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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-992

Filed 17 September 2024

New Hanover County, Nos. 20CRS51101–02

STATE OF NORTH CAROLINA

v.

DONTE JAMAR ROLLINSON, Defendant.

Appeal by defendant from judgment entered 27 January 2023 by Judge R. Kent Harrell in New Hanover County Superior Court. Heard in the Court of Appeals 14 August 2024.

Attorney General Joshua H. Stein, by Deputy General Counsel Daniel P. Mosteller, for the State.

Patterson Harkavy LLP, by Christopher A. Brook, for defendant-appellant.

FLOOD, Judge.

Defendant Donte Jamar Rollinson appeals from his conviction for first-degree murder, arguing the trial court erred in denying Defendant’s motion to dismiss the first-degree murder charge because there was sufficient evidence to show his extreme impairment prohibited him from forming the required mental state to commit first-degree murder. After careful review of the record, we conclude the State presented

sufficient evidence of Defendant's intent to murder Jason Stokes, such that submission of the issue to the jury was proper.

I. Factual and Procedural Background

On 29 May 2020, Defendant was indicted on one count of first-degree murder for the killing of Jason Stokes, and one count of possession of a firearm by a felon. The following evidence was presented at trial.

On 4 February 2020, at or around 10:15 p.m., Stokes' girlfriend, Tiphany Batts, returned to her home where she lived with her three children and Stokes. When she arrived home, Stokes was on the phone and did not speak to Batts, but indicated that he was taking her dog outside to be walked. While Stokes was walking the dog, Batts spent some time cleaning the house, and then she took a shower. Thirty minutes later, when she got out of the shower, Batts could hear in the backyard Stokes' voice as well as the voice of a second male. Batts did not recognize the male's voice, nor did she look out the window to see with whom Stokes was speaking.

Batts went into the kitchen to heat up some pizza, "[a]nd as soon as [she] bit into [her] pizza, [she] heard a gunshot" coming from her backyard. Batts immediately locked the main door to her house, which led to the backyard, and called the police. While she was locking the door, she looked out the window into the backyard and observed Stokes' body and a man kneeling down on the very top step of her porch with a firearm in his hand. Batts, who at trial identified Defendant as the man she saw in her backyard, did not know Defendant but testified that she had seen him

around the neighborhood prior to that night.

After seeing Defendant in her backyard, Batts gathered her three children, who had been sleeping in their beds, and hid with them in a bedroom closet. While Batts was in the closet, she heard someone attempting to get into her house through the locked door. Shortly after, Batts heard police officers telling Defendant, “Don’t move. Get down.”

Officers Farnum and Westfall had responded to Batts’ backyard where they observed a “black male laying on his right side with a large caliber gunshot to his left cheek.” A subsequent autopsy report concluded that the firearm had been discharged while the barrel of the firearm was pressed against Stokes’ cheek. Officers then observed a black male sitting on the porch holding a firearm. Officer Farnum ordered Defendant to put both hands in the air, and Defendant complied only after being commanded to do so three separate times. Once Defendant’s hands were in the air, Officer Farnum ordered Defendant to stand up, and Defendant “staggered to his feet.” A search of Defendant’s person yielded multiple suspected drugs.

During Defendant’s trial, Officer Farnum testified that, while he was interacting with Defendant in Batts’ yard, Defendant’s “mannerisms were disjointed. He was not moving like a normal person would . . . and I assumed he was drunk.” Officer Westfall testified that Defendant “looked a little disoriented or maybe confused as I was giving him commands, but he – obviously knew what I was saying to him and followed the commands.” Officer Westfall also testified, however, that the

STATE V. ROLLINSON

Opinion of the Court

officers had a hard time learning Defendant's name because every time they asked, Defendant responded with "incomprehensible mumbles," and Defendant had a hard time standing up during the search.

While Defendant was being searched, emergency medical services ("EMS") responded to the scene. Defendant requested to go to the hospital, and "due to his state of mind, [the officers] put him on the hospital gurney" and put him into an ambulance where he was treated by paramedic Bradley Woltman. Woltman testified that Defendant answered his questions clearly and followed every command, stating, "[Defendant] was 100 percent very cooperative with me, being able to follow every single command I gave him, and he was able to respond in kind after . . . every question that I asked."

Defendant was transported to the hospital via ambulance where investigators collected his clothing, took blood and urine samples, and tested his person for gunshot residue. A toxicology report indicated that Defendant had a blood alcohol content of .06 and phencyclidine, more commonly known as PCP, in his blood at the time of the shooting. Drug recognition expert, Scott Bramley, testified that PCP was the primary substance impairing Defendant on the evening of 4 February 2020. Bramley represented to the trial court that there is "a spectrum of behavior and responses" a person impaired by PCP exhibits, including being "able to have a conversation like you and I are having right now."

Once Defendant was cleared to leave the hospital, Officer Westfall transported

him to the Wilmington Police Department where he was processed into the New Hanover County Jail. Defendant was placed in the same cell as Anthony Murray, who testified against Defendant at trial. Murray testified that Defendant described himself and “Jay”—Stokes—as “jack boys,” which is slang for “robber, somebody that just rob people for drugs or money or whatever the case may be.” According to Murray, Stokes was “the better-known jack boy . . . and [Defendant] didn’t like that.” Murray also testified that Defendant told him Stokes had a “bounty on his head” for \$20,000, which was “another reason why he had killed him.” Murray further testified that Defendant told him that the reason he “didn’t get away [was] because he was . . . trying to kill the girl . . . but he couldn’t find [her].”

At the close of the State’s evidence, Defendant, through his counsel, moved to dismiss the first-degree murder charge “based on an insufficiency of the evidence,” which the trial court denied.

Defendant’s testimony was the sole evidence he presented at trial. During his testimony, Defendant refuted Murray’s claims that Defendant killed Stokes for money and that Defendant wanted to be known as the “better jack boy.” Defendant testified that he did not find out about the bounty on Stokes’ head or that Stokes was a “jack man” until he was already in the county jail.

Defendant testified that he did not shoot Stokes, stating that they were friends, and Defendant “would have never done that to him.” Defendant represented that he and Stokes were “get-high partners” who got together that night to smoke PCP and

drink beer. Defendant claimed he did not have a weapon when he went to see Stokes that night, but testified that Stokes had a gun “in his pants[,]” and “either he said he was buying one or he already bought it and somebody was supposed to bring his gun back to him.” According to Defendant, “somebody in a blue shirt” came into the backyard to speak with Stokes, but Defendant, who was sitting on the porch “enjoying [his] high,” did not hear what was said. When asked how intoxicated Defendant was at this point in the evening, he stated, “I’m high. Like, . . . I’m feeling good, though, you know. I’m [] not upset or anything. I’m just, like, pretty much enjoying my high. Because, like I said, I smoked [PCP] before, you know. That’s one of my choices . . . of drugs.”

After the man in the blue shirt left, Stokes, who, according to Defendant, now had a second firearm, walked back to where Defendant was sitting on the porch. Defendant testified that he did not “remember much after [he saw Stokes] with the gun,” but he did remember that he was watching Stokes play with the dog when “[s]omething heavy hit [Defendant] in the head[,]” and that was the last thing he could remember from that night. Defendant did not remember officers reporting to the scene or arresting him.

Defendant renewed his motion to dismiss at the close of his evidence, which the trial court again denied.

The trial court instructed the jury that,

if you find that [Defendant] was intoxicated, you should

consider whether this condition affected his ability to formulate the specific intent which is required for conviction of first degree murder. In order for you to find [D]efendant guilty of first degree murder, you must find, beyond a reasonable doubt, that [D]efendant killed the deceased with malice and in the execution of an actual, specific intent to kill, formed after premeditation and deliberation. If as a result of intoxication [Defendant] did not have the specific intent to kill the deceased, formed after premeditation and deliberation, [Defendant] is not guilty of first degree murder.

On 27 January 2023, the jury found Defendant guilty of first-degree murder and felon in possession of a firearm. Defendant gave oral notice of appeal at the close of his trial.

II. Jurisdiction

This Court has jurisdiction to review this appeal from a final superior court judgment pursuant to N.C. Gen. Stat. § 7A-27(b) (2023).

III. Analysis

Defendant's sole issue on appeal is whether the trial court erred in denying his motion to dismiss the charge of first-degree murder because of the "overwhelming evidence of [his] extreme impairment."

Our standard of review for an appeal of a motion to dismiss a criminal charge is whether, when considering the evidence "in the light most favorable to the State[,] . . . the State presented substantial evidence of each element of the offense charged and of the defendant's guilt." *State v. Allred*, 131 N.C. App. 11, 19, 505 S.E.2d 153, 158 (1998). "Substantial evidence is such relevant evidence as a reasonable mind

might accept as adequate to support a conclusion.” *State v. Schmieder*, 265 N.C. App. 95, 101, 827 S.E.2d 322, 327–28 (2019) (citation omitted). “[T]he State is entitled to every reasonable intendment and every reasonable inference to be drawn from the evidence; contradictions and discrepancies do not warrant dismissal of the case[—]they are for the jury to resolve.” *State v. Coble*, 163 N.C. App. 335, 337, 539 S.E.2d 109, 111 (2004) (citation omitted).

To show a defendant committed “premeditated, 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). Evidence of premeditation and deliberation can consist of “the conduct and statements of the defendant before and after the killing, [] threats and declarations made by the defendant against the victim, [] ill will or previous difficulty between the parties, . . . and evidence that the killing was done in a brutal manner.” *State v. McCray*, 342 N.C. 123, 129, 463 S.E.2d 176, 180 (1995). As for a person’s voluntary drunkenness impact on premeditation and deliberation, our Supreme Court has said:

It is well settled that voluntary drunkenness is not a legal excuse for crime; but where a specific intent, or premeditation and deliberation, is essential to constitute a crime or a degree of a crime, the fact of intoxication may negative its existence. Thus, while voluntary drunkenness is not, per se, an excuse for a criminal act, it may be sufficient in degree to prevent and, therefore, disprove the existence of a specific intent, such as the intent to kill.

State v. Goodman, 298 N.C. 1, 12, 257 S.E.2d 569, 578 (1979) (citation omitted).

“Ordinarily, [] the degree of intoxication and its effect upon the elements of premeditation and deliberation is an issue for the jury unless the evidence is insufficient to warrant submission of the issue to them.” *Id.* at 13, 257 S.E.2d at 578. Evidence that a defendant is merely intoxicated is insufficient; to have the issue submitted to the jury, the evidence must show “that[,] at the time of the killing[,] the defendant’s mind and reason were so *completely intoxicated* and overthrown as to render him *utterly incapable* of forming a deliberate and premeditated purpose to kill.” *State v. Mash*, 323 N.C. 339, 346, 372 S.E.2d 532, 536 (1988) (emphasis added); *see also State v. Meader*, 377 N.C. 157, ___, 856 S.E.2d 533, 537–38 (2021) (concluding the defendant presented evidence of “mere intoxication” where she could provide officers with biographical information, answer questions when prompted, and was able to navigate stairs while handcuffed) (citation and internal quotation marks omitted). This “utterly incapable” standard is a “high threshold” to meet. *See State v. Long*, 354 N.C. 534, 539, 557 S.E.2d 89, 93 (2001).

In this case, Defendant argues “the State did not present any evidence that he was capable of planning and forming an intent to kill[.]” We disagree.

First, the State presented evidence to the jury through Murray’s testimony that Defendant had the intent to kill Stokes. Murray testified that Defendant explained to him in their jail cell that Defendant killed Stokes because of the \$20,000 bounty on Stokes’ head, and Stokes was Defendant’s competition in the neighborhood.

Murray further testified that Defendant told Murray that he intended to kill Batts, but he could not find her. Murray's testimony was corroborated by Batts, who testified that she heard Defendant attempting to open the door to her home after Defendant shot Stokes. Defendant's statements made after the killing, as well as testimony tending to corroborate Defendant's statements, can be used as evidence to show premeditation and deliberation. *See McCray*, 342, N.C. at 129, 463 S.E.2d at 180.

Second, the jury heard testimony from Officers Farnum and Westfall that, while Defendant seemed clearly intoxicated, he was able to follow their commands when they told him to put his hands in the air and stand up and when they were putting handcuffs on him and searching his person. Similarly, the paramedic who treated Defendant testified that Defendant answered his questions clearly and followed every command. While the evidence indicated Defendant was impaired that evening, neither the testimony of Officers Farnum and Westfall, nor of the responding paramedic, suggests Defendant was so "completely intoxicated" as to render him "utterly incapable" of "forming a deliberate and premeditated purpose to kill" Stokes. *See Mash*, 323 N.C. at 346, 372 S.E.2d at 536. Moreover, the medical report showed the firearm that killed Stokes was fired while it was pressed against Stokes' cheek, an indication that the gun was placed specifically on Stokes as opposed to being fired from a distance—an action inconsistent with the mental state of a person who was so

“completely intoxicated” as to be “utterly incapable” of forming the deliberate and premeditated purpose to commit murder. *See id.* at 346, 372 S.E.2d at 536.

Finally, Defendant’s own testimony suggests that he was not so “completely intoxicated” on the evening of 4 February 2020 such that he was rendered “utterly incapable” of forming the deliberate and premeditated purpose to murder Stokes. *See id.* at 346, 372 N.C. at 536. Defendant testified that he smoked PCP and drank a few beers that night and was feeling the effects of both, stating to the jury that he was “high.” Officers Farnum and Westfall further testified that Defendant looked disoriented, mumbled some of his responses, and his mannerisms were disjointed. Defendant was, however, able to testify to a timeline of the evening. Defendant testified that he went to Stokes’s house where they drank beers and smoked PCP, and “someone in a blue shirt” came to the yard to speak with Stokes. Moreover, Defendant represented to the jury that he did not remember anything from that night after he was allegedly hit in the head. He did not state that he blacked out, lost consciousness, or otherwise could not remember the remainder of the evening due to the effects the PCP had on him.

Accordingly, the evidence the State presented to the trial court was sufficient to show Defendant was capable of forming the required intent to kill Stokes. The trial court, therefore, did not err by submitting the issue to the jury. *See Goodman*, 298 N.C. at 13, 257 S.E.2d at 578.

IV. Conclusion

STATE V. ROLLINSON

Opinion of the Court

We conclude that the trial court did not err by denying Defendant's motion to dismiss the charge of first-degree murder because the State presented sufficient evidence for submission to the jury, such that the jury could determine whether Defendant's intoxication negated the required mental state.

NO ERROR.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).