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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-816

No. COA22-486

Filed 6 December 2022

Rowan County, No. 18 CRS 2219

STATE OF NORTH CAROLINA

v.

JUAN RENARDO CHUNN, Defendant.

Appeal by Defendant from judgment entered 2 November 2021 by Judge Lori I. Hamilton in Rowan County Superior Court. Heard in the Court of Appeals 1 November 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Robert C. Montgomery, for the State.

Marilyn G. Ozer for Defendant-Appellant.

JACKSON, Judge.

¶ 1 Defendant Juan Renardo Chunn ("Defendant") appeals from denial of his motion in limine and motion to dismiss. For the reasons detailed below, we hold that the trial court did not err in its rulings.

I. Background

¶ 2 Early in the morning on 19 April 2018, Salisbury police officers responded to a

report of a possibly deceased individual in a home. When the officers arrived at the home, they found a man, later identified as Eugene Chunn, in an upright position on a couch in the living room, with his body and head covered by a blanket. Mr. Chunn was deceased and had injuries to his face and head.

¶ 3 The autopsy conducted on Mr. Chunn revealed that he sustained blunt force trauma injuries, including fractures of the bones around his eye, fractures of his cheekbone and nasal bone, fractures of his right lower jaw, fractures of several ribs and in both of his arms, broken dentures, and internal soft tissue damage. The medical examiner determined that the cause of death was blunt force trauma to the head, chest, and abdomen, and that the manner of death was homicide.

¶ 4 Defendant—Mr. Chunn's son and the individual who called 911—had been living with Mr. Chunn for approximately two months before he was killed. Defendant told officers who responded to the call that he had left the house between 10:30 p.m. and 11:00 p.m. on 17 April 2018. Defendant came back the next morning and saw that Mr. Chunn was sitting upright on a couch in the living room with a blanket over his head. Defendant said that he did not think this was unusual. Defendant proceeded to go in and out of the home approximately three to four times over the course of 18 April 2018, and each time he saw Mr. Chunn in the same position on the couch with a blanket over his head. The last time Defendant came home, in the early morning hours of 19 April 2018, he finally checked on Mr. Chunn, pulled the blanket

down, realized that his father was dead, and went to a neighbor—Kenneth Gibson—to get help. Defendant then called 911.

¶ 5 Officers who responded to the scene testified at trial that there was blood splatter in multiple places around the home including: on the wall between the den and the living room, on the wall between the bedroom and the living room, on the floor of the bedroom by the living room, on the blanket covering Mr. Chunn, on the oxygen tank on the ground next to Mr. Chunn, and on Mr. Chunn's body. The blood was dry.

¶ 6 The home showed no signs of a struggle or burglary. There were only two exterior doors in the home, a door in the front and a door in the back. The door in the back had a chair wedged underneath the handle and there was no sign of forced entry.

¶ 7 Mr. Chunn's friend and neighbor Kenneth Gibson testified that he had seen Defendant driving Mr. Chunn's car about an hour before Defendant came to his house to tell him that Mr. Chunn was dead, and that Mr. Chunn would not have let Defendant use his car for an extended period of time. Mr. Gibson testified that Mr. Chunn had COPD which caused breathing issues and that he was on oxygen so he would never cover his head or nose while sleeping. Mr. Gibson further testified, over objection of defense counsel, that Mr. Chunn told him that he had approximately $400 go missing in the week or two before his death, and that he suspected Defendant of having taken the money. Mr. Chunn told Mr. Gibson that Defendant was on drugs

and that he wanted to "ship him back" to Georgia, where Defendant was living prior to coming to North Carolina to live with Mr. Chunn. Mr. Gibson also testified that Mr. Chunn regularly kept money in a bank envelope in his sock, and that on 17 April 2018 he saw Mr. Chunn take out the envelope and it had approximately $200 to $300 in it. There was no money on Mr. Chunn's person when his body was examined.

¶ 8 Defendant was indicted on one count of first-degree murder on 9 July 2018. On 26 August 2021, Defendant moved in limine to exclude the statements made by Mr. Chunn to Mr. Gibson regarding the stolen money and his suspicion of Defendant as the perpetrator. The trial court denied the motion at a pretrial hearing held on 22 October 2021, finding the statements admissible under North Carolina Rule of Evidence 803(3). Defendant was tried by a jury at the 25 October 2021 criminal session of Rowan County Superior Court. On 2 November 2021, Defendant was found guilty of one count of first-degree murder. Defendant was sentenced to life in prison without the possibility of parole.

¶ 9 Defendant entered oral notice of appeal.

II. Analysis

¶ 10 Defendant makes two arguments on appeal: (1) the trial court erred in admitting statements by Mr. Chunn because they are inadmissible hearsay; and (2) the trial court erred in denying Defendant's motion to dismiss.

A. Standard of Review

¶ 11 We review *de novo* "a trial court's admission of evidence over a party's hearsay objection." *State v. Cook*, 246 N.C. App. 266, 279, 782 S.E.2d 569, 578 (2016). We use the same standard for our review of a trial court's denial of a motion to dismiss for insufficiency of the evidence. *State v. Lyons*, 268 N.C. App. 603, 607, 836 S.E.2d 917, 921 (2019).

B. Mr. Chunn's Statement

¶ 12 Defendant first contends that statements made by Mr. Chunn to Mr. Gibson, Mr. Chunn's friend for over 20 years, should not have been admitted at trial because they are inadmissible hearsay. We disagree.

¶ 13 During pretrial motions, following *voir dire*, the trial court ruled that statements that Mr. Chunn made about having money go missing and suspecting Defendant of taking it were admissible under North Carolina Rule of Evidence 803(3) as showing Mr. Chunn's state of mind at the time the statements were made.

¶ 14 "Under 803(3), hearsay evidence may be admitted to show the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)." *State v. Lathan*, 138 N.C. App. 234, 236, 530 S.E.2d 615, 618 (2000) (internal quotations omitted). While statements that only relay factual events do not fall under Rule 803(3), statements that relay factual events and also "tend to show the victim's state of mind while making the statements" are covered by the rule if the facts "serve to demonstrate the

basis for the victim's emotions." *State v. Exum*, 128 N.C. App. 647, 654, 497 S.E.2d 98, 103 (1998) (internal quotations omitted). This may include statements that show "the victim's fears, feelings, impressions[,] or experiences." *Lathan*, 138 N.C. App. at 236, 530 S.E.2d at 618. However, the probative value of the statements must outweigh any potential prejudice under N.C. Gen. Stat. § 8C-1, Rule 403, *id.*, which we review under an abuse of discretion standard, *State v. Bynum*, 111 N.C. App. 845, 849, 433 S.E.2d 778, 781 (1993). The statements necessarily must also be relevant. *Lathan*, 138 N.C. App. at 236, 530 S.E.2d at 618. We note that Defendant does not challenge on appeal the admissibility of Mr. Chunn's statements under Rule 403, or their relevance.

¶ 15 In *State v. Bishop*, our Supreme Court held that testimony by the victim's brother that the victim told him that "she was concerned that the defendant was stealing the money from the real estate sale of her property" and that the victim was "planning to get an injunction against the defendant to collect the money that she owed her" was properly admitted under 803(3). 346 N.C. 365, 379-80, 488 S.E.2d 769, 776 (1997) (cleaned up). The Court held that "these statements bore directly on the relationship between the victim and [the] defendant at the time of the killing and were relevant to show the motive for the killing[.]" *Id.* at 380, 488 S.E.2d at 776.

Here, Mr. Gibson testified the following at trial:

> **Q**: Did he tell you anything about an amount of money in

the amount of $400.

[Defense Counsel]: Objection. Need to be heard.

THE COURT: Overruled.

A: Yes, ma'am. He said it got—it was missing. He had to go back to the bank to get some more money for to complete job he had started.

Q: And could you please tell the jury, was this in the, like, week or two before his death, in that period?

A: Yes.

. . .

Q: Okay. Could you tell the jury if you had any conversations with your friend about his son Juan living with him and that—that situation.

[Defense Counsel]: Objection. Hearsay. Confrontation.

THE COURT: Overruled.

A: Yes, ma'am. He said some money was missing and he had a idea who took it, and he was gonna to ship his son back to where he got it from.

Q: He was going to [s]hip—could you say that one more time. I had a little trouble hearing you.

A: He said he's gonna ship his son back to where he got it from.

Q: What, if any, concerns did he share with you about drug use?

[Defense Counsel]: Objection.

THE COURT: Overruled.

> **A**: Yeah, he thought he was on drugs, yes, ma'am. That's why he was gonna ship him back.

¶ 16 While Defendant is correct that there are factual assertions contained in this testimony, they serve to show the basis for Mr. Chunn's emotions, i.e., his concern and frustration about Defendant's drug use and potential theft and his intent to send Defendant home. Like the statements our Supreme Court held admissible in *Bishop*, these statements are directly probative of Mr. Chunn's relationship with his son and expose potential motives for the killing. They are also relevant as they inform the jury about a potential point of conflict between Mr. Chunn and Defendant. *See Lathan*, 138 N.C. App. at 237, 530 S.E.2d at 618-19.

¶ 17 Defendant argues that because there was no evidence presented at trial to corroborate Mr. Gibson's testimony that Mr. Chunn had money stolen from him, the statements should not have been admitted. We disagree.

¶ 18 Rule 803(3) does not require that statements admitted under it be corroborated with other testimony or evidence. The rule simply says that the following is not excluded by the general prohibition against hearsay:

> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered unless it relates to the execution, revocation, identification, or terms of declarant's will.

N.C. Gen. Stat. § 8C-1, Rule 803(3) (2021).

¶ 19 Defendant's argument would appear to go more towards what weight the jury should give the testimony admitted under the Rule, which does not impact the trial court's consideration of the testimony's initial admissibility.

¶ 20 We hold that the trial court did not err in admitting Mr. Chunn's statements through Mr. Gibson's testimony.

C. Motion to Dismiss

¶ 21 Defendant next contends that the trial court erred in denying his motion to dismiss at the close of the State's evidence. Defendant asserts that the only evidence of motive was the uncorroborated hearsay testimony by Mr. Gibson, and that the State failed to establish a time or day of death, thereby making any evidence of opportunity weak. We disagree.

¶ 22 In evaluating a motion to dismiss a first-degree murder prosecution, "the trial court must determine whether the evidence, viewed in the light most favorable to the State, is sufficient to permit a jury to make a reasonable inference and finding that the defendant, after premeditation and deliberation, formed and executed a fixed purpose to kill." *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61-62 (1991). "Premeditation occurs when the defendant forms the specific intent to kill at some period of time, however short, before the actual killing." *State v. Harshaw*, 138 N.C. App. 657, 659, 532 S.E.2d 224, 226 (2000). "Deliberation means that [the] defendant

formed an intent to kill in cool state of blood rather than under the influence of a violent passion suddenly aroused by sufficient provocation." *Id.*

¶ 23 Generally, premeditation and deliberation must be established by circumstantial evidence. *Vause*, 328 N.C. at 238, 400 S.E.2d at 62. An inference of premeditation and deliberation may be made in light of evidence of "ill will or previous difficulty between the parties, the want of provocation on the part of the deceased, the conduct of the defendant before and after the killing, and whether the killing was done in a brutal or vicious manner." *State v. Jones*, 303 N.C. 500, 505, 279 S.E.2d 835, 839 (1981) (internal citations omitted).

¶ 24 Here, there is no dispute that the manner of Mr. Chunn's death was homicide. However, Defendant disputes the sufficiency of the evidence that would identify him as the perpetrator of the homicide.

¶ 25 We consider a set of non-exclusive circumstances relevant in identifying an accused as the perpetrator of a crime. *State v. Bell*, 65 N.C. App. 234, 238, 309 S.E.2d 464, 467 (1984). These include "proof of motive, opportunity, capability[,] and identity." *Id.* "[E]vidence of either motive or opportunity alone is insufficient to carry a case to the jury." *Id.* at 238-39, 309 S.E.2d at 467. Where there is evidence of both motive and opportunity, there is not a bright line test for determining whether that evidence is sufficient to survive a motion to dismiss. *Id.* at 239, 309 S.E.2d at 467. Instead, we look at the strength of the motive and opportunity evidence, and what

other evidence has been presented to the jury to support the charge. *Id.*

1. Motive

¶ 26 Defendant contends that the only evidence of motive is the testimony by Mr. Gibson, which he asserts is inadmissible hearsay. We disagree.

¶ 27 We first note that "[m]otive is not an element of first-degree murder, nor is its absence a defense." *State v. Elliott*, 344 N.C. 242, 273, 475 S.E.2d 202, 216 (1996). However, as discussed above, evidence of motive in conjunction with evidence of other circumstances such as opportunity is relevant in identifying a defendant as the perpetrator. *Bell*, 65 N.C. App. at 239, 309 S.E.2d at 467.

¶ 28 "Motive may be proved by circumstantial evidence." *State v. Barnett*, 141 N.C. App. 378, 384, 540 S.E.2d 423, 428 (2000). In *Barnett*, we held that testimony which showed that the defendant was a frequent user of drugs and alcohol and was suffering from financial strain was sufficient to permit the inference that the defendant was in need of money and robbed and murdered the victim to obtain that money. *Id.*

¶ 29 Similarly, in *State v. Adams*, our Supreme Court held that while motive is not essential to a charge of first-degree murder, "[t]hat money was stolen must be some evidence that the motive was robbery, even though the defendant did not know that there was money in the house, and even though none of the money was found in his possession." *State v. Adams*, 138 N.C. 688, 698, 50 S.E.2d 765, 768 (1905). While this evidence alone was not sufficient to identify the defendant as the perpetrator, it

was relevant for the jury to consider. *Id.*

¶ 30 Having already decided that the trial court did not err in admitting Mr. Gibson's testimony under Rule 803(3), the State's evidence presented at trial tended to show that Mr. Chunn frequently kept large amounts of cash in a bank envelope in his sock. The day before Mr. Chunn was found deceased, Mr. Gibson saw him take a bank envelope out of his sock to pay a man who was doing maintenance on his property. Mr. Gibson testified that the bank envelope had between $200 to $300 in it. When Mr. Chunn was found deceased, he did not have any cash on his person. Mr. Gibson also testified that Mr. Chunn told him a week or two prior to his death that he had approximately $400 go missing and that he suspected Defendant of having taken it. Mr. Chunn told Mr. Gibson that he thought Defendant was on drugs and that he wanted to "ship [Defendant] back."

¶ 31 Detective Jeremy Hill with the Salisbury Police Department interviewed Defendant on two separate occasions. In the second of these interviews, Defendant told Detective Hill that he used crack cocaine and marijuana. Defendant also told Detective Hill that Mr. Chunn would never give him enough money, usually only $10 to $20 every two weeks. Defendant said he knew that Mr. Chunn kept some money around the house, but that he was "not going to say that [Mr. Chunn] had a whole lot of money hanging around the house."

¶ 32 In sum, the evidence of motive before the jury was: (1) that Defendant was a

drug user; (2) that Defendant was dissatisfied with how much money Mr. Chunn gave him; (3) that Defendant knew that Mr. Chunn kept some money around the house; (4) that Mr. Chunn had relatively large sums of money go missing shortly before his death; and (5) that Mr. Chunn suspected Defendant of taking this money. This evidence is sufficient to permit the jury to infer that Defendant had a monetary motive to kill Mr. Chunn.

2. Opportunity

¶ 33 Defendant next contends that because the State failed to conclusively establish a time or day of Mr. Chunn's death, the evidence of opportunity was insufficient to carry the case to the jury. We disagree.

¶ 34 "In order to show opportunity, the State must have presented evidence at trial not only placing the defendant at the scene of the crime but placing him there at the time that the crime was committed." *State v. Holmes*, 263 N.C. App. 289, 297, 822 S.E.2d 708, 716 (2018) (cleaned up). However, we have never held that the State must provide conclusive evidence that the defendant was in the exact place at the exact time that a murder took place. Rather, "we have made it clear that presence at or near the scene of a killing around the time it was committed is sufficient for a reasonable juror to conclude [that the] defendant had the opportunity to commit the killing." *Id.* at 297, 822 S.E.2d at 717.

¶ 35 Here, Defendant's own statements to Detective Miller show that he was at or

near the scene of the killing—Mr. Chunn's home—during the time period it had to have occurred. Defendant said that he cooked dinner for Mr. Chunn in the evening of 17 April 2018. Defendant called 911 to report Mr. Chunn as deceased early in the morning on 19 April 2018. Defendant was living in Mr. Chunn's home at the time Mr. Chunn was killed. He had a key to the premises and told Detective Miller that he was in and out of the home throughout the day on 18 April 2019. According to Defendant's own timeline, Mr. Chunn was killed at some point between the evening of 17 April 2018 and the early morning hours of 19 April 2018, and Defendant was present at the scene consistently throughout that period. That is sufficient evidence of opportunity to go to the jury.

¶ 36 Having held that there was sufficient evidence of both opportunity and motive to carry the charge of first-degree murder to the jury, we further hold that the trial court did not err in denying Defendant's motion to dismiss.

III. Conclusion

¶ 37 For the aforementioned reasons, we hold that Defendant received a fair trial, free from error.

NO ERROR.

Chief Judge STROUD and Judge HAMPSON concur.

Report per Rule 30(e).