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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-70

Filed: 3 November 2020

Wake County, Nos. 16 CRS 204952-53

STATE OF NORTH CAROLINA

v.

DENZEL RASHAD DANCY

Appeal by defendant from judgments entered 24 May 2019 by Judge A. Graham Shirley in Wake County Superior Court. Heard in the Court of Appeals 6 October 2020.

Joshua H. Stein Attorney General, by Special Deputy Attorney General Marc Bernstein, for the State.

Cooley Law Office, by Craig M. Cooley, for defendant.

ARROWOOD, Judge.

Denzel Rashad Dancy ("defendant") appeals from judgments entered following two convictions for first-degree murder. For the following reasons, we find no error.

I. Background

On 9 March 2016, defendant traveled from Goldsboro, North Carolina to Raleigh, North Carolina. Defendant smoked marijuana and consumed Xanax on several occasions throughout the day. Defendant is a member of the Bloods gang.

On this same day, another Bloods member, "Marley," had been in contact with Allan Rodriguez ("Rodriguez"). Rodriguez sold marijuana and at the time had a high-potency marijuana product referred to as "[m]oonrocks." Rodriguez had earlier borrowed a pickle jar from a friend, ostensibly to store his marijuana. Rodriguez used a book bag to carry his marijuana (and likely cash from his sales of the same).

Marley negotiated to buy moonrocks from Rodriguez. Once a deal was struck ($650.00 for twenty-six grams of moonrocks), Marley told Rodriguez that his "lil bro," which later turned out to be a reference to defendant, would pick up the marijuana. Marley then put Rodriguez directly in touch with defendant. Before the transaction, Marley arranged for defendant to meet with another Bloods member, Daekwon Ragland ("Ragland"). Unlike defendant, Ragland grew up in Raleigh.

At around eleven o'clock in the evening on 9 March 2016, phone records show defendant traveling from Gorman Street in Raleigh toward the eventual crime scene off Glenwood Avenue (also in Raleigh). Defendant purchased a few items at a gas station off Glenwood Avenue and ingested more Xanax. Footage from the gas station shows defendant wearing white earbuds.

While at the gas station, defendant received and placed calls to Ragland. Defendant subsequently left the store and proceeded to meet Ragland who was selling marijuana in a Golden Corral parking lot nearby. Ragland recalled that defendant was wearing white earbuds.

Thereafter, cellular records indicate that Rodriguez and defendant spoke by phone. Defendant shared his location with Rodriguez who informed defendant that he was "hot." At this point, Rodriguez was sitting in the passenger side of a vehicle driven by Pedro Diaz ("Diaz"). Rodriguez and Diaz asked defendant to meet them in the parking lot of a restaurant directly adjacent to the Golden Corral. Defendant left Ragland to meet Rodriguez and Diaz.

After being signaled to their car, defendant was instructed to get in the back seat. Defendant testified that once inside the car Rodriguez and Diaz were speaking mostly Spanish but asked him twice in English what he wanted to purchase. Defendant claimed that he told them he wanted to buy an eighth of an ounce of marijuana and pulled out money and began to count it.

Almost simultaneously, the undisputed evidence shows that defendant then pulled out a gun and shot Rodriguez twice in the left side of his head and Diaz twice in the right side of his head. Rodriguez and Diaz died within minutes as a result of the gunshots. Rodriguez and Diaz were found by authorities wearing their seatbelts and with the car engine still running. The evidence did not suggest any signs of

struggle or any indication that Rodriguez or Diaz were aware that they were going to be attacked from the rear.

Almost contemporaneously with the shootings, Ragland arrived at the scene and heard "two muffled thumps" emanate from the car. Ragland saw defendant exit the car. Before fleeing the scene with Ragland, defendant grabbed Rodriguez's book bag from the center console but left the money he had pulled out to count before shooting Rodriguez and Diaz as well as around $300.00 that was not clearly visible to defendant. Inside the car, Ragland could see that Diaz was motionless and slumped over while Rodriguez was coughing blood.

Video surveillance confirms that defendant and Ragland were in the parking lot where Rodriguez and Diaz were shot. Camera recordings also show Ragland and defendant fleeing the scene a minute or so after Rodriguez and Diaz arrived in the parking lot. Defendant was holding a book bag. The timing of the video recordings suggest that defendant was probably in the car with Rodriguez and Diaz for less than a minute.

After leaving the scene, defendant demanded a ride from Ragland by making a "gesture to his waistline." Ragland arranged a ride from his girlfriend, who arrived with her sister and another female. Upon picking up Ragland and defendant, during the ride, defendant's demeanor was calm; he apparently even tried to seduce one of the female occupants in the car. Defendant was then dropped off near Gorman Street

in Raleigh where he exited by himself with the book bag. Defendant shortly thereafter secured a ride back to Goldsboro. He arrived around two o'clock in the morning on 10 March 2016.

In the following days, defendant changed his phone number and travelled to Fayetteville and Greensboro and also to South Carolina. When he finally returned to Goldsboro, defendant sold the gun he had used to shoot Rodriguez and Diaz. Around the same time, defendant learned that he had been charged with murder. While he claims to have planned to surrender to authorities, it would not be before he had "one last weekend to party."

Officers from the Raleigh Police Department were dispatched to the scene of the shootings around 12:30 a.m. on 10 March 2016. The officers observed a vehicle running in the parking lot with its brake lights engaged; the windows were fogged. Upon approaching the vehicle, the officers observed blood and two male subjects who did not appear to be breathing. The occupants were wearing their seatbelts and the passenger's (Rodriguez's) coat pocket appeared to have been turned inside out.

Between Rodriguez's legs, the officers discovered a lid to a pickle jar, though the jar itself was missing. No weapons were found in the car. Officers recovered approximately $87.00 of blood-spattered currency on the rear floorboard along with some other cash that would not have been visible to defendant when he was in the backseat. Marijuana was also found in the vehicle.

Law enforcement subsequently located a pair of bloody earbuds along the path that Ragland and defendant took to flee the scene of the shootings. Defendant ultimately admitted that the earbuds were likely his but did not explain why blood had been found on them. Investigators lifted a fingerprint from the outside of the rear passenger door of the vehicle. The print matched defendant.

Ragland was the first suspect questioned by authorities. Ragland provided law enforcement with a false alibi and changed his story several times. He was charged with two counts of first-degree murder. Thereafter, while in custody, Ragland revealed details about the incident to Anthony Jones ("Jones"). Jones, another Bloods member, relayed the conversation to law enforcement.

Shortly thereafter, defendant was arrested in Goldsboro. Defendant was indicted for murder in the first degree and robbery with a dangerous weapon in two separate indictments (one for each victim).[1] Before trial, defendant provided at least three false accounts of his whereabouts on the night of the shootings and the events before and after the same. In one of these fictitious stories, defendant claimed that a person named "Brazy Red" had shot Rodriguez and Diaz and that he was not present at the time. Defendant purported that he had never spoken to Rodriguez or Diaz; he told police that Brazy Red had borrowed his phone to make calls to the victims.[2]

[1] The trial court dismissed the charge of robbery with a dangerous weapon.
[2] All of these assertions were contradicted by evidence adduced at trial.

Defendant admitted later that the Brazy Red story was false. Defendant's final story (to which he testified) did not come to light until several months later.

This case was tried in Wake County Superior Court beginning 13 May 2019. At trial, defendant admitted to shooting Rodriguez and Diaz and stealing the former's book bag. However, defendant maintained that he did not enter the vehicle with the intent to shoot or rob the victims. Defendant testified that he had intended to purchase a small amount of marijuana from Rodriguez, though not the moonrocks, and that Marley had made the arrangements for the purchase. Defendant claimed that, upon entering the vehicle, Rodriguez and Diaz spoke in such a way that made him feel unsafe; defendant believed they were "plotting against" him. Defendant testified that Diaz at one point reached for the door, which defendant believed to be an effort to retrieve a weapon, so out of "fear for [his] life," he shot Diaz and Rodriguez. Defendant never saw a weapon, and the evidence at trial indicated that Diaz was not reaching for a weapon. After shooting Diaz and Rodriguez, defendant grabbed the latter's book bag and fled.

Defendant tendered an expert on toxicology who opined that defendant's drug use may have increased his risk of anxiety and paranoia during his interaction with the victims. The expert concluded that defendant's drug use and past experiences, among other factors, "probably contributed to [the] anxiety and paranoia" that

defendant claimed to have experienced at the time. The expert's opinion was based solely on statements made by defendant during a one-hour meeting.

On 24 May 2019, the jury found defendant guilty of the first-degree murder of Rodriguez under a premeditation and deliberation theory *and* a felony-murder theory. The jury found defendant guilty of the first-degree murder of Diaz under a premeditation and deliberation theory. The trial court sentenced defendant to life without parole for each conviction. Defendant appealed.

II. Discussion

Defendant challenges the trial court's denial of his motion to dismiss for insufficient evidence as it pertains to premeditation and deliberation and felony murder. Defendant also assigns error to the trial court's jury instruction regarding the "continuous transaction doctrine." Finally, defendant maintains that the trial court committed plain error by permitting testimony concerning defendant's gang affiliations, or, alternatively, that defendant's trial counsel was ineffective for not objecting to the same.

A. Motion to Dismiss

Defendant claims that the State failed to present substantial evidence of premeditation and deliberation and also failed to establish that defendant was perpetrating a robbery at the time of the killings. According to defendant, the trial

court erred when it denied his motion to dismiss for insufficient evidence. We disagree.

"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) (citing *State v. McKinnon*, 306 N.C. 288, 298, 293 S.E.2d 118, 125 (1982)). In ruling on a motion to dismiss, "the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator." *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015) (internal quotation marks and citation omitted). Substantial evidence has been defined by our North Carolina Supreme Court as "evidence which a reasonable mind could accept as adequate to support a conclusion." *State v. Lee,* 348 N.C. 474, 488, 501 S.E.2d 334, 343 (1998) (citing *State v. Vick,* 341 N.C. 569, 583-84, 461 S.E.2d 655, 663 (1995)). In reviewing the trial court's decision on appeal, the evidence must be viewed "in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993) (citation omitted).

In order to be submitted to the jury for determination of defendant's guilt, the evidence "need only give rise to a reasonable inference of guilt." *State v. Turnage*, 362 N.C. 491, 494, 666 S.E.2d 753, 755 (2008) (citing *State v. Stone,* 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988)). This is true regardless of whether the evidence is direct or circumstantial. *State v. Trull,* 349 N.C. 428, 447, 509 S.E.2d 178, 191 (1998).

If the court decides that a reasonable inference of the 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 them beyond a reasonable doubt that the defendant is actually guilty." *State v. Thomas*, 296 N.C. 236, 244, 250 S.E.2d 204, 209 (1978) (citation and emphasis omitted). When ruling on a motion to dismiss, the only question for the trial court is whether "the evidence is sufficient to get the case to the jury; it should not be concerned with the weight of the evidence." *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649, 652 (1982) (citing *State v. McNeil*, 280 N.C. 159, 162, 185 S.E.2d 156, 157 (1971)).

"Premeditation means that the act was thought over beforehand for some length of time, however short. Deliberation means an intent to kill, carried out in a cool state of blood . . . and not under the influence of a violent passion or a sufficient legal provocation." *State v. Taylor*, 362 N.C. 514, 531, 669 S.E.2d 239, 256 (2008) (quoting *State v. Leazer*, 353 N.C. 234, 238, 539 S.E.2d 922, 925 (2000)). Premeditation and deliberation are often proved by circumstantial evidence. *Id.* (citation omitted).

Moreover, N.C. Gen. Stat. § 14-17(a), provides that a "murder . . . committed in the perpetration or attempted perpetration of any . . . robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree[.]" N.C. Gen. Stat. § 14-17(a) (2019).

"A killing is committed in the perpetration or attempted perpetration of another felony when there is no break in the chain of events between the felony and the act causing death, so that the felony and homicide are part of the same series of events, forming one continuous transaction." *State v. Wooten*, 295 N.C. 378, 385-86, 245 S.E.2d 699, 704 (1978) (citations omitted). If there is evidence that defendant took property belonging to the victim posthumously, "such evidence would support a jury determination that the killing occurred during the perpetration of a robbery." *Id.* at 386, 245 S.E.2d at 704 (citing *State v. Rich*, 277 N.C. 333, 177 S.E.2d 422 (1970)).

In this case, the evidence, when considered in the light most favorable to the State, is sufficient to permit a reasonable jury to conclude that defendant killed Rodriguez and Diaz with premeditation and deliberation and did so in the perpetration or attempted perpetration of a felony.

As for the former conclusion, the government established that defendant fired multiple shots at both victims from close range. *State v. Chapman*, 359 N.C. 328, 376, 611 S.E.2d 794, 828 (2005) (citations omitted) ("Premeditation and deliberation may be inferred from the multiple shots fired by defendant."); *State v. Harden*, 344 N.C. 542, 554, 476 S.E.2d 658, 664 (1996) (holding that evidence showing that defendant shot officers at close range was sufficient to permit finding of premeditation and deliberation). The victims were unarmed, and the record is devoid of any evidence of provocation or aggression by the victims. *State v. Beck*, 346 N.C.

750, 755, 487 S.E.2d 751, 755 (1997) (finding that these factors buttress premeditation and deliberation theory). Furthermore, defendant repeatedly misrepresented the nature of his involvement in the crimes. Defendant sought to conceal his involvement in the killings by fleeing the scene, changing his phone number, selling the murder weapon, and by making false and misleading statements to law enforcement. *Taylor*, 362 N.C. at 532, 669 S.E.2d at 257 (noting that attempts to "cover up" involvement in murders supported finding of premeditation and deliberation). Collectively, this evidence was more than sufficient to submit a premeditation and deliberation theory to the jury. Defendant's arguments to the contrary are red herrings and immaterial to the operative question of whether the State proffered substantial evidence of premeditation and deliberation. For example, defendant argues that the State's evidence of premeditation and deliberation is negated by the "fact" that defendant subjectively believed his life was in danger at the time he shot the victims. However, at the same time, defendant "admit[s] [that] his subjective 'perception' of the fast-moving events immediately before the shooting was wrong, i.e., objectively unreasonable, because Diaz and Rodriguez—as it turned out—weren't armed." It is the jury's duty to weigh this evidence against the evidence introduced by the government. *State v. Stewart*, 226 N.C. 299, 302, 38 S.E.2d 29, 31 (1946) ("Premeditation and deliberation are always matters of fact to be determined by the jury, and not matters of law to be determined by the judge."). And in the

matter *sub judice*, the jury was not persuaded by defendant's evidence and arguments regarding his intentions at the time of the killings (or any other exculpating evidence introduced by defendant).

With respect to the felony-murder conviction, defendant admitted to taking the personal property of Rodriguez (his book bag) while possessing a firearm. *See* N.C. Gen. Stat. § 14-87(a) (2019). The government also introduced evidence, as discussed below, from which a reasonable jury could infer that defendant had no intention of purchasing marijuana from the victims; rather, the evidence permits the reasonable inference that defendant met the victims for the purpose of unlawfully taking personal property belonging to another. As for intent, defendant correctly points out that "this Court and the Supreme Court have 'repeatedly rejected the contention that the felony murder rule does not apply if the intent to commit the felony was formed only after the homicide.' " Defendant's contentions that the State failed to show that he was in the midst of an armed robbery when he murdered the victims and that a post-homicide act cannot be used to infer a pre-homicide intent to steal are without merit.

B. Continuous Transaction Doctrine

Defendant argues that the trial court erred by instructing the jury on the application of the continuous transaction doctrine as it applied to felony murder and the predicate offense of armed robbery.

"Whether a jury instruction correctly explains the law is a question of law, reviewable by this Court *de novo*." *State v. Barron*, 202 N.C. App. 686, 694, 690 S.E.2d 22, 29 (2010) (citing *Staton v. Brame*, 136 N.C. App. 170, 174, 523 S.E.2d 424, 427 (1999)). Even assuming defendant properly preserved this issue for appellate review, which is questionable given his colloquy with the trial court, we hold that the trial court did not err (or commit plain error) by instructing the jury that the continuous transaction doctrine applies to first-degree felony murder when the felony occurs soon after the victim's death so long as the felony and murder form one continuous transaction. We also hold that the trial court did not err by instructing the jury that, under the continuous transaction doctrine, it makes no difference whether the intent to steal was formulated before the use of force or after so long as the robbery and use of force constitute a single transaction.

The trial court instructed the jury, in relevant part, as follows:

> Second, that while committing or attempting to commit robbery with a firearm, the defendant killed the victim. I instruct you that the continuous transaction doctrine applies to first-degree felony murder when the felony occurs during or soon after the victim's death, so long as the felony and murder form one continuous transaction. I instruct you further as follows: Where there is a continuous transaction, the exact time between the violence and the taking is unimportant. When the circumstances of an alleged robbery with a firearm reveal an intent to permanently deprive the owner of his property and a taking effectuated by the use of a firearm, it makes no difference whether the intent to steal was formulated before the use of force or after it, so long as the theft and

> use of force can be perceived by you as constituting a single transaction.

This instruction is taken nearly verbatim from the Supreme Court's holding in *State v. Rasor*, 319 N.C. 577, 587, 356 S.E.2d 328, 335 (1987). In *Rasor*, the Court upheld defendant's conviction on the grounds that the evidence tended to show a "continuous transaction in which defendant critically wounded the victim and removed his wallet a short time afterwards." *Id.* When the violence and the taking constitute a continuous transaction, "it makes no difference whether the intent to steal was formulated before the use of force or after it, so long as the theft and the use of force can be perceived by the jury as constituting a single transaction." *Id.* (citing *State v. Fields*, 315 N.C. 191, 337 S.E.2d 518 (1985)). In other words, where there is a single and continuous transaction, it is immaterial whether the intent to rob was formed before or after the killing. *State v. Handy*, 331 N.C. 515, 529, 419 S.E.2d 545, 552 (1992); *State v. Morganherring*, 350 N.C. 701, 734, 517 S.E.2d 622, 641 (1999); *State v. McNeill*, 243 N.C. App. 762, 772, 778 S.E.2d 457, 464 (2015). It is well settled that the continuous transaction doctrine applies to the predicate felony in this case for the purposes of the felony-murder statute. *Handy*, 331 N.C. at 529, 419 S.E.2d at 552 (holding that trial court did not err in instructing jury on armed robbery and felony murder given that the theft and killing were aspects of a single transaction).

In the case before us, the robbery with a dangerous weapon and the murder constituted one continuous transaction. Evidence at trial revealed that defendant

took the personal property of another (Rodriguez's book bag) after shooting him twice in the head—and that Rodriguez was still alive when he did so. The State presented evidence that defendant was sent by another Bloods member, Marley, to buy a large supply of drugs, yet defendant carried insufficient monies to pay for this quantity of narcotics. The evidence indicated that the victims were unarmed and there were no signs of any altercation. The evidence further established that defendant fled the scene in possession of the stolen personal property of another. As explained, these facts, along with those noted elsewhere herein, support a reasonable inference that the killings occurred during the perpetration of a robbery under the felony-murder statute. *Wooten*, 295 N.C. at 386, 245 S.E.2d at 704; N.C. Gen. Stat. § 14-17 (2019). While the evidence in this case may permit different inferences regarding the timing of the events, the fact remains that the robbery with a dangerous weapon occurred as part of the same continuous transaction which led to the felony murder of Rodriguez. As such, we decline defendant's invitation to engage in an in-depth statutory construction analysis due to his mere disagreement with the reasoning and holdings of binding precedent. The jury charge was proper, and defendant's assignment of error with respect to this issue is overruled.

C. Gang-Related Evidence and Ineffective Assistance of Counsel

Defendant's final contention is that the trial court erred by allowing the testimony of Detective Sergeant Brian Neighbors ("Detective Sergeant Neighbors").

Detective Sergeant Neighbors testified about the Bloods gang and defendant's affiliation therewith.

Because defendant did not object to the admission of this evidence, the Court reviews this issue for plain error. *State v. Odom*, 307 N.C. 655, 661, 300 S.E.2d 375, 378 (1983). Under this standard, a defendant must show that the alleged error is so fundamental as to amount to a miscarriage of justice or that it had a probable impact on the jury's finding of guilt. *Id.* at 307 N.C. at 660, 300 S.E.2d at 378. The alleged error must be "so fundamental that it denied the defendant a fair trial and quite probably tilted the scales against him." *State v. Collins*, 334 N.C. 54, 62, 431 S.E.2d 188, 193 (1993).

We hold that the trial court did not commit error, much less plain error, by allowing testimony regarding defendant's gang affiliation. Defendant freely disclosed information about his membership in the Bloods on several occasions during trial, including on direct examination. Indeed, the record is replete with unchallenged testimony and evidence offered by defendant regarding his violent past and gang involvement. The error, if any, in allowing the admission of such evidence is a "textbook example of invited error." *State v. Harris*, 256 N.C. App. 549, 555, 808 S.E.2d 327, 332 (2017). To be sure, defendant admitted to shooting Rodriguez and Diaz at point-blank range; robbing Rodriguez; fleeing the scene without attempting to aid his victims; and concealing his involvement by providing authorities with false

information. Defendant testified to his criminal and violent history as well as to his connection to illegal enterprises. Even assuming *arguendo* that the trial court erred by allowing the introduction of gang-related evidence against defendant, the error was not fundamental. The admission of Detective Sergeant Neighbors' testimony did not tilt the scales unfairly against him. As such, defendant is not entitled to appellate relief based on the admission of gang-related evidence. *State v. Privette*, 218 N.C. App. 459, 468, 721 S.E.2d 299, 307 (2012).

Finally, defendant alternatively claims that he received ineffective assistance of counsel at trial because his attorney did not object to Detective Sergeant Neighbors' testimony.

"On appeal, this Court reviews whether a defendant was denied effective assistance of counsel de novo." *State v. Wilson*, 236 N.C. App. 472, 475, 762 S.E.2d 894, 896 (2014) (citing *State v. Martin*, 64 N.C. App. 180, 181, 306 S.E.2d 851, 852 (1983)).

In order to establish that counsel was ineffective, defendant must satisfy a two-part test:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is

reliable.

Strickland v. Washington, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 693 (1984). "Deficient performance may be established by showing that counsel's representation fell below an objective standard of reasonableness. Generally, to establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *State v. Givens*, 246 N.C. App. 121, 124, 783 S.E.2d 42, 45 (2016) (quoting *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006)).

Defendant's argument in support of this claim is as follows: "If [defendant] can't prove plain error, he can prove *Strickland* prejudice because the latter (*Strickland*) is a lower standard than the former (plain error)." However, defendant fails to show that, but for counsel's alleged mistakes, the result of his trial would have been different. As discussed *supra*, the evidence against defendant was overwhelming. To mitigate the effect of this evidence, it appears that defense counsel made an intentional strategic decision to allow (and enter) evidence regarding defendant's connection to the Bloods. It is not this Court's role to "second guess counsel on questions of trial strategy." *State v. Aiken*, 73 N.C. App. 487, 492, 326 S.E.2d 919, 922 (1985) (citing *State v. James*, 60 N.C. App. 529, 299 S.E.2d 451 (1983)). We therefore hold that defendant has failed to make an adequate showing of prejudice to support his claim of ineffective assistance of counsel. *Harris*, 256 N.C.

App. at 558, 808 S.E.2d at 333 (concluding that defendant failed to establish that counsel's trial strategy, which included consideration of his role in street gangs, constituted ineffective assistance of counsel).

III. Conclusion

For the foregoing reasons, we hold that the trial court did not err by denying defendant's motion to dismiss as the State offered sufficient, substantial evidence to prove the subject offenses. We further hold that the trial court's jury instructions were free of error. Lastly, we conclude that the trial court did not commit plain error by allowing the testimony of Detective Sergeant Neighbors and that defendant has failed, given the substantial evidence of his guilt, to make a sufficient showing to support a claim of ineffective assistance of counsel.

NO ERROR.

Chief Judge MCGEE and Judge STROUD concur.

Report per Rule 30(e).