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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-670

Filed 7 May 2024

Craven County, Nos. 20 CRS 51140, 21 CRS 626

STATE OF NORTH CAROLINA

v.

GLENDON CHRISTOPHER FRASER, Defendant.

Appeal by Defendant from judgment entered 13 October 2022 by Judge Forrest D. Bridges in Craven County Superior Court. Heard in the Court of Appeals 20 February 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Stacey A. Phipps, for the State.

Lisa Miles for Defendant.

GRIFFIN, Judge.

Defendant Glendon Christopher Fraser appeals from a judgment entered after a jury found him guilty of discharging a weapon into an occupied vehicle and possession of a firearm by a felon. Defendant argues the trial court erred by denying his motion to dismiss as the State failed to present sufficient evidence of him being the perpetrator of the crime where the only evidence identifying Defendant as the

perpetrator was hearsay. We hold the trial court did not err.

I. Factual and Procedural Background

In April 2020, Defendant, also known by the street name “Pop,” and Audrey Walker were in a relationship which deteriorated due to a disagreement. On 23 April 2020, Walker and a friend were sitting in Walker’s car on New Bern Avenue. Walker and Defendant exchanged messages on Instagram at approximately 5:18 p.m. and then had a conversation via Facetime at approximately 5:44 p.m. Later, Defendant arrived at Walker’s location and walked over to her car while yelling with a gun in his hand. Defendant then began shooting at Walker’s car. Walker captured a video of a portion of the incident on her cell phone using Snapchat. When law enforcement arrived on the scene, Walker provided Officer Chelsea Belcher with the video footage and screenshots of her text messages with Defendant which occurred just before the incident. Officer Belcher used the footage to form and disperse a description of Defendant, along with still images taken from the footage, to other New Bern law enforcement officers. Law enforcement identified Defendant using the footage and Officer Belcher’s description.

Hours after the incident, at around 12:52 a.m. on 24 April 2020, Walker met with Detective Garity of the New Bern Police Department and, during a recorded interview, gave a handwritten statement noting Defendant shot into her car. Officers were able to identify Defendant as the shooter but could not locate him. Defendant was later apprehended, on 28 April 2020, exiting a plane in Fort Worth, Texas.

On 13 September 2021, Defendant was indicted on charges of discharging a weapon into an occupied vehicle, possession of a firearm by a felon, and attempted robbery with a dangerous weapon. On 11 October 2022, the matter came on for jury trial in Craven County Superior Court.

At the close of the State's evidence, Defendant moved to dismiss all charges for insufficient evidence. After hearing arguments, the court denied Defendant's motion. On 13 October 2022, the jury returned verdicts finding Defendant guilty of discharging a weapon into an occupied vehicle and possession of a firearm by a felon. The jury found Defendant not guilty of attempted robbery with a dangerous weapon.

Defendant was sentenced as a prior record level IV to 38-58 months' imprisonment with a recommendation for work release. Defendant noticed appeal in open court.

II. Analysis

Defendant contends the trial court erred in denying his motion to dismiss as the State failed to present sufficient evidence of him being the perpetrator of the crime where the only evidence identifying Defendant was hearsay. We disagree.

This Court reviews the trial court's denial of a motion to dismiss *de novo*. See *State v. Lamp*, 383 N.C. 562, 569, 884 S.E.2d 623, 628 (2022); see also *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (“Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” (internal marks and citation omitted)).

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To withstand a motion to dismiss, the State must present “substantial evidence of each essential element of the crime and that the defendant is the perpetrator.” *State v. Golder*, 374 N.C. 238, 249, 839 S.E.2d 782, 790 (2020) (citation omitted); *see also State v. Booth*, 286 N.C. App. 71, 77, 879 S.E.2d 370, 375 (2022) (“Evidence is substantial if it is adequate to convince a reasonable mind to accept a conclusion.” (citation omitted)). In making this determination, the trial court must view all evidence, with every reasonable inference drawn therefrom, in the light most favorable to the State. *Id.* Both competent and incompetent evidence favorable to the State must be considered. *See State v. Osborne*, 372 N.C. 619, 626, 831 S.E.2d 328, 333 (2019); *see also Booth*, 286 N.C. App. at 77, 879 S.E.2d at 375 (“Incompetent evidence that was admitted ‘must be considered as if it were competent.’” (quoting *State v. Vestal*, 278 N.C. 561, 567, 180 S.E.2d 755, 760 (1971))). “[I]f the record developed before the trial court contains substantial evidence, whether direct or circumstantial, or a combination, to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied.” *Osborne*, 372 N.C. at 626, 831 S.E.2d at 333 (internal marks and citation omitted).

Here, Defendant only argues the trial court erroneously considered hearsay evidence which identified him as the perpetrator of the crime in denying his motion to dismiss. Assuming Walker’s written and recorded statement identifying Defendant as the perpetrator could not be considered in ruling on the motion to

dismiss, as they were offered for a non-substantive purpose, other competent evidence identifying Defendant as the perpetrator exists.

The State presented evidence of Defendant's identity as the perpetrator through a video Walker recorded at the scene prior to the shooting. The video depicted Defendant leaning into Walker's car and arguing with her. Walker identified Defendant as the person in the video twice in her trial testimony. Walker's friend could also be seen sitting in the passenger's seat. Walker testified that while she did not remember why she recorded the video, she did recall recording it that day.¹ The video was then admitted into evidence.

During the video, the Defendant states, "I shoot people. I shoot people." Walker can be heard stating, "Now you wanna come out here with a gun." Thus, there was sufficient evidence that the individual in the video was the shooter. Defendant is recorded in the video telling the victim he shoots people immediately prior to the shooting. Additionally, a reasonable inference could be drawn that Defendant had a gun in his possession at the time the video was recorded because, rather than denying Walker's statement, he continues stating that he shoots people. Moreover, Walker identified Defendant as the person in the video twice while

¹ We "may take judicial notice *ex mero motu* on any occasion where the existence of a particular fact is important." *Lineberger v. North Carolina Dept. of Corr.*, 189 N.C. App. 1, 6, 657 S.E.2d 673, 677 (2008) (citation and internal marks omitted). The video has a Snapchat filter reflecting that the 2020 NFL Draft would occur "TONIGHT 8PM ET." The shooting at issue occurred on 23 April 2020. Taking notice of the fact that the 2020 NFL Draft also occurred on 23 April 2020, the video is dated to the day of the shooting.

testifying. On direct examination, the State questioned whether one of the people in the video “was the defendant in this case, Mr. Fraser?” Walker answered, “Yes.” Later, when asked if she recognized the person in the video, Walker stated that it was Defendant. Taking this evidence in the light most favorable to the State, Walker’s identification of Defendant in the video, and his statements therein, are sufficient to support a finding that Defendant was the person who shot into Walker’s car.

Accordingly, the trial court did not err in denying Defendant’s motion to dismiss.

III. Conclusion

For the aforementioned reasons, the trial court did not err in denying Defendant’s motion to dismiss.

NO ERROR.

Judges ZACHARY and GORE concur.

Report per Rule 30(e).