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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-174

Filed: 7 January 2020

Vance County, No. 16 CRS 000085

STATE OF NORTH CAROLINA

v.

CHELSEA JOANNA COLLIER

Appeal by Defendant from Judgment entered 23 January 2018 by Judge Elaine M. O’Neal in Vance County Superior Court. Heard in the Court of Appeals 1 October 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General John P. Barkley, for the State.

Lisa Miles for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

Chelsea Joanna Collier (Defendant) appeals from her convictions for First-Degree Murder and Conspiracy to Commit First-Degree Murder. The Record before us, including evidence presented at trial, tends to show the following:

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At the time of his death, Marcus Fields (Decedent) was thirty-six years old and suffered from schizophrenia and diabetes, which conditions required him to take medication daily. According to Decedent's mother, Decedent's schizophrenia began approximately eight years prior after he accidentally shot and killed his cousin while "playing with a gun[.]" As a result of this incident, Decedent was convicted of voluntary manslaughter.

In early December 2015, Decedent met Defendant, and they began dating approximately a week after meeting. At the time, Defendant was twenty-one years old and pregnant. Shortly after they started dating, Defendant moved in with Decedent.

On 29 December 2015, Defendant called her cousin, Jessica Lewis (Lewis), and asked Lewis to come pick her up because Defendant believed Decedent was "going to kill her." According to Lewis's testimony, Defendant was "freaking out," "crying," and "truly scared" because Decedent had been beating Defendant, told her "he was going to tie her up, cut her baby out of her stomach and make her hold it while he dismembered her[.]" and stated he intended to take Defendant to New York and force her into prostitution. Approximately an hour later, Lewis left work and picked up Defendant.

When Defendant got into Lewis's car, Defendant stated she needed a gun and began calling several people asking for a gun. After driving around for a little while,

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Defendant and Lewis met Lewis's boyfriend, Chase Weisner (Weisner), at Weisner's father's house. Defendant and Lewis explained to Weisner and another individual, Daniel Grissom (Grissom), that Defendant needed a gun, and Grissom arranged for Lewis to purchase a gun from Grissom's cousin. Lewis then took Defendant to Lewis's house.

Thereafter, Weisner picked up the gun from Grissom's cousin. On the way back, Weisner received a call from Lewis, who stated she and Defendant were hiding in her garage "because they thought [Decedent] was riding up and down the road in [Defendant's] car." When Weisner arrived with the gun, Defendant requested Weisner show her how to shoot it. Defendant, Lewis, and Weisner then went back to Weisner's father's house where Defendant fired the gun three separate times before deciding "she'd gotten the hang of it[.]" Afterwards, all three returned to Lewis's house.

Once back at Lewis's house, Defendant and Lewis began planning "where and how" the shooting would take place. After ruling out the front door and kitchen areas, Defendant, Lewis, and Weisner agreed it should take place in Lewis's bedroom and then acted out how they envisioned the scenario would transpire. According to Lewis, Defendant would stand in Lewis's bedroom with the gun, and when Decedent walked down the hallway and stepped into Lewis's bedroom, Defendant would shoot him.

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That evening, on 29 December 2015, Lewis called Decedent and told him Defendant was leaving him, to which Decedent replied, “what the fuck and something about bitch.” Approximately five minutes later, Decedent arrived at Lewis’s house, irritated and looking for Defendant. Lewis told Decedent that Defendant was in her bedroom. When Decedent entered Lewis’s bedroom, Defendant shot him two times, resulting in Decedent’s death. Eventually, Defendant and Weisner took Decedent’s body to a wooded area located off of Spring Valley Road in Henderson, buried the body in a hole, and then covered the body with cement.

Defendant was subsequently arrested and indicted on one count of First-Degree Murder and one count of Conspiracy to Commit First-Degree Murder. Lewis and Weisner were also arrested and charged with first-degree murder. Both individuals, however, later pleaded guilty to second-degree murder in exchange for their testimony at Defendant’s trial.

Defendant’s trial in Vance County Superior Court began on 3 January 2018. During the charge conference, Defendant’s counsel requested the trial court instruct the jury on the lesser included offense of second-degree murder based on extreme provocation. The trial court denied Defendant’s requested jury instruction and instead submitted instructions for first-degree murder on the basis of being perpetrated while lying in wait and on the basis of malice, premeditation, and deliberation. On 23 January 2018, the jury returned verdicts finding Defendant

guilty of First-Degree Murder under both theories and guilty of Conspiracy to Commit First-Degree Murder. The same day, the trial court entered Judgment against Defendant, sentencing her to life without parole. Defendant timely filed Notice of Appeal on 25 January 2018.

Issues

The dispositive issues on appeal are whether the trial court erred by (I) denying Defendant's request for an instruction on the effect of extreme provocation on Defendant's ability to deliberate and (II) entering Judgment for Conspiracy to Commit First-Degree Murder as a Class A felony.

Analysis

I. Provocation

Defendant argues the trial court erred by denying Defendant's requested instruction on second-degree murder based on the effect of extreme provocation on Defendant's ability to deliberate. "[Arguments] challenging the trial court's decisions regarding jury instructions are reviewed *de novo*[]" *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009) (citations omitted).

N.C. Gen. Stat. § 14-17(a) defines murder generally and provides in relevant part:

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined by G.S. 14-288.21, poison, *lying in wait*, imprisonment, starving, torture, or by *any other kind of willful, deliberate, and*

premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, 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) (2017) (emphasis added). Accordingly, our Supreme Court has construed this statute as separating first-degree murder into four classes:

(1) murder perpetrated by means of poison, lying in wait, imprisonment, starving or torture; (2) murder perpetrated by any other kind of willful, deliberate and premeditated killing; (3) murder committed in the perpetration or attempted perpetration of certain enumerated felonies; and (4) murder committed in the perpetration or attempted perpetration of any other felony committed or attempted with the use of a deadly weapon.

State v. Evangelista, 319 N.C. 152, 157, 353 S.E.2d 375, 380 (1987) (citation and quotation marks omitted).

Our Supreme Court has explained first-degree murder perpetrated by means of lying in wait is “a killing where the assassin has stationed himself or is lying in ambush for a private attack upon his victim.” *State v. Leroux*, 326 N.C. 368, 375, 390 S.E.2d 314, 320 (1990) (citation and quotation marks omitted); *see also State v. Camacho*, 337 N.C. 224, 231, 446 S.E.2d 8, 12 (1994) (“Homicide by lying in wait is committed when: the defendant lies in wait for the victim, that is, waits and watches for the victim in ambush for a private attack on him, intentionally assaults the victim, proximately causing the victim’s death[.]” (citations omitted)). As Defendant concedes, our Supreme Court has previously held: “Premeditation and deliberation

are not elements of the crime of first-degree murder perpetrated by means of lying in wait, nor is a specific intent to kill. The presence or absence of these elements is irrelevant.” *Leroux*, 326 N.C. at 375, 390 S.E.2d at 320 (citation omitted). “Lying in wait is a physical act and does not require a finding of any specific intent.” *State v. Grullon*, 240 N.C. App. 55, 60, 770 S.E.2d 379, 383 (2015) (alteration, citation, and quotation marks omitted).

Here, Defendant contends the trial court erred by not instructing the jury on second-degree murder. Specifically, Defendant asserts “[e]xtreme provocation by [Decedent] negated [Defendant’s] ability to deliberate[,]” thereby requiring submission of an instruction on second-degree murder. *See State v. Watson*, 338 N.C. 168, 177, 449 S.E.2d 694, 700 (1994) (explaining adequate provocation by the victim “may be enough to arouse a sudden and sufficient passion in the perpetrator to negate deliberation and reduce a homicide to murder in the second degree” (citations omitted)); *see also* N.C. Gen. Stat. § 14-17(b) (defining a murder without the element of deliberation as second-degree murder).

However, under *Leroux*, “[t]he trial court may not give an instruction on second-degree murder when the State’s evidence supports a jury finding of each element of lying in wait and when there is no conflict with respect to such evidence.” 326 N.C. at 379, 390 S.E.2d at 322. Here, the evidence presented at trial overwhelmingly “support[ed] a jury finding of each element of lying in wait and . . .

there [was] no conflict with respect to such evidence.” *Id.* Through the testimony of Lewis and Weisner, the State presented substantial evidence showing Defendant lured Decedent to Lewis’s bedroom where Defendant was waiting to shoot Decedent immediately upon his entering the bedroom. *See id.* at 375, 390 S.E.2d at 320 (defining first-degree murder by lying in wait as “a killing where the assassin has stationed [herself] or is lying in ambush for a private attack upon [her] victim” (citation and quotation marks omitted)). Accordingly, because the evidence at trial supported a finding of first-degree murder by lying in wait and no conflict existed as to this evidence, the trial court did not err by denying Defendant’s request to submit an instruction to the jury on second-degree murder by adequate provocation. *See id.* at 379, 390 S.E.2d at 322.

In her brief to this Court, Defendant concedes, “this is . . . a correct statement of the law and . . . [that Defendant] had no legal defense to lying in wait, not even a lesser included offense that would have taken into account [Defendant’s] state of mind as a result of [Decedent’s] provocation at the time of the crime.” Defendant therefore requests we “address the inequity inherent in the current interpretation of” N.C. Gen. Stat. § 14-17(a). However, as the State correctly counters, we are bound to follow our Supreme Court’s decision in *Leroux* and its progeny and therefore decline Defendant’s request to deviate from binding precedent. *See Mahoney v. Ronnie’s Road Service*, 122 N.C. App. 150, 153, 468 S.E.2d 279, 281 (1996) (“[I]t is elementary

that we are bound by the rulings of our Supreme Court[.]”), *aff’d per curiam*, 345 N.C. 631, 481 S.E.2d 85 (1997). Accordingly, we conclude the trial court did not err in its instructions to the jury.

II. Sentencing Classification

Defendant next contends the trial court erred by classifying her conviction for Conspiracy to Commit First-Degree Murder as a Class A felony. Although Defendant failed to object to this conviction’s classification during sentencing, “[a] defendant properly preserves the issue of a sentencing error on appeal despite [her] failure to object during the sentencing hearing.” *State v. Paul*, 231 N.C. App. 448, 449, 752 S.E.2d 252, 253 (2013) (citation omitted).

Section 14-2.4 of our General Statutes provides that “[u]nless a different classification is expressly stated, a person who is convicted of a conspiracy to commit . . . a Class A . . . felony is a Class B2 felony[.]” N.C. Gen. Stat. § 14-2.4(a) (2017). As explained *supra*, first-degree murder by lying in wait is a Class A felony, and the statute defining this offense does not provide a different classification for a conviction of conspiracy to commit first-degree murder. *See id.* §§ 14-2.4(a); -17(a). Therefore, Defendant’s conviction for Conspiracy to Commit First-Degree Murder should have been classified as a Class B2 felony, and the trial court erred by instead classifying this conviction as a Class A felony.¹ *See id.* § 14-2.4(a). Accordingly, we vacate the

¹ The State concedes this underlying point but contends, within the context of the trial court’s Judgment, the erroneous classification effectively constitutes a mere clerical error.

consolidated Judgment and remand this matter to the trial court to re-classify Defendant's conviction for Conspiracy to Commit First-Degree Murder as a Class B2 felony and to re-enter its sentence and judgment accordingly.

Conclusion

For the foregoing reasons, we hold the trial court did not err in denying Defendant's requested instructions on provocation and second-degree murder. We vacate the trial court's consolidated Judgment and remand this matter for the trial court to properly classify Defendant's conviction for Conspiracy to Commit First-Degree Murder and re-enter its sentence and judgment accordingly.

NO ERROR IN PART, REMANDED FOR RESENTENCING.

Chief Judge MCGEE and Judge COLLINS concur.

Report per Rule 30(e).