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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-465

Filed 17 December 2024

Gaston County, No. 20CRS055958

STATE OF NORTH CAROLINA

v.

ZKEVIS JARTA WILLIAMS, Defendant.

Appeal by defendant from judgment entered 19 May 2023 by Judge David A. Phillips in Superior Court, Gaston County. Heard in the Court of Appeals 22 October 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General John H. Schaeffer, for the State.

William D. Spence for Defendant-Appellant.

STROUD, Judge.

Defendant Zkevis Jarta Williams appeals from judgment entered following a jury trial finding him guilty of first-degree murder. On appeal, Defendant argues the trial court erred in (1) denying his motion to dismiss the charge of first-degree murder, and (2) failing to instruct the jury of their ability to find Defendant guilty of second-degree murder under a theory of depraved heart malice. We discern no error

in the trial court's denial of Defendant's motion to dismiss and the instructions given to the jury.

I. Background

The State's evidence at trial tended to show the victim, Whitney Petway, was a registered guest of WoodSpring Suites in Gastonia, North Carolina. Ms. Petway checked into WoodSpring Suites on 21 June 2020. WoodSpring Suites is an extended stay hotel where guests may book reservations for weeks at a time or longer if they desire. The room is listed in the name of the primary guest, and if another person is staying in the room, the practice of WoodSpring Suites is to include any additional individuals on the registration cards maintained by the front desk.

Ms. Petway and Defendant began dating in the Fall of 2019. Though Defendant was not registered as an additional guest of Ms. Petway's room, he was seen at times visiting the hotel and staying with Ms. Petway.

On the morning of 29 June 2020, Ms. Petway was shot and killed while in her room at WoodSpring Suites. Video surveillance footage maintained by the hotel tended to show Defendant was the only individual, other than Ms. Petway, present in her room when she was killed.

Defendant was indicted on 6 July 2020 for one count of first-degree murder. The case came on for jury trial on 8 May 2023 during the criminal session of Superior Court, Gaston County. At the close of the State's case, Defendant moved to dismiss the charge of first-degree murder, claiming the State had not presented sufficient

evidence to support the requisite elements of the offense. The trial court denied Defendant's motion. Defendant renewed his motion to dismiss at the close of all evidence and the trial court again denied it.

The jury returned a verdict of guilty on the charge of first-degree murder on 19 May 2023, and Defendant was sentenced to life imprisonment without parole. Defendant appeals.

II. Sufficiency of the Evidence

Defendant first argues the trial court erred in denying his motion to dismiss the charge of first-degree murder, contending the State failed to present substantial evidence of malice, premeditation, and/or deliberation by Defendant. We disagree.

"Upon [a] defendant's motion for dismissal, the question for the 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 such offense." *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980) (citations omitted).

[T]he State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom; contradictions and discrepancies are for the jury to resolve and do not warrant dismissal; and all of the evidence actually admitted, whether competent or incompetent, which is favorable to the State is to be considered by the court in ruling on the motion.

Id. at 99, 261 S.E.2d at 117 (citations omitted).

In considering whether the State presented substantial evidence for each

element of the alleged offense, the question is whether “a reasonable mind might accept [such evidence] as adequate to support a conclusion.” *State v. King*, 343 N.C. 29, 36, 468 S.E.2d 232, 237 (1996) (citation omitted). If the evidence presented by the State raises only suspicion or conjecture as to whether a defendant was the perpetrator of the crime, then defendant’s motion to dismiss should be granted. *See State v. Bates*, 309 N.C. 528, 533, 308 S.E.2d 258, 262 (1983). If a motion to dismiss “calls into question the sufficiency of circumstantial evidence, the question for the Court is whether a reasonable inference of the defendant’s guilt may be drawn from the circumstances.” *Powell*, 299 N.C. at 99, 261 S.E.2d at 117 (1980) (citations and quotation marks omitted).

“First degree murder is the unlawful killing of a human being with malice, premeditation, and deliberation.” *State v. Misenheimer*, 304 N.C. 108, 113, 282 S.E.2d 791, 795 (1981) (citation omitted). “Murder in the second degree is the unlawful killing of a human being with malice but without premeditation and deliberation.” *State v. Flowers*, 347 N.C. 1, 29, 489 S.E.2d 391, 407 (1997) (citation omitted). The difference between first-degree murder and second-degree murder is the presence of a specific intent to kill. *See State v. Smith*, 269 N.C. App. 100, 102, 837 S.E.2d 166, 168 (2019) (“First-degree murder is a specific-intent crime because it includes as an essential element the intent to kill, whereas second-degree murder is a general-intent crime because it lacks the essential element of an intent to kill.” (citation omitted)).

Here, Defendant argues the trial court erred in denying his motion to dismiss, contending the State did not present substantial evidence as to *any* of the essential elements of first-degree murder. We disagree and conclude the State provided substantial evidence for a reasonable jury to accept as true the elements of premeditation, deliberation, and malice. *See Powell*, 299 N.C. at 99, 261 S.E.2d at 117.

1. Premeditation and Deliberation

“Premeditation means that the act was thought over beforehand for some length of time, however short.” *State v. Leazer*, 353 N.C. 234, 238, 539 S.E.2d 922, 925 (2000) (citation and quotation marks omitted). “Deliberation means an intent to kill, carried out in a cool state of blood, in furtherance of a fixed design for revenge or to accomplish an unlawful purpose and not under the influence of a violent passion, suddenly aroused by legal provocation or lawful or just cause.” *State v. Thomas*, 350 N.C. 315, 347, 514 S.E.2d 486, 506 (1999) (citation omitted).

Defendant argues the only evidence of what occurred inside the hotel room, i.e., the killing of Ms. Petway, came from the statements he made during his interview with the Gastonia Police Department, and contends such statements do not support the elements of premeditation and deliberation with a specific intent to kill. But the elements of premeditation and deliberation call into question a defendant’s mental processes, so they are “ordinarily not susceptible to proof by direct evidence and therefore must usually be proven by circumstantial evidence.” *State v. Alston*, 341

N.C. 198, 245, 461 S.E.2d 687, 713 (1995) (citation omitted).

Our Supreme Court has outlined some circumstances from which premeditation and deliberation can be inferred. These circumstances include:

(1) absence of provocation on the part of deceased, (2) the statements and conduct of the defendant before and after the killing, (3) threats and declarations of the defendant before and during the occurrence giving rise to the death of the deceased, (4) ill will or previous difficulties between the parties, (5) the dealing of lethal blows after the deceased has been felled and rendered helpless, (6) evidence that the killing was done in a brutal manner, and (7) the nature and number of the victim's wounds.

State v. Olson, 330 N.C. 557, 565, 411 S.E.2d 592, 596 (1992) (citation omitted).

Here, the evidence presented by the State tended to show ill will and previous difficulties between Ms. Petway and Defendant. Specifically, some of Ms. Petway's friends and family testified about past instances when Defendant physically battered Ms. Petway, destroyed some of her property in response to fights and arguments, and threatened to kill her if she ever left him.

The State also submitted video surveillance footage captured and maintained by WoodSpring Suites on the day of Ms. Petway's death. One camera was positioned at the end of the hallway where Ms. Petway's room was located, and the other was positioned within the adjoining stairwell. Both cameras were motion-activated and captured some of the interactions between Defendant and Ms. Petway before the shooting. This surveillance footage also supports an inference of premeditation and deliberation.

Around 2:31 a.m., the footage captured shows Defendant walking up the stairs and being let into the room by Ms. Petway. Two minutes later, Ms. Petway is seen exiting her room with Defendant following close behind her. Both Ms. Petway and Defendant enter the stairwell, and as Ms. Petway is descending towards the first floor, Defendant pushes her down the final remaining steps, slamming her into the adjacent wall. Ms. Petway and Defendant then engage in a physical fight which lasts just under a minute. Following this altercation, the two can be seen exiting the stairwell toward the parking lot, and then returning to Ms. Petway's room at 2:38 a.m.

The next time Ms. Petway is seen on the surveillance footage is at 8:20 a.m. as she exits her room and proceeds out of the stairwell towards the parking lot. Thirty seconds later, Defendant follows behind Ms. Petway, also making his way out to the parking lot through the stairwell exit. Defendant re-enters the stairwell about three minutes later carrying a hand-held object in his right hand. Once Defendant enters the hallway, the camera footage clearly reveals the object to be a tan handgun.

At 8:25 a.m., Ms. Petway is seen re-entering the building from the parking lot, and as she ascends the stairs towards the hallway, she is intercepted by Defendant. Both Ms. Petway and Defendant return to the second floor and enter Ms. Petway's room. This is the last time Ms. Petway appeared on camera.

Further, the elements of premeditation and deliberation can be inferred by Defendant's conduct after the shooting, as he actively concealed for some time the

fact Ms. Petway had been shot and needed medical attention. *See Olson*, 330 N.C. at 565, 411 S.E.2d at 596.

After the shooting, the cameras next capture Defendant at 8:48 a.m. exiting the room and proceeding out the stairs towards the parking lot. About five minutes later, Defendant is seen re-entering the building talking on his cell phone. Defendant tried to enter Ms. Petway's room but could not get in.

Defendant then went to the front desk and spoke with the hotel manager, telling her that his girlfriend was away at work and he was locked out of the room. The hotel manager told Defendant she could not let him into the room as he was not a registered guest of the room. At no point during this conversation did Defendant ever indicate to the manager someone had been shot and may need medical attention. After this conversation, Defendant left the hotel property.

Later that morning, Defendant went to the Gastonia Police Department claiming he wanted to turn himself in for self-defense. Originally, Defendant did not tell anyone at the police station that Ms. Petway had been shot. It was not until later that Defendant said Ms. Petway had been shot but stated he did not know of her condition.

At trial, Defendant presented his statements made to police during an interview after turning himself in and the DNA found on the gun as evidence to try to negate the elements of premeditation and deliberation.

After presenting to the Gastonia Police Department, Defendant was eventually

taken to an interview room to speak with Detective Heather Houser. During this interview, Defendant's statements to Detective Houser were inconsistent as to the circumstances surrounding the shooting, and Defendant often changed his story as to what occurred. For example, Defendant originally stated he and Ms. Petway started tussling back and forth over the gun, and were both in the process of falling when the gun went off due to the floor being slippery following Ms. Petway's shower. Defendant also originally contended the gun was pointed upwards towards the ceiling when it went off. Later, Defendant revealed to Detective Houser in a demonstration of the event that both he and Ms. Petway were actually standing when the gun went off and the gun was not pointed at the ceiling.

Regarding the DNA evidence, Defendant argues the presence of Ms. Petway's DNA on the gun, and the absence of Defendant's DNA, calls into question whether Defendant was the shooter and whether he possessed a specific intent to kill. But considering the evidence in the light most favorable to the State, as required by our standard of review, *see Powell*, 299 N.C. at 99, 261 S.E.2d at 117, the absence of Defendant's DNA on the weapon does not negate any element of the crime. The video surveillance footage clearly shows Defendant carrying the gun into Ms. Petway's room from the parking lot before the shooting.

The ill will and prior difficulties between the parties, threats of lethal violence, Defendant pushing Ms. Petway down the stairs during the early morning of the shooting, and Defendant's conduct before and after the killing allow for the inference

of premeditation and deliberation. Defendant had a state of mind and intention of seeking to physically harm Ms. Petway when he pushed her down the stairs, and it can be inferred this intent to harm continued moments later when he retrieved the gun and brought it into Ms. Petway's room. Further, Defendant's efforts to conceal the fact Ms. Petway had been shot and was potentially in need of medical attention support an inference of premeditation and deliberation. *See State v. Trull*, 349 N.C. 428, 448, 509 S.E.2d 178, 192 (1998) ("[A]ttempts to cover up involvement in the crime are among other circumstances from which premeditation and deliberation can be inferred." (citation omitted)). The inconsistencies in Defendant's statements made to police, along with the absence of Defendant's DNA being found on the gun, do not negate these elements as established by the State. Therefore, the State presented substantial evidence of premeditation and deliberation. *See id.* at 450, 509 S.E.2d at 192-93 ("Defendant's evidence did not negate or contradict this evidence of premeditation and deliberation. The trial court did not err in denying defendant's request to submit the lesser-included offense of second-degree murder.").

2. Malice

In addition to premeditation and deliberation for first-degree murder, the State must also prove the defendant acted with malice in the killing of another. *See State v. Johnson*, 317 N.C. 193, 201, 344 S.E.2d 775, 780 (1986).

Malice means not only hatred, ill-will or spite as it is ordinarily understood . . . , but it also means that condition of mind which prompts a person to take the life of another

intentionally or to intentionally inflict serious injury upon another, which proximately results in [the victim's] death without just cause, excuse or justification.

Id. The element of malice “is presumed where the defendant intentionally assaults another with a deadly weapon, thereby causing the other’s death.” *State v. McNeill*, 346 N.C. 233, 238, 485 S.E.2d 284, 287 (1997) (citation omitted).

We conclude the element of malice can be inferred from Defendant’s retrieval of the gun from the parking lot moments before Ms. Petway was shot. Further, the evidence of Defendant’s ill will and spite towards Ms. Petway also supports the element of malice.

Therefore, the State met its burden in presenting evidence of the elements of first-degree murder, beyond mere speculation, and the trial court did not err by denying Defendant’s motion to dismiss.

III. Second-Degree Murder and Depraved Heart Malice

Defendant further argues the trial court erred in failing to instruct the jury on the alternative possibility to find Defendant guilty of the lesser-included offense of second-degree murder under a theory of depraved heart malice under North Carolina Pattern Jury Instruction 206.30A. At trial, however, Defendant did not request this instruction, nor did he object to its absence.

Ordinarily, “a failure to except or object to errors at trial constitutes a waiver of the right to assert the alleged error on appeal.” *State v. Oliver*, 309 N.C. 326, 334, 307 S.E.2d 304, 311 (1983) (citations omitted). However, even if a defendant fails to

raise an objection at trial, this Court may nevertheless review the issue under plain error review. *See State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). Plain error arises “only when the alleged error is unpreserved, and it requires the defendant to bear the heavier burden of showing that the error rises to the level of plain error.” *State v. Lawrence*, 365 N.C. 506, 516, 723 S.E.2d 326, 333 (2012) (citation omitted). To succeed under plain error review, the defendant must show

the claimed error is a fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done, or where the error is grave error which amounts to a denial of a fundamental right of the accused, or the error has resulted in a miscarriage of justice or in the denial to appellant of a fair trial or where the error is such as to seriously affect the fairness, integrity or public reputation of judicial proceedings or where it can be fairly said the instructional mistake had a probable impact on the jury’s finding that the defendant was guilty.

Odom, 307 N.C. at 660, 300 S.E.2d at 378 (citations, quotation marks, emphasis, and brackets omitted).

Here, Defendant alleges the trial court erred in not instructing the jury of the different distinctions of malice for second-degree murder under North Carolina Pattern Jury Instruction 206.30A. In advancing this argument, Defendant relies heavily on this Court’s opinion in *State v. Mosely*. In *Mosely*, however, the main issue for this Court’s consideration was whether the trial court’s instructions given to the jury were sufficient for finding the defendant guilty of second-degree murder. *See State v. Mosely*, 256 N.C. App. 148, 150, 806 S.E.2d 365, 367 (2017).

The three classifications of malice recognized in North Carolina include:

(1) express hatred, ill-will or spite; (2) commission of inherently dangerous acts in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief; or (3) a condition of mind which prompts a person to take the life of another intentionally without just cause, excuse, or justification.

State v. Coble, 351 N.C. 448, 450-51, 527 S.E.2d 45, 47 (2000) (citation and quotation marks omitted). “The second type of malice [is] commonly referred to as ‘depraved-heart’ malice[.]” *State v. Fuller*, 138 N.C. App. 481, 484, 531 S.E.2d 861, 864 (2000) (citation omitted).

The different distinctions of malice are important for second-degree murder convictions in North Carolina as our General Assembly outlines different classifications of the offense. *See* N.C. Gen. Stat. § 14-17(b) (2023). When a jury is instructed on second-degree murder, it is important to note the basis of malice which the jury finds a defendant guilty because of the separate classifications of second-degree murder for sentencing purposes. *See Mosely*, 256 N.C. at 152, 806 S.E.2d at 368 (determining “the jury’s general verdict of guilty of second degree murder is ambiguous for sentencing purposes because there was evidence in this case of depraved-heart malice to support a verdict of guilty of a Class B2 second degree murder[]”).

Here, however, *Mosely* and the separate distinctions of malice are inapplicable as Defendant was convicted of first-degree murder, which, unlike second-degree

murder, does not have separate classifications. *See* N.C. Gen. Stat. § 14-17(a) (2023).

Further, the rule as to when the lesser-included offense of second-degree murder should be instructed to a jury is as follows:

[I]f the State's evidence is sufficient to satisfy its burden of proving each element of first-degree murder, including premeditation and deliberation, and there is no evidence other than defendant's denial that he committed the crime to negate these elements, the trial court should not instruct the jury on second-degree murder.

State v. Conaway, 339 N.C. 487, 514, 453 S.E.2d 824, 841 (1995) (citation omitted).

As already discussed in considering Defendant's first argument, the State met its burden in showing the elements of premeditation and deliberation for a reasonable jury to accept as true. The evidence presented by Defendant at trial also failed to negate these elements. An instruction of the lesser-included offense of second-degree murder was not required. Though not required, the trial court *did* instruct the jury of the option to find Defendant guilty of second-degree murder, as opposed to first-degree, and the option to find Defendant guilty of neither under a theory of self-defense.

For these reasons, we conclude Defendant has failed to show error, much less plain error, in the instructions given to the jury. Defendant received a fair trial free of any prejudicial error.

IV. Conclusion

The State met its burden in providing substantial evidence as to each element

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of first-degree murder and the trial court did not err in denying Defendant's motion to dismiss. Further, the trial court did not err in the instructions given to the jury as the State's evidence was "sufficient to satisfy its burden of proving each element of first-degree murder, including premeditation and deliberation, and there is no evidence other than [D]efendant's denial that he committed the crime to negate these elements[.]" *Id.* (citation omitted).

NO ERROR.

Judges MURPHY and FLOOD concur.

Report per Rule 30(e).