IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-178

Filed: 16 October 2018

Wilkes County, No. 16CRS50208-09

STATE OF NORTH CAROLINA

v.

DANIEL BARKER, Defendant.

Appeal by Defendant from judgment entered 15 September 2017 by Judge Stanley L. Allen in Wilkes County Superior Court. Heard in the Court of Appeals 20 September 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Ryan F. Haigh, for the State.

Anne Bleyman for Defendant.

INMAN, Judge.

Daniel Barker ("Defendant") appeals from judgment entered following a jury verdict finding him guilty of first-degree murder and misdemeanor possession of stolen goods. After careful review of the record and applicable law, we conclude that the short-form indictment and the evidence presented were sufficient to support Defendant's murder conviction.

Procedural and Factual Background

The evidence presented at trial tended to show the following:

Defendant and his girlfriend, Kimberly Kennedy ("Kimberly"), were avid methamphetamine and heroin users, and lived together in a mobile home park. Defendant's uncle owned the mobile home park, and Defendant and Kimberly did not pay Defendant's uncle rent for the mobile home they occupied. Defendant would normally use the money he received from his construction jobs to pay for drugs. After Defendant lost his job, he and Kimberly sold their belongings to fund their drug use. A few days after Christmas in December 2015, Defendant and Kimberly vacated Defendant's uncle's mobile home park and moved into another mobile home owned by Todd Beyer ("Todd"). Defendant's step-father and Todd's drug dealer, Benny Lankford ("Benny"), urged them to move in with Todd. Defendant and Kimberly's stay was only meant to last about a month or two.

Todd was about five foot, eight inches tall and weighed around 240 pounds. Injuries suffered years earlier in an automobile collision left him physically disabled from the waist down. Initially relegated to a wheelchair, by December 2015 he was able to use a walker and a cane. Todd could only walk short distances and constructed handicap ramps to enable him to enter his mobile home.

Defendant and Kimberly routinely used drugs in Todd's home. Todd also used methamphetamine, crack cocaine, and drank over a case of beer a day. During their

stay, Todd's belligerent and erratic behavior unsettled Defendant. About half of their time with Todd, Defendant and Kimberly stayed with Defendant's friend, Chad Smith ("Chad"). Todd worried that police were watching Defendant due to Benny's relationship with the both of them. On two occasions, Todd threatened to shoot Defendant with his muzzleloader and have "three men jump him." Defendant later told Kimberly that if they continued to live with Todd, he was going to kill him.

On the morning of 13 January 2016, Defendant woke Kimberly and told her to go to a neighbor's house. At the time, Todd was sitting on a reclining chair, with his legs outstretched, in his living room. Less than an hour later, Defendant found Kimberly at the neighbor's house and, while holding a kitchen butcher knife in his hand, told her that he had killed Todd by stabbing him three times. Defendant appeared "scared and upset," and had "blood splattered on his face."

A report following Todd's autopsy revealed that Defendant had stabbed Todd twelve times, and that Todd died as a result of the stab wounds. Six stab wounds were on the back of both sides of Todd's neck—one piercing his right carotid artery and jugular vein. Three stab wounds were on the back of Todd's head. The rest of the stab wounds were on Todd's upper back, left chest, and left shoulder. All of the stab wounds, other than one chest wound, were made by a downward or neutral stabbing motion. The depth of the stab wounds ranged from one-half to four and a

quarter inches. No evidence tended to show any defensive wounds on Todd's body or signs of a struggle with Defendant.

After Defendant arrived at the neighbor's house, the neighbor drove Defendant and Kimberly to meet up with Chad. Two days later, on 15 January 2016, Defendant, Kimberly, and Chad went back to Todd's home and removed personal property, including two televisions and a sound bar, while Todd's body lay on the floor in front of the recliner. Chad did not know Todd was dead at the time, and did not see his body until leaving the home. Defendant did not respond when Chad inquired about Todd's body. When Defendant left Todd's home, he threw a set of keys into a field. Later that day, Defendant pawned one television, the sound bar, and an electric saw for $100. The keys were later recovered by police.

On 21 January 2016, Todd's friend, Rocky Gregory, visited Todd's home and—after noticing Todd's billfold and its contents scattered on the floor—found him dead in the living room and called the police. When police arrived at Todd's home, there was no indication in the residence that there had been an altercation, with only blood present in the location of Todd's body.

On 26 January 2016, police located and arrested Defendant and Kimberly. At the time of his arrest, Defendant did not have any physical injuries. During his interrogation, Defendant claimed he acted in self-defense when Todd attempted to hit him with a fire shovel.

At trial, at the close of the State's evidence and at the close of Defendant's evidence, defense counsel submitted a motion to dismiss the murder charge, arguing that the indictment was facially defective and that the evidence was insufficient to support a murder conviction. The trial court denied both motions. The jury found Defendant guilty of first-degree murder and misdemeanor possession of stolen goods. The trial court sentenced him to concurrent sentences of life without the possibility of parole for murder and 100 days for the possession conviction in the Division of Adult Corrections, and Defendant timely appealed.

Analysis

I. Defective Indictment

Defendant argues that he was denied due process because the short-form indictment for murder did not specifically allege all the statutory elements of first-degree murder. We employ *de novo* review for allegations concerning facially defective indictments and constitutional rights violations. *State v. McKoy*, 196 N.C. App. 650, 652, 675 S.E.2d 406, 409 (2009); *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009). When employing *de novo* review, we consider the matter anew and freely substitute our own judgment for that of the lower tribunal. *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008).

The indictment accusing Defendant of murder alleged that, in violation of Section 14-17 of our General Statutes, he did "unlawfully, willfully, and feloniously . . . with malice aforethought kill and murder Todd Beyer."

Section 14-17 defines murder in detailed terms, defines both first-degree and second-degree murder, and specifies two theories of first-degree murder: (1) committed with premeditation and deliberation; and (2) committed in the course of a felony attempted or committed with the use of a deadly weapon. N.C. Gen. Stat. § 14-17 (2017). Section 15-144, titled "**Essentials of bill for homicide**," provides that an indictment for murder "is sufficient in describing murder to allege that the accused person feloniously, willfully, and of his malice aforethought, did kill and murder (naming the person killed), and concluding as is now required by law." N.C. Gen. Stat. § 15-144 (2017). An indictment meeting this abbreviated criteria is known as a "short-form" indictment. *State v. Braxton*, 352 N.C. 158, 174, 531 S.E.2d 428, 437 (2000).

A short-form indictment "that complies with the requirements of [Section 15-144] will support a conviction of both first-degree and second-degree murder," and is "in compliance with both the North Carolina and United States Constitutions." *Id.* at 174, 531 S.E.2d at 437. A short-form indictment containing language consistent with Section 15-144 is "sufficient to charge first-degree murder on the basis of any"

theory—"including premeditation and deliberation"—which "need not be separately alleged in the short-form indictment." *Id.* at 174-75, 531 S.E.2d at 437-38.

Here, the short-form indictment accusing Defendant of murder was consistent with the requirements of Section 15-144. Although the indictment did not specify that Defendant was charged with first-degree murder and did not allege a theory of first-degree murder, the short-form indictment statute does not require these allegations in a valid indictment for murder. *Id.* We thus reject Defendant's argument.

II. Motion to Dismiss

Defendant also argues that the trial court erred by denying defense counsel's motion to dismiss the first-degree murder charge because the State produced insufficient evidence to establish the elements of deliberation and premeditation. Considering the ample evidence in the light most favorable to the State, we disagree.

We review the trial court's determination of a motion to dismiss *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007).

Upon review of a trial court's denial of a motion to dismiss, we must "determine only whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Vause*, 328 N.C. 231, 236, 400 S.E.2d 57, 61 (1991). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

State v. Ingram, 227 N.C. App. 383, 385, 741 S.E.2d 906, 909 (2013) (citation and quotation marks omitted). All evidence is viewed in the light most favorable to the State, including the benefit of every reasonable inference drawn from the evidence in the State's favor. *State v. Barnett*, 368 N.C. 710, 713, 782 S.E.2d 885, 888 (2016). "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). Even if circumstantial evidence does not rule out "every hypothesis of innocence," the motion to dismiss may be withstood. *State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988).

To support a conviction for first-degree murder, the State must prove: "(1) an unlawful killing; (2) with malice; (3) with the specific intent to kill formed after some measure of premeditation and deliberation." *State v. Peterson*, 361 N.C. 587, 595, 652 S.E.2d 216, 223 (2007) (citing N.C. Gen. Stat. § 14-17 (2005)). Premeditation is thinking out the act "beforehand for some length of time, however short," while deliberation is "an intent to kill, carried out in a cool state of blood" with "an unlawful purpose" not influenced by a "violent passion." *State v. Broom*, 225 N.C. App. 137, 148, 736 S.E.2d 802, 810 (2013) (citation and quotation marks omitted). If the "defendant formed the intent to kill in a cool state of blood before [a] quarrel or scuffle began and the killing during the quarrel was the product of this earlier formed

intent," the defendant has committed first-degree murder. *State v. Misenheimer*, 304 N.C. 108, 114, 282 S.E.2d 791, 795 (1981).

The record reflects evidence sufficient to allow a reasonable juror to find Defendant guilty of first-degree murder. In the weeks prior to Todd's death, Defendant lost his job, sold his belongings so he and Kimberly could obtain methamphetamine and heroin, frequently changed residences, relied on others for shelter, and was without employment. Days before Todd's death, Defendant told Kimberly that he would kill Todd if they continued to stay at Todd's residence. Shortly before his death, Todd was reclined in his chair. Less than an hour after telling Kimberly to go to a neighbor's house, Defendant arrived at the neighbor's and said that he had killed Todd. Instead of calling the police, Defendant stole items from Todd's home to pawn. When Defendant was arrested, he did not display any physical injuries and Todd's body did not show any signs of defensive wounds.

This evidence was sufficient to support a finding that Defendant premeditated and deliberated before killing Todd. A reasonable juror could find that Defendant told Kimberly to go to the neighbor's house because he was planning to kill Todd. A reasonable juror could find that Defendant planned to kill Todd in order to steal his personal property to sell to buy drugs. Defendant's argument that he killed Todd in self-defense did not preclude admission of other evidence, but presented a credibility

determination within the sole province of the jury. *State v. Cross*, 345 N.C. 713, 717, 483 S.E.2d 432, 434-45 (1997); *Ingram*, 227 N.C. App. at 385, 741 S.E.2d at 909.

When viewed in the light most favorable to the State, we conclude that there was substantial evidence of premeditation and deliberation. Accordingly, we hold the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Judges TYSON and BERGER concur.

Report per Rule 30(e).