17 CRS 65868

STATE OF NORTH CAROLINA

v.

ELISHO RAY CHAVIS

Appeal by defendant from judgment entered 10 July 2019 by Judge Athena F. Brooks in Gaston County Superior Court. Heard in the Court of Appeals 27 May 2020.

*Attorney General Joshua H. Stein, by Assistant Attorney General David L. Gore, III, for the State.*

*Sean P. Vitrano for defendant.*

ARROWOOD, Judge.

Defendant appeals from judgment entered upon his conviction for discharging a firearm into an occupied dwelling. For the following reasons, we find no error.

I. Background

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This case arises from a shooting incident at the residence of William Toney (“Mr. Toney”) in Gaston County. On 5 February 2018, defendant was indicted on one count of discharging a firearm into an occupied dwelling in violation of N.C. Gen. Stat. § 14-34.1(b) (2019). The State’s evidence at trial tended to show the following.

Mr. Toney testified that defendant’s then-girlfriend Ashley Pope (“Ms. Pope”) became romantically entangled with Mr. Toney after an argument with defendant, and stayed with him in his trailer for a few days prior to the shooting incident. Ms. Pope later returned to the trailer with defendant and his brother to retrieve some of her belongings, which Mr. Toney had placed for her in the bed of his pickup. Defendant became upset when he could not find presents he had bought for Ms. Pope’s children among these belongings. Mr. Toney told defendant that he did not know where the presents were.

Mr. Toney testified that defendant then pulled up his sweatshirt, revealing a handgun. Mr. Toney ran inside the home and heard several gunshots three seconds later. After defendant, his brother, and Ms. Pope left the scene, Mr. Toney found several bullet holes in his trailer and called the police.

Officer John Gardner of the Gaston County Police Department testified that he was a responding officer for the incident. In his investigation of the area outside Mr. Toney’s trailer, he found six 9mm shell casings in the general area where Mr. Toney indicated defendant had been standing when he exposed his firearm.

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Defendant's brother and Ms. Pope testified for defendant. Their testimony was to the effect that, though defendant and his brother both possessed handguns when they went to Mr. Toney's trailer, his brother was the shooter. Defendant moved to dismiss the charge against him at the close of the State's evidence, and again at the close of his evidence. The trial court denied both motions. On 10 July 2019, the jury found defendant guilty of discharging a firearm into an occupied building. Defendant timely noted his appeal.

II. Discussion

In his sole argument on appeal, defendant argues that the trial court erred in denying his motion to dismiss the charge of discharging a firearm into an occupied dwelling. He contends that the State presented insufficient evidence of his identity as the shooter. For the following reasons, we disagree and find no error.

"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) (citation omitted). "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 (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "Substantial evidence is

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such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). “In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994) (citation omitted), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). “The trial court is not required to determine that the evidence excludes every reasonable hypothesis of innocence before denying a defendant’s motion to dismiss.” *State v. Barfield*, 127 N.C. App. 399, 401, 489 S.E.2d 905, 907 (1997) (citation omitted).

A person unlawfully discharges a firearm into an occupied dwelling in violation of N.C. Gen. Stat. § 14-34.1(b) “if he intentionally, without legal excuse or justification, discharges a firearm into an occupied [dwelling] with knowledge that the [dwelling] is then occupied by one or more persons or when he has reasonable grounds to believe that the [dwelling] might be occupied by one or more persons.” *State v. Jones*, 104 N.C. App. 251, 258, 409 S.E.2d 322, 326 (1991).

Defendant’s only argument is that there was not substantial evidence that he was the individual who discharged a handgun into Mr. Toney’s trailer. Viewed in a light most favorable to the State, the evidence showed that defendant, Ms. Pope, and Mr. Toney were involved in a love triangle. Defendant went with Ms. Pope and his

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brother to retrieve some of her belongings from Mr. Toney's trailer and became upset with Mr. Toney over some allegedly missing items. Defendant then produced a handgun from his waistband, prompting Mr. Toney to retreat into the trailer. Seconds later, several shots were fired into the trailer. Six 9mm shell casings were found in the general area where defendant was standing when he exposed his firearm. This amounts to substantial evidence that defendant fired the shots into Mr. Toney's trailer.

The cases defendant cites to the contrary are inapposite. *See, e.g., State v. Hewitt*, 294 N.C. 316, 319, 239 S.E.2d 833, 835 (1978) (holding insufficient evidence that any shots fired by defendant struck trailer, where witness testified only that “[t]o [his] knowledge the [.22 caliber-sized] holes were not in [his] trailer before [he] heard the . . . shots” and trailer was located in rural area commonly used for public hunting) (internal quotation marks omitted). Here, in addition to testimony that defendant brandished a pistol at the scene mere seconds before the shots were fired, the State presented evidence from which the jury could infer defendant had a romantic motive to commit the crime.

Defendant argues that the eyewitness testimony of his brother and Ms. Pope establish that his brother was the shooter, overwhelming the State's circumstantial evidence to the contrary and mandating dismissal of the charge against him. We disagree. “Circumstantial evidence may withstand a motion to dismiss and support

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a conviction even when the evidence does not rule out every hypothesis of innocence. If the evidence presented is circumstantial, the court must consider whether a reasonable inference of defendant's guilt may be drawn from the circumstances. Once the court decides that a reasonable inference of defendant's guilt may be drawn from the circumstances, then it is for the jury to decide whether the facts, *taken singly or in combination*, satisfy it beyond a reasonable doubt that the defendant is actually guilty." *State v. Hagans*, 177 N.C. App. 17, 29, 628 S.E.2d 776, 784 (2006) (emphasis in original) (alterations and citation omitted); *see also State v. Clark*, 325 N.C. 677, 682, 386 S.E.2d 191, 194 (1989) ("The trial court should not grant a dismissal simply because there are contradictions and discrepancies in the evidence; the jury must resolve these conflicts. The test that the trial court must apply is whether there is substantial evidence—either direct, circumstantial, or both—to support a finding that the crime charged has been committed and that defendant was the perpetrator.") (internal citations omitted).

III. Conclusion

For the foregoing reasons, we hold that the trial court did not err in denying defendant's motion to dismiss.

NO ERROR.

Judges INMAN and MURPHY concur.

Report per Rule 30(e).