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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-397

Filed 21 March 2023

Pasquotank County, Nos. 18 CRS 51130, 20 CRS 174

STATE OF NORTH CAROLINA

v.

ANGEL MARIE SAWYER

Appeal by defendant from judgments entered 20 September 2021 by Judge Wayland J. Sermons, Jr., in Pasquotank County Superior Court. Heard in the Court of Appeals 25 January 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Teresa M. Postell, for the State.*

*Hynson Law, PLLC, by Warren D. Hynson, for defendant.*

ARROWOOD, Judge.

Angel Marie Sawyer (“defendant”) appeals from final judgments entered 20 September 2021 following her convictions of first-degree murder and conspiracy to commit first-degree murder. For the following reasons, we find no error.

I. Background

Isaac Melcher (“Melcher”) was working as a physical therapist at Sentara Medical Center when he met defendant in the fall of 2017. Melcher specialized in “dry needling,” and due to the nature of his work most appointments would occur in a “private treatment room[.]” Defendant was referred to Melcher as “she was not seeing adequate relief” with her pain, and her therapist believed “dry needling would be helpful[.]” Melcher would typically see defendant “[t]wo to three times a week depending on scheduling and availability.”

The first time Melcher treated defendant, they engaged in “fairly normal” conversations about their “personal lives[.]” Their conversations “initially progressed to discussing how controlling [her husband] Milton was.” Defendant stated that Milton “didn’t allow her to go out with friends[.]” nor “go[ ] to church because he didn’t want her . . . to be around other men.” Defendant also expressed to Melcher that Milton “was not interested in her[.]” and explained how “she would be naked in bed and . . . he wouldn’t even look at her[.]” Melcher testified that it was normal for patients to share information about their home life and marriage issues, “but not to that extent.” According to defendant, Milton would “yell at her to the point where she would become so anxious she would . . . vomit or, . . . [have] a panic attack[.]”

In December 2018, defendant and Melcher’s relationship “turn[ed] sexual[.]” Defendant “was naked in the hot tub” when she offered to send Melcher a picture, although he “knew it was a bad idea,” he accepted the picture and “from there, it very quickly progressed to planning when [they] could begin an affair.”

The first time Melcher and defendant met “to begin th[eir] affair[.]” Melcher “reconsidered.” Melcher asked if they could “back off and not begin an affair,” as he was worried about losing his job and his “wife finding out[.]” Defendant initially agreed to forego the affair, however, “the next time she came in, the flirting[.]” changed to “her exposing herself[.]”

Shortly thereafter, defendant and Melcher began to have sex “anywhere from three to five times a week.” They initially used “the standard” Facebook messaging app to arrange their meet ups and switched to “Secret Conversations” on a later date. They would meet at a variety of locations to continue their affair, but the majority of their sexual encounters occurred during defendant’s treatment sessions.

In January 2018, defendant expressed to Melcher that she would no longer be coming to therapy as Milton “believed . . . she was having an affair.” According to defendant, Milton “did not like how [Melcher] looked and . . . didn’t want her to continue therapy” with him. Defendant and Melcher initially “continue[d] the relationship” but “shortly after she stopped coming” to her appointments, Melcher attempted to end the relationship. Defendant expressed to Melcher “that she was contemplating suicide” and “didn’t know [if] she could . . . live without [him],” so Melcher believed it would be easier “to maintain the relationship” and end it at another time. For the next couple of months the affair continued, although defendant stopped coming to therapy. Defendant returned to physical therapy on 18 April 2018, as “Milton was okay with it now[.]”

In May 2018, Melcher made plans to go to the beach with his family for Memorial Day weekend and suggested he and defendant meet each other at Jennette's Pier, as her family was also going to the beach. Melcher saw defendant and Milton, "walked past [them,]" and "when [he] came back, they had left." Melcher stated that Milton "did not look happy to see [him]" but did not confront him.

That following Tuesday, defendant's daughter called Melcher's employer and said Milton "was contemplating coming in to confront [him] about having an affair with his wife." Elizabeth City police were called, and an officer was sent to Milton's home and place of business, a local pawn shop he and defendant owned, to "warn him not to come in." Melcher called defendant "to see if she was okay" and if "Milton had hurt her[,]" to which she responded, "not yet."

In June 2018, Melcher made multiple attempts to contact defendant through Facebook which were unsuccessful. He then called defendant from the medical center and told her "[he] loved her, [and] . . . was sorry that this had happened[.]" Defendant stated that "Milton had been taking her phone[,]" and "didn't know if she would be able to contact [him] again or how things were going to work out." "[E]ventually, towards the end of June, [they] were able to touch base again [as] . . . [Melcher] wanted to be with her[.]" Melcher told defendant he "was willing to leave his wife and kids" and he "would take her away from Milton."

At this point, defendant had decided to move to Florida to live with her mom and leave Milton once her kids left for college. But, "[h]aving expressed that [he] was

willing to leave [his] wife and kids,” Melcher asked defendant to stay, and “[he] would find [them] a place.” Defendant “expressed fear that Milton would track her down” and “possibly kill us.” However, “[Melcher] tried to allay her fears,” and stated he “would find a place where [Milton] couldn’t find [them].”

In July 2018, defendant and Melcher began to discuss killing Milton. Melcher had already moved out of his marital home when defendant expressed that she “could not leave Milton at all; [and] that if she did, . . . he would kill her[.]” Melcher “begged her to reconsider,” promised to “protect her,” and stated he “would not let him hurt her[.]” Defendant “refused[,] and said that the only way she knew she could ever get out of the relationship was if [Milton] died of natural causes.”

At one point in July, Melcher and defendant met in person. Defendant, “[a]gain, . . . expressed her fear of [Milton][.]” Melcher stated that if Milton “ever laid a hand on her, to let [him] know[,]” and he “would come get her immediately.” Melcher said “[he] would do whatever it took to get her out of the situation even if it meant killing [Milton].” Melcher testified that as he was “fully invested in th[e] relationship[,]” he was “not willing to just let [it] go, . . . so [he] told her that if [they] had to, [they] could kill [Milton] and make it look like natural causes.”

They began to discuss mixing Milton’s medication with alcohol to “make it look like he overdosed” upon being told that defendant was going to leave him. One weekend defendant mixed Milton’s beer with “a couple of pills” and he “slept until the afternoon the next day.”

Shortly thereafter, defendant expressed to Melcher that she “fe[lt] [un]comfortable . . . with the plan [they] had come up with” because she didn’t want to put medication in his beer again and she didn’t think people would believe she was going to leave Milton as “he had been treating her well[.]” Defendant then explained that she and Milton were planning a yard sale at their house, and “she had warned [Milton]” not to put their address on Facebook as some of their customers were criminals. Defendant’s plan was for Melcher to “pretend that [he] was robbing them and kill [Milton] in the process of the robbery.” Melcher was “uncomfortable” with this plan as he knew it would lead the police to search for a suspect. Melcher “agreed that [they] might try it[.]” but he still preferred using medication to make it look like an overdose.

Melcher and defendant “never set a date” to execute their plan of killing Milton. As her children were still living at home, defendant “was supposed to let [Melcher] know” when the kids left, and he would come over and kill Milton. Defendant went “back and forth between” wanting to go through with their plan soon and wanting to wait until her children left. Melcher stated that “a lot of [defendant’s uncertainty] depended on when she” and Milton were fighting.

At this point, Melcher and defendant were mainly communicating via Secret Conversations, an encrypted Facebook feature which would provide them with more discretion. On a previous occasion, defendant believed Milton hacked into her Facebook account so “she actually initialized” their use of Secret Conversations.

Melcher was under the impression that it would prevent someone with access to their Facebook accounts from seeing their messages and allowed messages to be deleted from both devices. Melcher also believed only one device could use Secret Conversations at a time, so “if [defendant] was on her phone, [Milton] couldn’t just [log on to] her computer and access it.”

Nearing the end of July 2018, communication had become difficult, so Melcher decided to buy defendant a phone and “sneak it onto her property.” Melcher asked defendant to “give [him] something that would have her smell on it because [he] missed her[.]” On the trampoline in her backyard, defendant left Melcher a “white plastic shopping bag” which contained some of her lotion, perfume, and a blanket. Melcher left the phone “underneath a couple of cushions . . . near where the trampoline was.”

On 1 August 2018, Melcher sent defendant a message via Secret Conversations when he received a notification from Facebook “that a device had been logged off the account[.]” This immediately worried Melcher as he believed “only one device could be logged on to Secret Conversations at a time,” and if Milton hacked into defendant’s account, he would learn about the affair and also defendant and Melcher’s plan to kill him. Melcher “assumed that if that w[ere] the case, . . . [Milton] would probably hurt [defendant][.]” so he became “scared.” “[U]ntil about 11:30 that night[.]” Melcher continuously tried to contact defendant but received no response.

“[H]aving already discussed how [they] would kill Milton,” Melcher “prepared a bag” with duct tape, rags, small bottles of alcohol, antianxiety medication, and a .45 automatic pistol, to take to defendant’s home. Melcher did not plan to shoot Milton, so he removed all the bullets from the gun, “anticipating that the gun itself would be enough to get him to cooperate[.]” Melcher testified that he “really hoped” defendant would contact him to let him know she was okay so he could “turn around and go home . . . because it . . . was not part of the plan.” Still, Melcher wanted to be prepared “just in case [Milton] had done something to her.”

Melcher used a key defendant had previously told him about “during the planning [of] [Milton’s] murder[.]” to enter through the back door. Moving quietly throughout the house, Melcher made his way to the master bedroom. Melcher stood at the master bedroom door, “listen[ing] for voices or arguing[.]” when defendant suddenly opened the door. As he was “standing . . . there in a mask holding a gun,” Melcher felt his only choice was “to move forward with the idea of robbery gone wrong.”

Melcher entered the bedroom, “pointed the gun at Milton and told him to get down on the floor.” He then ordered defendant to go into the bathroom while he tied Milton’s hands behind his back. Melcher put him “into a choke hold . . . and held on until he stopped moving[.]” To ensure Milton was dead, Melcher “compressed his carotid arteries[.]” As Melcher’s hands “were shaking too much[.]” defendant checked



Milton's pulse, confirming he was dead. Defendant then stated they needed to make it look like a robbery.

Defendant and Melcher grabbed the cash from Milton's nightstand and began emptying defendant's jewelry stand. As defendant "would need some cash," she kept "a couple of hundred dollars" and some gold jewelry. Defendant asked Melcher "to hit her to make it look realistic[.]" and he also duct taped her hands. Defendant also "smacked her head . . . on the ground" to make it appear as "she had fallen and hit the corner of the drawer[.]"

It was now the early morning of 2 August 2018 when defendant knocked on her neighbor's door. She stated that "someone had broken into her house, hit her over the head, taped her, and put her in the bathroom." Defendant said she escaped and "tr[ie]d to wake her husband . . . but couldn't." Her neighbor then called 911.

Defendant was subsequently taken to the hospital where she was interviewed by officers of the Pasquotank County Sheriff's Office. Defendant's initial interview did not mention Melcher, but stated "[an] intruder . . . asked for keys to the business, stated that they knew she had nice stuff, . . . nice jewelry . . . [and Milton] was [a] gold buyer." Melcher became a "person of interest" when Milton's son was interviewed and told officers about the affair and how it could have a potential connection to the case.

“Several days after having killed Milton,” Melcher confessed his involvement to his mom and flew to Oregon to see her. Melcher also confessed to his wife and Eugene Kazemier (“Louie”), his former youth pastor, who also lived in Oregon.

On 13 August 2018, Louie called the Pasquotank County Sheriff’s Department with information regarding Milton’s homicide. Officers flew to Oregon to interview Louie, and Louie agreed to call Melcher “to discuss the case.” “After the phone calls, . . . [officers] formed a plan to arrest [defendant] and [Melcher].”

Defendant was interviewed multiple times, but the final interview which led to her arrest occurred on 21 August 2018. Melcher was also arrested, but initially “tr[ie]d to keep the defendant out of Milton’s death[.]” On 26 October 2020, Melcher, believing Milton’s family “deserved the truth[.]” agreed to be interviewed by law enforcement about defendant’s involvement. Melcher provided law enforcement with the blanket, lotion, and perfume given to him by defendant as well as the jewelry taken the night of Milton’s death. Melcher testified that “[he] felt manipulated[;] . . . stupid[.] . . . [and] used[.]” He felt “giving it all up for [defendant] was not worth it at that point[.]” and he “just wanted to be done with that part of [his] life and . . . move forward.”

On 27 August 2018, a Pasquotank County Grand Jury indicted defendant on one count of first-degree murder for the murder of her husband, Milton. Defendant was indicted on an additional charge of conspiracy to commit first-degree murder on 3 February 2020. Defendant’s cases came on for trial in September 2021 in

Pasquotank County Superior Court, Judge Wayland presiding. At trial, Melcher testified for the State. Defendant moved to dismiss the charges of first-degree murder and conspiracy to commit first-degree murder for insufficient evidence at the close of all evidence, which was subsequently denied. After receiving two guilty verdicts, defendant was sentenced to life in prison without the possibility of parole with a concurrent sentence of 157 to 201 months for the conspiracy conviction. Defendant timely appealed.

## II. Discussion

Defendant contends the trial court erred in denying her motion to dismiss for insufficient evidence and plainly erred in instructing the jury on acting in concert. We address each argument in turn.

### A. Motion to Dismiss for Insufficient Evidence

Defendant argues the trial court erred in denying her motion to dismiss the charge of first-degree murder due to insufficient evidence she acted in concert with Melcher. Specifically, defendant asserts that although they conspired to kill Milton “at some undetermined time in the future[,] . . . with respect to the commission of the murder itself, the State’s evidence showed that Melcher” acted alone and defendant was merely “a subject of Melcher’s terror[.]” Defendant contends that acting in concert requires more than “mere presence” during the commission of a crime, and absent affirmative conduct that she “assisted or encouraged” or “stood by prepared to help Melcher” requires this Court to vacate her conviction. We disagree.

“This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted). “When ruling on a defendant’s motion to dismiss, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged, and (2) that the defendant is the perpetrator of the offense.” *Id.* (citation omitted). “‘Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Id.* (citation omitted). “In making its determination, 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) (citation omitted), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

On appeal, the question for this Court is “whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant’s being the perpetrator of the offense. If so, the motion is properly denied.” *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993) (citation omitted).

“‘The elements of first-degree murder are: (1) the unlawful killing, (2) of another human being, (3) with malice, and (4) with premeditation and deliberation.’” *State v. Phillpott*, 213 N.C. App. 468, 478, 713 S.E.2d 202, 209 (2011) (citation omitted), *disc. review denied*, 365 N.C. 544, 720 S.E.2d 393 (2012). The State

advanced the theory that defendant acted in concert with Melcher to commit first-degree murder. “To act in concert means to act together, in harmony or in conjunction one with another pursuant to a common plan or purpose.” *State v. Joyner*, 297 N.C. 349, 356, 255 S.E.2d 390, 395 (1979) (citation omitted). “Under this theory, two or more persons, who joined together in a purpose to commit a crime, are responsible for the unlawful acts committed by the other person, so long as those acts are committed in furtherance of the crime’s common purpose.” *State v. Baldwin*, 276 N.C. App. 368, 373, 856 S.E.2d 897, 902 (citation omitted), *disc. review denied*, 379 N.C. 148, 863 S.E.2d 616 (2021). Acting pursuant to a common plan or purpose may be illustrated by “‘circumstances accompanying the unlawful act and conduct of the defendant subsequent thereto.’” *In re J.D.*, 376 N.C. 148, 156, 852 S.E.2d 36, 43 (2020) (citation omitted).

In order to be convicted under the theory of acting in concert, it is not “necessary for a defendant to do any particular act constituting . . . part of [the] crime[.]” *Joyner*, 297 N.C. at 357, 255 S.E.2d at 395. It is also immaterial whether there is an “express agreement between the parties.” *State v. Giles*, 83 N.C. App. 487, 490, 350 S.E.2d 868, 870 (1986), *appeal dismissed, disc. review denied*, 319 N.C. 460, 356 S.E.2d 8 (1987). “All that is necessary is an implied mutual understanding or agreement to do the crimes.” *Id.* (citation omitted).

A defendant is guilty under the theory of acting in concert “so long as he is *present* at the scene of the crime and the evidence is sufficient to show he is acting

together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose to commit the crime.” *Joyner*, 297 N.C. at 357, 255 S.E.2d at 395 (emphasis added). “A defendant’s presence at the scene may be either actual or constructive.” *State v. Gaines*, 345 N.C. 647, 675, 483 S.E.2d 396, 413 (citation omitted), *cert. denied*, 522 U.S. 900, 139 L. Ed. 2d 177 (1997). “Constructive presence is not determined by the defendant’s actual distance from the crime; the accused simply must be near enough to render assistance if need be and to encourage the actual perpetration of the crime.” *State v. Combs*, 182 N.C. App. 365, 370, 642 S.E.2d 491, 496 (citation omitted), *aff’d per curiam*, 361 N.C. 585, 650 S.E.2d 594 (2007).

“A defendant’s mere presence at the scene of the crime, even though he may silently approve of the criminal act and do nothing to prevent it, is not sufficient to make him guilty of the crime.” *State v. Allen*, 127 N.C. App. 182, 185, 488 S.E.2d 294, 296 (1997) (citation omitted). “However, presence alone may be sufficient when the bystander is a friend of the perpetrator and the perpetrator knows the friend’s presence will be regarded as encouragement and protection.” *Id.* (citations omitted).

Defendant argues that the evidence was insufficient to show she was actively involved in or encouraged Melcher during the commission of Milton’s murder. Defendant contends the evidence at trial established that: Melcher arrived unexpectedly on a night that was not preplanned, pointed a gun at her and ordered her to the bathroom, and murdered Milton while she remained “huddled up and

crying in the bathroom.” Defendant further asserts her telling Melcher about the location of a spare key “sometime during the planning of Milton’s murder[;]” checking Milton’s pulse after he was dead; and working with Melcher to cover up the crime do not make her criminally liable for first-degree murder as she did not “assist in the ‘actual execution’ ” of the crime. We disagree.

Defendant is correct that planning a crime before its commission is irrelevant for purposes of acting in concert and all that matters is “presence and conduct during the commission of the crime itself.” *State v. Hardison*, 243 N.C. App. 723, 726, 779 S.E.2d 505, 507 (2015), *disc. review denied*, 368 N.C. 685, 781 S.E.2d 609 (2016). However, in *Hardison*, this Court found that “the undisputed evidence at trial established that [the defendant] was not present, either actually or constructively,” during the commission of the crime. *Id.* at 727, 779 S.E.2d at 508. Thus, *State v. Hardison* is not comparable to the case *sub judice*. In the present case, defendant was present during the commission of the crime and her relationship with Melcher in addition to their prior discussions planning to kill Milton indicate an “intent to aid the perpetrator should [her] assistance become necessary[.]” *Allen*, 127 N.C. App. at 184, 488 S.E.2d at 296. Defendant may not have actively encouraged or assisted Melcher on the night of the murder, but her presence alone was sufficient. *Id.* at 185, 448 S.E.2d at 296 (“[P]resence alone may be sufficient when the bystander is a friend of the perpetrator and the perpetrator knows the friend’s presence will be regarded as encouragement and protection.”).

As established above, our jurisprudence has never required an individual to actively perform some act of the crime charged in order to face criminal liability for purposes of acting in concert. *See Joyner*, 297 N.C. at 357, 255 S.E.2d at 395. However, it is relevant whether or not “there is evidence of a common plan or purpose.” *State v. Williams*, 299 N.C. 652, 657, 263 S.E.2d 774, 778 (1980). “[E]xpressly vocaliz[ing]” one’s assent to the criminal conduct is not necessary. *State v. Marion*, 233 N.C. App. 195, 204, 756 S.E.2d 61, 68 (citation omitted), *disc. review denied*, 367 N.C. 520, 762 S.E.2d 444 (2014). All that is required is evidence of “an implied mutual understanding or agreement” to commit the crimes. *Giles*, 83 N.C. App. at 490, 350 S.E.2d at 870.

Here, the State’s evidence tended to show: defendant, acting together with Melcher, planned to kill Milton pursuant to a theory of “robbery gone wrong”; defendant told Melcher where a spare key was located in order to give him access to commit said crime; defendant checked Milton’s pulse to ensure he was dead; defendant lied to investigators and worked to cover up Milton’s murder; and Melcher went to defendant’s house that night knowing she wanted her husband killed. This evidence, and the reasonable inferences drawn therefrom, is sufficient to lead a reasonable juror to conclude that defendant acted in concert to commit first-degree murder. The idea that defendant “was not involved in or encouraged” Milton’s murder “is not considered when ruling on the sufficiency of the evidence[.]” *See Marion*, 233 N.C. App. at 205, 756 S.E.2d at 69. Defendant’s argument is overruled.



B. Jury Instructions

Defendant also contends the trial court plainly erred in instructing the jury on the theory of acting in concert. “Plain error with respect to jury instructions requires the error be so fundamental that (i) absent the error, the jury probably would have reached a different verdict; or (ii) the error would constitute a miscarriage of justice if not corrected.” *State v. Banks*, 191 N.C. App. 743, 749, 664 S.E.2d 355, 359 (2008) (citation omitted). To support a jury instruction on acting in concert: the evidence must be sufficient to show that the defendant was present at the scene of the crime and that the defendant was “acting together with another who d[id] the acts necessary to constitute the crime pursuant to a common plan or purpose to commit the crime.” *Joyner*, 297 N.C. at 357, 255 S.E.2d at 395.

As set forth above, the evidence at trial indicated that defendant was present during the commission of Milton’s murder and acted pursuant to a common plan between her and Melcher. That the evidence tended to show Melcher strangled Milton while defendant was in the bathroom, does nothing to lessen defendant’s criminal culpability. *See Williams*, 299 N.C. at 657, 263 S.E.2d at 778 (finding acting in concert jury instruction proper where “[t]he action of both [parties] created one orchestrated sequence of events,” which led to the victim’s death). Defendant’s argument is overruled.

III. Conclusion

For the foregoing reasons, we find no error.

STATE V. SAWYER

*Opinion of the Court*

NO ERROR.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).