

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-244
NORTH CAROLINA COURT OF APPEALS

Filed: 18 October 2011

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 06 CRS 222499-500

HARRY SHAROD JAMES

Appeal by defendant from judgment entered 10 June 2010 by Judge Robert F. Johnson in Mecklenburg County Superior Court. Heard in the Court of Appeals 14 September 2011.

Attorney General Roy Cooper, by Assistant Attorney General Sandra Wallace-Smith, for the State.

Anne Bleyman for defendant appellant.

McCULLOUGH, Judge.

Harry Sharod James ("defendant") appeals from his convictions of first-degree murder and robbery with a dangerous weapon. Defendant also appeals his sentence of life in prison without parole on the charge of first-degree murder, with a concurrent sentence of 64 to 86 months for robbery with a dangerous weapon. For reasons discussed herein, we find no error.

I. Background

Defendant became acquainted with the victim, Curtis Laquan Jenkins, through a church sponsored group, "Becoming a Man" ("BAM"), where Jenkins served as defendant's mentor. Defendant, 16 years old at the time, took his 21-year-old friend, Adrian Morene, to a BAM event where he introduced Morene to Jenkins. Morene later suggested that he and defendant rob Jenkins. According to defendant, Morene threatened to hurt defendant's family if defendant did not help with the robbery.

On 11 May 2006, Morene's mother drove Morene and defendant to Jenkins' neighborhood and dropped them off. Morene told defendant to get the door to Jenkins' house open and he would do the rest. The two intended to get Jenkins' debit card and pin number, so they could empty his bank account at an automatic teller machine ("ATM"). Around 10:00 p.m., defendant rang Jenkins' doorbell and upon Jenkins opening the door, Morene rushed in with a BB gun, resembling a real revolver, pointed at Jenkins. Defendant closed and locked the door behind them. They were supposed to get a shotgun from Morene's friend to use in the robbery, but were unsuccessful.

Once inside, Morene ordered Jenkins into a corner and told defendant to go upstairs to get Jenkins' wallet and anything he could pawn. When defendant returned from upstairs, Jenkins was naked and kneeling with his face on the floor. Morene proceeded to hit Jenkins in the head with the BB gun to elicit his pin number. Jenkins acquiesced and defendant wrote down the pin number.

Morene and defendant were afraid Jenkins might call the police if they let him go. Consequently, Morene told defendant to go back upstairs to get some towels and while he did that Morene retrieved a knife from the kitchen. Morene then stabbed Jenkins in the right side of the neck, breaking the handle off in the process. Defendant wrapped the towels around Jenkins' neck in an attempt to keep blood off the floor. Morene ordered Jenkins to put his face in the couch and Morene stabbed Jenkins a few more times in the right kidney area to make sure he was dead. In doing so, he bent another knife.

Defendant told Morene that Jenkins was dead and that the two of them should leave. Defendant kicked Jenkins to show he was dead, but he was still breathing so Morene stabbed him again. Morene then told defendant to get some pillows from upstairs because he was "gonna go ahead and do this the old

fashioned way." Morene then put two pillows on Jenkins' face and sat on them, smothering Jenkins. Defendant watched as Jenkins' legs and hands flailed while he gasped for air. Defendant again kicked Jenkins' in the foot to see if he was dead and Morene, not being satisfied, continued to press the pillows onto Jenkins' face. Once Jenkins no longer moved or gasped, defendant told Morene "this man is dead[,] let's go."

The robbery and murder took about twenty minutes, and afterwards the two left in Jenkins' Honda Civic, with defendant driving. They took some watches, and a cell phone, and ditched a knife and two pillows in a wooded area after leaving Jenkins' house. Defendant changed into a pair of shoes he had for working at the YMCA because he had blood on his other pair. The two headed to defendant's house so he could pack a bag in preparation for leaving Charlotte. Defendant had printed out directions to Chicago from Mapquest.com. In a custodial interrogation, defendant claimed he printed the directions out at Jenkins' house, while in actuality, police determined defendant printed the directions out the day before at the YMCA where he worked. Defendant also claimed in the interrogation that he was going to Chicago to see a girl and that Morene

planned on continuing to Manhattan after dropping defendant off in Chicago.

After leaving defendant's house, Morene and defendant attempted to withdraw money from Jenkins' Bank of America checking account at an ATM in Charlotte. Records showed a withdrawal of \$100 from Jenkins' account at 12:44 a.m. on 12 May 2006. Then at 1:02 a.m. they withdrew another \$100 from a different ATM followed by a withdrawal of \$60. They tried one more time, but were unsuccessful due to insufficient funds. After withdrawing as much money as they could, the two went by Morene's house so he could get a change of clothes and then left Charlotte for Chicago, following the Mapquest directions.

On the morning of 12 May 2006, Kentucky State Police ("KSP") stopped Jenkins' Honda on Interstate 75 in London, Kentucky, due to a traffic violation. The police noted defendant was a juvenile driving without a license or permit. Defendant told the officer that Morene was the registered owner of the vehicle. KSP placed defendant in custody for the failure to have a license and searched the vehicle. In the trunk, they found a knife blade, without a handle, covered in blood. They also found a BB gun in a backpack on the backseat and Jenkins' wallet stuck between the center console and the passenger seat. A KSP

detective arrived at the scene and contacted the Charlotte Mecklenburg Police Department ("CMPD") to have someone do a welfare check on Jenkins. Jenkins' family also contacted CMPD regarding a welfare check after receiving notice from a State Farm Insurance agent that Jenkins' car was in Kentucky without him. Upon conducting the welfare check, CMPD found Jenkins' dead in his home. KSP subsequently took defendant to a patrol station in London.

Around 8:50 p.m. that evening, CMPD detectives, Stephen D. Furr and Arvin B. Fant, arrived in London and conducted a custodial interrogation of defendant. The following day, based on defendant's statements in the interrogation, CMPD surveyed the wooded area defendant mentioned and found two pillows and a knife. Former CMPD analyst, Timothy French, tested the knife blade from the trunk, along with defendant's shoes, tank top, and shorts for any traces of blood. In his opinion, all items were positive for the presence of blood, but he did not perform any confirmatory tests for human blood. Former CMPD examiner, Lara Katherine Hayes, compared a blood standard from Jenkins with buccal swabs from defendant, swabs from defendant's shoes, cuttings from defendant's tank tops and shorts, and a swab from the knife blade. In her opinion, Jenkins could not be excluded

as the contributor of the DNA on the shoe, tank top, shorts, or knife blade. Finally, Dr. Thomas Darrell Owens performed the autopsy on Jenkins and determined any of the stab wounds could have been lethal, with suffocation contributing to the probable cause of death.

On 19 June 2006, a grand jury presented two indictments charging defendant with murder and robbery with a dangerous weapon. The case came for trial on 2 June 2010 and on 4 June 2010, the trial court entered an order extending the session. At the end of the State's evidence, defendant made a motion to dismiss for lack of sufficient evidence, which the trial court denied. Defendant did not present any evidence and renewed his motion to dismiss, which was again denied. On 10 June 2010, the jury returned a verdict finding defendant guilty of first-degree murder and robbery with a dangerous weapon. On the same day, the trial court entered judgment. The murder conviction was based on theories of premeditation and deliberation, along with felony-murder. The trial court sentenced defendant to life without parole on the murder conviction and a concurrent sentence of a term of 64 to 86 months' imprisonment for the robbery with a dangerous weapon conviction. Defendant entered notice of appeal in open court.

II. Analysis

On appeal, defendant contends (a) the trial court erred in denying defendant's motion to dismiss the charge of premeditated and deliberate first-degree murder; (b) his sentence of life without parole for first-degree murder is in violation of his state and federal rights; and (c) the indictment charging him with first-degree murder is defective as it does not sufficiently allege the essential elements of the crime.

A. Denial of Defendant's Motion to Dismiss

Defendant first argues the trial court erred in denying his motion to dismiss the charge of premeditated and deliberate first-degree murder because the State failed to present sufficient evidence at trial. We disagree.

We review an appeal from the denial of a motion to dismiss for "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. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002) (quoting *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980)). "In reviewing challenges to the

sufficiency of evidence, we must view the evidence in the light most favorable to the State[.]’” *Id.* at 596, 573 S.E.2d at 869 (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)). “Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion.” *Id.* at 597, 573 S.E.2d at 869.

Defendant argues the trial court erred in submitting the charge of first-degree murder to the jury on the theories of premeditation and deliberation. “In order to convict a defendant of 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), *cert. denied*, 552 U.S. 1271, 170 L. Ed. 2d 377 (2008); N.C. Gen. Stat. § 14-17 (2009). Defendant contends he did not have the requisite specific intent formed after premeditation and deliberation to warrant a conviction of first-degree murder.

Among other circumstances to be considered in determining whether a killing was with premeditation and deliberation are: (1) want of provocation on the part of the deceased; (2) the conduct and statements of the defendant before and after the killing; (3) threats and declarations of the defendant before and during the course of the

occurrence giving rise to the death of the deceased; (4) ill-will or previous difficulty between the parties; (5) the dealing of lethal blows after the deceased has been felled and rendered helpless; and (6) evidence that the killing was done in a brutal manner.

State v. Gladden, 315 N.C. 398, 430-31, 340 S.E.2d 673, 693 (1986). On the other hand, the State notes that "[p]remeditation means that the act was thought out beforehand for some length of time, however short, but no particular amount of time is necessary for the mental process of premeditation[,] while "[d]eliberation 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 lawful or just cause or legal provocation." *State v. Conner*, 335 N.C. 618, 635, 440 S.E.2d 826, 835-36 (1994).

Even further, where a defendant attempts to flee the scene and get rid of the fruits of the crime, one may infer premeditation and deliberation, and appropriately submit the issue to the jury. See *State v. Sparks*, 285 N.C. 631, 643, 207 S.E.2d 712, 719 (1974), *death sentence vacated*, 428 U.S. 905, 49 L. Ed. 2d 1212 (1976). Here, defendant argues he only agreed to take part in the robbery after being threatened by Morene. He

contends he did not intend to kill Jenkins, but merely wanted to steal his money. Defendant also notes that Morene brought the weapon and actually did the killing. Alternatively, the State raises the issue regarding the Mapquest directions, in that defendant initially told police he printed the directions out at Jenkins' house, while in actuality he printed them out the day before in anticipation of leaving Charlotte. The State also argues defendant and Morene decided to kill Jenkins so he would not be a "snitch," as they "concluded [] Jenkins had to die in order to cover up their crime."

Neither party mentioned in their arguments the well-grounded doctrine of acting in concert, as instructed to the jury by the trial court. The doctrine, as explained in *State v. Barnes*, 345 N.C. 184, 233, 481 S.E.2d 44, 71 (1997) (finding defendant guilty of first-degree murder where codefendant committed the murder during an armed robbery and burglary), states that

[i]f two persons join in a purpose to commit a crime, each of them, if actually or constructively present, is not only guilty as a principal if the other commits that particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose . . . or as a natural or probable consequence thereof.

Id. (internal quotation marks and citations omitted). Therefore, defendant did not need the specific intent to kill Jenkins because Morene committed the murder in pursuance of the robbery. He certainly acted in concert with Morene in committing the robbery of Jenkins because defendant admitted that it was only with his assistance that he and Morene gained access to Jenkins' house, that he knew Morene attempted to obtain a shotgun for use during the robbery, and that he helped with the robbery and murder by getting the items from upstairs, specifically the pillows used for smothering Jenkins. Defendant also drove the car as the two attempted to flee Charlotte and helped get rid of the evidence on the way out of town. Consequently, the evidence tends to show defendant was an active participant throughout the planning and commission of the crime sufficient to warrant the trial court's denial of defendant's motions to dismiss. We therefore find no error on behalf of the trial court in regard to this issue.

B. Sentence of Life Without Parole

Defendant next argues his sentence of life without parole on the conviction of first-degree murder violates his constitutional rights as sentencing a juvenile to life without parole is cruel and unusual punishment under the Eighth

Amendment to the United States Constitution and Article I, Section 27 of the North Carolina Constitution. See U.S. Const. amend. VIII; N.C. Const. art. I, § 27. The State, however, argues this being a constitutional question, defendant did not preserve the issue for appeal by objecting at trial. We agree with the State.

When reviewing a constitutional issue, we apply a *de novo* standard of review. *Piedmont Triad Airport Auth. v. Urbine*, 354 N.C. 336, 338, 554 S.E.2d 331, 332 (2001). Generally, constitutional issues not raised at the trial level will not be considered for the first time on appeal. *State v. Hunter*, 305 N.C. 106, 112, 286 S.E.2d 535, 539 (1982); N.C.R. App. P. 10(a)(1) (2009). However, on rare occasions we may review an issue where “[a] significant change in law, either substantive or procedural, applies to the proceedings leading to the defendant’s conviction or sentence, and retroactive application of the changed legal standard is required.” N.C. Gen. Stat. § 15A-1446(d)(19) (2009).

Defendant argues two petitions for writ of certiorari filed with the United States Supreme Court may affect defendant’s sentence of life without parole, as the cases are requesting review of the constitutionality of sentencing juveniles to life

without parole. See *Miller v. Alabama*, 63 So. 3d 676 (Ala. Crim. App. 2010), petition for cert. filed ___ U.S.L.W. ___ (U.S. Mar. 21, 2011) (No. 10-9646); *Jackson v. Norris*, ___ S.W.3d ___ (Ark. 2011), petition for cert. filed sub nom. *Jackson v. Hobbs* ___ U.S.L.W. ___ (U.S. Feb. 9, 2011) (No. 10-9647). But, there is no guarantee the Supreme Court will grant certiorari for either of these cases. Defendant attempts to rely on *State v. Wray*, ___ N.C. App. ___, ___, 698 S.E.2d 137, 139 (2010), *State's disc. review denied, defendant's disc. review dismissed as moot*, 365 N.C. 88, 706 S.E.2d 476 (2011), for his argument that our Court may review a constitutional issue where there are changes in the law before the case is final. However, in *Wray* the Supreme Court had decided a case about a month before the defendant's trial, which applied to defendant's case, and our Court could not tell if the trial court had applied the standards of the now controlling case. *Id.* at ___, 698 S.E.2d at 139. Either way, our Court held the Supreme Court case retroactively applied to the case on appeal because it was before the Court for direct review. *Id.* Alternatively, in the case at hand, the Supreme Court has not reached a decision in *Miller v. Alabama* or *Jackson v. Hobbs*, if they even decide to review either one. If the Supreme Court does decide to review the cases, it could be

months before the Court publishes an opinion. Therefore, there has been no change in the law as it relates to a juvenile's sentence of life in prison without parole and our State's progeny of cases and statutes, holding life in prison without parole to not constitute cruel and unusual punishment apply. See *State v. Rogers*, 275 N.C. 411, 421, 168 S.E.2d 345, 350 (1969); *State v. Stinnett*, 129 N.C. App. 192, 200, 497 S.E.2d 696, 701 (1998); N.C. Gen. Stat. § 7B-2200 (2009); N.C. Gen. Stat. § 14-17. Consequently, defendant did not preserve this issue for review.

C. Short-form Indictment

Defendant's final argument on appeal is that the indictment charging him with first-degree murder is defective because it does not sufficiently allege the essential elements of the crime. We disagree.

The indictment was a "short-form" indictment, pursuant to N.C. Gen. Stat. § 15-144 (2009), and as defendant notes, our Supreme Court has previously held that a short-form indictment does not violate a defendant's constitutional rights. *State v. Braxton*, 352 N.C. 158, 175, 531 S.E.2d 428, 437-38 (2000) (concluding premeditation and deliberation do not need to be separately alleged in the short-form indictment); *State v. Hunt*,

357 N.C. 257, 278, 582 S.E.2d 593, 607 (2003) (short-form murder indictments satisfy the requirements of our State and Federal Constitutions). Thus, this argument is without merit.

III. Conclusion

Based on the foregoing, we find the trial court did not err in denying defendant's motions to dismiss, sentencing him to life in prison without parole, or allowing the short-form indictment.

No error.

Judges HUNTER (Robert C.) and STEELMAN concur.

Report per Rule 30(e).