

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-952

Filed: 19 May 2015

Brunswick County, No. 12 CRS 2264

STATE OF NORTH CAROLINA,

v.

JULIE ANN ENGLISH, Defendant.

Appeal by Defendant from a judgment entered 4 March 2014 by Judge Claire V. Hill in Brunswick County Superior Court. Heard in the Court of Appeals 18 February 2015.

Attorney General Roy Cooper, by Special Deputy Attorney General Melissa L. Trippe, for the State.

Glover and Petersen P.A., by Ann B. Petersen, for defendant-appellant.

HUNTER, JR., Robert N., Judge.

Julie Ann English (“Defendant”) appeals from a judgment after a jury found her guilty of voluntary manslaughter. Defendant contends it was error to deny her motion to dismiss. We disagree.

I. Factual and Procedural History

On 24 February 2014, Defendant was tried before a jury based on an indictment charging her with second-degree murder in Brunswick County. At trial, the State’s evidence tended to show the following:

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On 27 May 2012, Defendant and her boyfriend, Michael Pate (“Pate”), had a party celebrating Pate’s birthday at their shared residence (“Pate residence”). Dixie Costlow (“Costlow”), Defendant’s employer, and her son, Timothy Staruch (“Staruch”), attended the party.

The State called Staruch, who arrived at the party at approximately 1:30 pm, as its first witness. He testified partygoers grilled out, drank alcohol, and swam in the pool. Staruch admitted he did “a little bit of drugs, a little marijuana and a few hits of crack.” He observed both Defendant, a casual acquaintance, and Pate, whom he had never previously met, doing drugs and drinking alcohol. After the party ended and the partygoers dispersed, Staruch remained behind to purchase drugs with Defendant and Pate. He asked Pate for a ride to Costlow’s house for drug money. Pate admitted he “drank too much that day and he didn’t want to get a DUI” so Defendant drove Staruch to Costlow’s house, where he obtained the purchase money. He watched as Defendant arranged by phone for a drug dealer to deliver cocaine to the Pate residence. At approximately 9:00 pm, Staruch and Defendant returned to the Pate residence. After Defendant pulled in the driveway, Staruch exited the car and walked up the stairs toward the porch.

Staruch testified just as he reached the top of the steps, Pate came out of the porch door, accusing Staruch of “messing around” with his wife. Staruch testified when Pate “pushed at” him, he “came down off the steps.” He observed Defendant

step between the two men. After he turned to leave, Staruch “heard” a punch and immediately turned back around. He saw Defendant lying on the ground. He then watched Defendant stand up and resume her argument with Pate. Thinking “she obviously can handle it,” Staruch turned and walked away.

As he walked, Staruch heard arguing and sounds of people “running in and out of the house.” He stopped about 200 yards away and looked back toward the Pate residence. Although it was dark and trees were in his line of sight, he claimed he could “see and hear silhouettes.” Staruch watched a figure run out of the house and into the car; another figure unsuccessfully tried to get into the car. He observed the back-up lights of the car switch on. Thinking Defendant was leaving the house and might stop to pick him up, Staruch turned and continued to walk away from the house. He then heard “a wreck, a boom,” and immediately turned around. He saw the car “tilted up” on the porch. Staruch walked back to the Pate residence and observed “most of [Pate’s] body . . . behind the tire, and [his] legs . . . sticking out.” Staruch testified Defendant was on her cell phone and she appeared “hysterical.”

The State called Chief Mark Hewett (“Chief Hewett”) of the Civietown Fire and Rescue Squad, who was the first official to arrive at the Pate residence. He testified that after receiving a call from 911 dispatch, he arrived at the Pate residence, where Defendant was standing in the yard and motioning toward the car. Chief Hewett saw Pate’s body under the car, immediately checked for a pulse, and determined “[Pate]

was already gone.” He observed damage to the left-hand side of the steps. Chief Hewett smelled alcohol on Defendant, who was crying and screaming “Help him.”

The State called Corporal Jeff Elwood (“Corporal Elwood”) of the Brunswick County Sheriff’s Office, who arrived at the Pate residence at the same time as First Sergeant Long. He testified that Chief Hewett informed him the “gentleman under the car was deceased.” He observed that the vehicle was “up towards the front porch, and the rail was leaning where it looked like the vehicle had struck the rail.” Corporal Elwood heard Sergeant Long direct Defendant to sit in a lawn chair in the yard and instruct her she was not free to leave. Corporal Elwood read Defendant her *Miranda* rights.

The State called Captain Donna Simpson (“Captain Simpson”) of the Brunswick County Sheriff’s Office, who arrived at the Pate residence at approximately 10:30 pm. Captain Simpson testified Defendant appeared a “little shaken up” and was bleeding from the left side of her face. Captain Simpson walked Defendant to the EMS truck, where she advised Defendant of her *Miranda* rights, conducted a recorded interview, and took some photographs. The recorded interview was played for the jury.¹ In the interview, Defendant stated:

I walked up on the porch and said “Mike what are you doing?” And he took his fists -- as soon as I walked on the steps, and he hit me in the face and knocked me from the porch to the yard, and my face started pouring blood. So I

¹ This Court was not provided with a transcript of this interview. The recording on the CD is incredibly difficult to understand at certain times.

went inside and got my pocketbook, got my keys, and got in my car and went to back up. . . . He was standing in the yard. . . . He hit me in the face, I'm just going to knock the porch down. . . . And I seen him standing in the yard. . . . I don't know how he got under my car. . . . I went to pull back and I couldn't pull back, probably because Mike was under my car.

Following the interview, Captain Simpson retrieved Defendant's cell phone from inside the Pate residence and examined the area outside the car. She testified the "vehicle was next to the front of the residence, where it hit a couple of steps" and there were "tire tracks on the concrete."

The State called Detective John Holman ("Detective Holman"), the lead investigator on the case. Holman first interacted with Defendant at the hospital and testified "[she] [t]old me that they had gotten into an argument, that her and [Staruch] were walking onto the porch, and [Pate] confronted [Staruch] and attempted to push him. She got upset, got hit, walked in, got the keys, and got into the vehicle." Shortly after midnight, Detective Holman and Captain Simpson conducted a formal recorded interview of Defendant in her room at Brunswick Novant Hospital. The recorded interview was played for the jury.²

In the interview, Defendant explained: "I've never been hit like that before in my life. . . . [h]e hit me and knocked me all the way into the yard [and] I laid there for a bit." Detective Holman asked about the source of Defendant and Pate's

² This Court was not provided with a transcript of this interview. The recording on the CD is difficult to understand at times.

argument; Defendant responded: “He was jealous over that -- over Timmy -- thought I was messing with him and I can swear on my daddy’s life that it wasn’t like that.” When asked “what happened after he hit you?”, Defendant responded: “I went back in and got my pocketbook and keys and went and got in the car. [inaudible] My thought was that I’d back up and run into the porch steps. I seen him out in the yard part out in the sand.” Defendant admitted the reason behind hitting the steps was: “I just got hit in the face. I was being evil too I guess.” Detective Holman asked “[a]nd at no point in time you saw him in front of you?”; Defendant responded:

No, he was standing out in the -- well he walked around my car and when he walked around my car I said I got to go to the hospital. I see him standing in the dirt in the front yard not even on the concrete part so I turned the car to hit the step. I don’t know if he ran up there at the same time I was pulling up or what -- or how he got in that position.

Following the interview, Detective Holman drew a warrant for Defendant’s arrest.

The State called Dr. John Almeida, who performed a forensic autopsy on Pate’s body on 29 May 2012. Dr. Almeida testified that Pate’s injuries consisted of a broken right ankle, abrasions throughout the body, a pelvic fracture, broken ribs, and a punctured left lung from a sharp piece of rib. He opined: “I believe the cause of death to be multiple blunt trauma with crushed ribs and crushed chest and pelvis.” Dr. Almeida explained that Pate’s pelvic and rib fractures were the result of “extreme pressure” and “extreme compression of the chest” and Pate’s abrasions could have

been “caused by being struck by a vehicle” or “by the body itself striking something, such as a porch.” Although tripping over the lip of concrete could cause a fractured ankle, Dr. Almeida testified that it was more likely “there was some pressure brought on [Pate’s] ankle.” He further explained: an ankle fracture is a “characteristic injury that is seen in motor vehicle accidents when a pedestrian is struck by a vehicle.”

At the close of the State’s evidence, Defendant’s counsel moved to dismiss for insufficient evidence of second-degree murder, stating “[t]here may be enough evidence for voluntary manslaughter but not second-degree murder[.]” The motion was denied. Defendant then presented the testimony of her expert witness and testified on her own behalf.

Defendant, a cosmetologist with two sons, began her testimony by explaining the nature of her relationship with Pate. Defendant testified she started dating Pate in 2001 and in the beginning, “[i]t was like [they] couldn’t do without each other, [they] were in love.” She respected the fact that Pate was a hard worker and a Christian man, and her sons even called him “Pop” and “Dad.” Defendant admitted that the couple drank alcohol recreationally and between 2003 and 2005, they started using cocaine “[j]ust [on the] weekends.” Under the influence of drugs and/or alcohol, Defendant claimed the couple began to “argue and fight.” Defendant explained: “[s]ometimes [the fighting] would be physical” and “[t]here was a lot of cussing and yelling and calling each other names, to the point where I had to leave or I was made

to leave. And a few days later, [Pate] would call me back, and it would start over again, and we would do the same thing again.” She continued:

I was scared most of the time, didn’t know what to look forward to when I got home, I didn’t know how he was going to be, how he was going to act, if he was going to be drunk[.]. . . I was just always scared. I felt like I was stuck. Once I’d move out and move back in, then I would have nowhere to go. It was kind of like if he got mad, he would say, “Get your stuff and get out,” you know. So I felt trapped, I guess, to say.

Defendant then testified as to the events of 27 May 2012. She recounted Pate began drinking alcohol at approximately 11:00 am. She “believed” Pate and other partygoers smoked crack cocaine because they “were gathering in the bathroom or in the bedroom.” Defendant claimed she did not smoke crack at the party, but admitted she “had a glass of wine with [her] most of the time[.]” Because Staruch “wanted to get some drugs,” Defendant drove him to Costlow’s house to pick up the purchase money. When Defendant and Staruch returned to the Pate residence, Defendant suspected that Pate was “pretty drunk.” She watched Staruch walk up the stairs and heard Pate “cussing and fussing” at Staruch. As Defendant stepped up on the stairs between Staruch and Pate, Pate hit her left cheek with his fist, propelling her from the stairs to the yard. She thought “[o]h my God, I’ve never been hit like that before[.]” as blood poured down her cheek.

Defendant testified after getting hit, she “didn’t really understand what was going on with [Pate], but [she] went to a different state of mind.” Intending to go to

the hospital, she locked herself in her car, but was forced to exit the car to retrieve her keys from the yard. Defendant returned to the car and locked the doors. Before starting the engine, she observed Pate walk to the driver's side of the car and look in the window. Defendant then watched Pate leave the window and "walk[] off" around the back of her car. She claimed she "didn't see [Pate] after he went to the back of [her] car." Although she initially intended to back out and put her car in gear, Defendant testified that she changed her mind and thought "I'll just hit those steps, and then I'll back out and leave." She drove forward and struck the porch stairs. Unable to back up her car, Defendant emerged from the driver's seat, thinking "my bumper [must be] hung on the steps or something." She heard Pate moan and saw his hand under the car. She attempted to pull Pate out by his hand, retrieved her phone from her car, and called 911. A recording of the 911 call was played for the jury.

Defendant called Dr. Jennifer Sapia, who evaluated Defendant four times in fourteen months at the Brunswick County Detention Facility. Dr. Sapia testified that in the course of evaluating Defendant, she performed clinical interviews, conducted psychological testing, and reviewed law enforcement investigation records. Dr. Sapia opined: Defendant's "judgment, planning, and problem-solving were more likely than not appreciably impaired by the acute effects of alcohol intoxication as well as the emotionally aroused state of mind due to that physical assault."

The State then offered the testimony of Richard Smith, a neighbor of Defendant and Pate, as a rebuttal witness. Smith testified he observed Defendant and Pate argue outside their home on two occasions prior to 27 May 2012 and, both times, Defendant hit Pate “like a girl hits” and Pate walked away.

After the close of all the evidence, Defendant renewed her motion for the court to dismiss the charge of second-degree murder. The motion was again denied. The judge submitted four possible verdicts to the jury: (1) second-degree murder, (2) voluntary manslaughter, (3) involuntary manslaughter, and (4) not guilty. The jury found Defendant guilty of voluntary manslaughter and the trial court sentenced her to a minimum term of fifty-one months and a maximum term of seventy-four months imprisonment.

II. Standard of Review

This Court reviews the trial court’s ruling with respect to a motion to dismiss for insufficient evidence on a *de novo* basis. *State v. Stephens*, 244 N.C. 380, 384, 93 S.E.2d 431, 433 (1956). “[T]he question for the trial court is whether there is substantial evidence of each essential element of the offense charged, or of a lesser included offense, and of the defendant’s being the perpetrator of such offense.” *State v. Malloy*, 309 N.C. 176, 178, 305 S.E.2d 718, 720 (1983) (citation omitted). Substantial evidence is “relevant evidence that a reasonable person might accept as adequate, or would consider necessary to support a particular conclusion.” *State v.*

Bunn, 173 N.C. App. 729, 733, 619 S.E.2d 918, 921 (2005). The evidence can be circumstantial or direct, or both. *State v. Bruton*, 264 N.C. 488, 497, 142 S.E.2d 169, 175 (1965). However, “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), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). “In considering such motions, the trial court is concerned only with the sufficiency of the evidence to take the case to the jury and not with its weight.” *Malloy*, 309 N.C. at 178, 305 S.E.2d at 720 (citations omitted). “Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve.” *State v. Fritsch*, 351 N.C. 373, 379, 526 S.E.2d 451, 455 (2000). If, however, the evidence is “sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator . . . the motion to dismiss must be allowed.” *Malloy*, 309 N.C. at 179, 305 S.E.2d at 720.

III. Analysis

Defendant contends the trial court erred as a matter of law by denying her motion to dismiss the charge of second-degree murder and its lesser-included offense, voluntary manslaughter. We disagree.

Voluntary manslaughter is the “unlawful killing of a human being without malice, express or implied, and without premeditation and deliberation.” *State v.*

Jackson, 145 N.C. App. 86, 90, 550 S.E.2d 225, 229 (2001) (citation and internal quotation marks omitted). “Generally, voluntary manslaughter occurs when one kills intentionally but does so in the heat of passion suddenly aroused by adequate provocation or in the exercise of self-defense where excessive force is used or defendant is the aggressor.” *Id.* However, “[n]either second degree murder nor voluntary manslaughter has as an essential element an intent to kill.” *Id.* (citation and quotation marks omitted). Therefore, the term intentional killing “is not used in the sense that a specific intent to kill must be admitted or established” but, “refers to the fact that the *act* which resulted in death is intentionally committed and is an assault which in itself amounts to a felony or is likely to cause death or serious bodily injury.” *Id.* (citation and quotation marks omitted).

At trial, Judge Hill instructed the jury on the essential elements of second-degree murder, voluntary manslaughter, and involuntary manslaughter. The judge explained for a conviction of voluntary manslaughter, the State must prove, beyond a reasonable doubt, that: (1) Defendant killed Pate by an “intentional and unlawful act” and (2) Defendant’s act was the “proximate cause of Michael Pate’s death.” During deliberation, the jury asked the court for clarification on the first element of voluntary manslaughter, specifically “what ‘act’ is referring to [in the context of] the act being an ‘intentional and unlawful act[.]’” The judge explained:

Pursuant to your jury instructions, intent is a mental attitude which is seldom provable by direct evidence. It

must ordinarily be proved by circumstances from which it may be inferred. You arrive at the intent of a person by such just and reasonable deductions from the circumstances proven as a reasonably prudent person would ordinarily draw therefrom.

The judge further explained the State is not required to prove Defendant intended to kill, but only must show Defendant intended to act in a manner that was an assault, which, in itself, amounts to a felony or is likely to cause death or serious injury.

On appeal, Defendant contends there was not sufficient evidence presented showing Defendant killed Pate by an intentional and unlawful act, the first essential element of voluntary manslaughter. Defendant argues that without evidence of her intent to strike Pate with a car, there is no evidence of an intentional assault, which in itself amounts to a felony or is likely to cause death or serious bodily injury.

In *State v. Jackson*, this Court found sufficient evidence to support a jury's conviction of voluntary manslaughter, where the defendant struck and killed the victim with his car. *Jackson*, 145 N.C. App. at 88, 550 S.E.2d at 228. At trial, the State offered the defendant's statement, explaining the victim "[got] in the middle of the street in front of [defendant's] car[.]" *Id.* (internal quotation marks omitted). In the statement, the defendant also admitted he hit the victim and kept driving because he "wasn't going to stop to get jumped or get [his] car messed up." *Id.* Officers present at the scene testified that the defendant was speeding and failed to slow down or swerve to avoid the victim, who did not make any sudden movements toward the car.

Id. at 91, 550 S.E.2d at 230. The defendant testified in his own defense. He admitted that after being assaulted by the victim, he was “upset” and “angry” while driving away and “he could not avoid striking decedent when he jumped into the path of defendant’s automobile.” *Id.* at 89, 550 S.E.2d at 228. On appeal, this Court concluded that the eyewitness’ testimony, the defendant’s written statement to police, and the nature of the assault itself constituted sufficient evidence of the defendant’s intent to strike the victim with his car. *Id.* at 91, 550 S.E.2d at 230.

Defendant correctly asserts the facts in *State v. Jackson* are distinguishable from the facts in this case. In *Jackson*, eyewitness testimony was presented at trial that both contradicted the defendant’s prior statements to officers and described the victim’s behavior before being hit with the car. *See id.* In this case, Staruch did not witness Defendant strike Pate with the car, so there is neither eyewitness testimony contradicting Defendant’s prior statements nor describing Pate’s actions immediately preceding the crash. Additionally, the defendant in *Jackson* admitted in a written statement that he hit the victim and continued driving because he did not want to stop. *See id.* In this case, there is no direct evidence that Defendant was aware she hit Pate until she got out of the car, heard him moan, and observed his body. This Court’s determination of a defendant’s intent, however, is not limited to the evidence we considered in *Jackson*.

“Circumstantial evidence and direct evidence are subject to the same test for sufficiency, and the law does not distinguish between the weight given to direct and circumstantial evidence[.]” *State v. Parker*, 354 N.C. 268, 279, 553 S.E.2d 885, 894 (2001) (citations omitted). Intent is “a mental attitude” so it “must ordinarily be proven by circumstances from which it can be *inferred*.” *Jackson*, 145 N.C. App. at 90, 550 S.E.2d at 229 (citations omitted) (emphasis added). Accordingly, when the jury asked for clarification on the issue of intent at trial, they were instructed that it “is seldom provable by direct evidence.” The evidence presented to the jury included the following: (1) Pate had a history, while under the influence of drugs and/or alcohol, of acting emotionally and physically abusive toward Defendant; (2) when Pate was angry, he would tell Defendant to “[g]et her stuff and get out,” so Defendant felt “trapped”; (3) on 27 May 2012, Pate drank alcohol and allegedly smoked crack before hitting Defendant in the face with a closed fist, knocking her from the porch to the yard; (4) Defendant felt scared and went “to a different state of mind” after being hit; (5) before driving forward, Defendant observed Pate standing in the sandy part of the yard, near the concrete patio steps; and (6) Defendant struck the stairs because she “wanted to be evil too.”

From this evidence, a jury could find Defendant felt trapped in a cycle of emotional and physical abuse, and after a particularly violent physical assault, she decided it was time to break free. Based on Dr. Almeida’s testimony, a jury could find

Pate did not trip and fall in front of the car, for his right ankle fracture was consistent with being struck by an automobile. A jury could also find Defendant was aware of Pate's location when she put the car in drive, as she testified she had seen him prior to moving the car forward. "Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence." *State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988). Based on the evidence presented, viewed in the light most favorable to the State, it was reasonable for the jury to infer Defendant intentionally struck Pate with her car.

Defendant contends the State is bound by the purported truth of her statements to Captain Simpson and Detective Holman, in which she denied intentionally striking Pate. *See State v. Morgan*, 299 N.C. 191, 208, 261 S.E.2d 827, 837 (1980) (citations omitted) (holding "[w]hen the state introduces into evidence exculpatory statements of the defendant which are not contradicted or shown to be false by any other facts or circumstances in evidence, the state is bound by those statements"). However, when evidence of the defendant's intent contradicts a previous exculpatory statement, the State is not bound by the truth of the prior statement and the matter is properly submitted to the jury. *See id.* at 209, 261 S.E.2d at 838 (explaining where inconsistencies in defendant's statement present a jury question as to whether a killing was accidental or intentional, "the state is not bound

by the exculpatory portions of defendant's statement and is entitled to go to the jury on the issue of defendant's guilt of the crime charged[]"). Here, Defendant contends that neither eyewitness testimony nor physical evidence contradict her statements to investigating officers, in which she denies intentionally striking Pate with her car. However, Defendant discounts the significance of circumstantial evidence, from which a jury could infer intent. As discussed above, the jury was presented with circumstantial evidence suggesting Defendant intentionally struck Pate with her car. Therefore, as there was evidence that contradicted Defendant's prior statements, the trial court was not bound by the purported truth of the statements.

IV. Conclusion

On appeal, this Court must only determine whether there was sufficient circumstantial or direct evidence, in the light most favorable to the State, supporting the jury's conviction of voluntary manslaughter. We hold that there was sufficient evidence offered to prove all essential elements of voluntary manslaughter. Therefore, the motion to dismiss was properly denied and the matter was correctly submitted to the jury.

NO ERROR.

Judges STEPHENS and TYSON concur.