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NO. COA11-408
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Avery County
No. 05 CRS 50421

GLORIA HUGHES ESTES

On Writ of Certiorari to review judgment of Judge Forrest D. Bridges entered 11 January 2008 and appeal by defendant from order entered 13 January 2010 by Judge James U. Downs in Avery County Superior Court. Heard in the Court of Appeals 28 September 2011.

Attorney General Roy Cooper, by Special Deputy Attorney General H. Dean Bowman, for the State.

C. Gary Triggs for defendant appellant.

McCULLOUGH, Judge.

Gloria Hughes Estes ("defendant") appeals her conviction for first-degree murder in the death of Samuel Joe Roberson. The trial court sentenced defendant to life in prison without parole. For the following reasons, we find no error.

I. Background

On the morning of 9 June 2005, police and first responders were called to a modular home in Newland, North Carolina, where they found the victim, Samuel Joe Roberson ("Sam"), dead on the front porch. The property belonged to Sam's mother who had been admitted to an Alzheimer's care facility. Sam lived there alone, but his brother, James Don Roberson, was responsible for the upkeep of the property, as well as looking after Sam.

Defendant had been residing with Sam for a few weeks because her car had broken down, resulting in her being stranded due to lack of funds for a repair. James knew defendant was a frequent visitor of Sam's, but did not realize she was staying with him. Sam had suffered from acute alcoholism for almost thirty years, so James warned defendant not to bring alcohol to the property. Sam's alcoholism was so bad he even resorted to drinking Listerine mouthwash.

Defendant had called 911 on the morning of the incident, and upon the arrival of the police and first responders, she told them that she had taken some medication the night before, fallen asleep, and woken up to find Sam lifeless on the porch. Defendant's story varied as to when she actually went to sleep, as she told a first responder it was around 7:00 p.m., an Avery

County Sheriff's Deputy it was around 10:00 p.m., and her son it was around midnight.

That morning, James, as well as defendant's son, Joe Estes, separately received calls from defendant in which she told them that she had found Sam on the front porch, cold and appearing to have hit his head. They both told defendant to immediately call 911 if she had not already done so.

At the scene of the crime, Jason Brown, Newland Chief of Police, observed Sam and guessed he had been dead for a while. Police Chief Brown noticed defendant was calm and not particularly upset. He noticed a trail of blood leading from a recliner, just inside the door to the home, out to the body, along with some blood spots leading into the kitchen. A whitish brown rug on top of the carpet appeared as though someone had used it to rub the blood out of the carpet.

Deputy Jody Coffey of the Avery County Sheriff's Department, testified defendant repeatedly told him she went to bed around 10:00 p.m. the night before and woke up to find a trail of blood leading through the mobile home to Sam's body. Deputy Coffey noticed blood on defendant's ankle and that her hand was bruised and swollen. It appeared to Deputy Coffey that defendant had not slept the night before. Defendant admitted to

Deputy Coffey that she had called her son prior to calling 911.

North Carolina State Bureau of Investigation ("SBI") Special Agent Mark Sharpe removed defendant from the scene of the crime and had an initial talk with her at Newland Town Hall. Agent Sharpe noticed defendant's swollen wrist and hand. She also had some swelling and bruising around one of her feet.

Agent Sharpe informed defendant she was not under arrest and was free to leave at any time. Defendant initially claimed she did not know what happened the night before, but eventually stated that she and Sam had been drinking Listerine that night, she blacked out, and when she got up the next morning she saw blood in the living room leading to Sam's body on the front porch. She told Agent Sharpe it appeared as though Sam had been hit. After further discussion, defendant told Agent Sharpe that she and Sam had gotten into an argument and that she hit him with her right fist, jamming it and causing the bruising on her wrist.

Finally, around 12:50 p.m. she told Agent Sharpe she "remembers now what had happened last night." Sam was yelling and cursing at her, telling her to "get [her] ragged ass out of here." Sam had not threatened her life, but had come at her and in response she kicked him with her right foot, on which she was

wearing a heavy sandal, hitting him in the right side of the head and face. She told Agent Sharpe that she "kicked him and flailed him," which she described as multiple hits. Following her hitting and kicking of Sam, defendant cleaned Sam's blood from both her sandals with a washcloth which she hid under the mobile home, and placed the sandals in a Marlboro bag in the back seat of her car. She then changed her clothes because they had blood on them and put them in a suitcase. She used Awesome cleaner to clean blood off the kitchen counter and also noticed blood on the kitchen floor, bathroom counter, and living room carpet. Defendant claimed Sam's death was an accident and in self-defense. She claimed, "[o]ne drunk killed another drunk." She admitted she might have even scooted his body out of the mobile home, but did not remember.

SBI Agent Van Williams took photos of defendant and collected samples of what appeared to be blood on defendant's ankle, as well as scrapings from under her fingernails. He and Agent Sharpe met with defendant at her Huskins' Court apartment, where she was staying after the incident. There they obtained defendant's consent to take the fingernail scrapings and had a second, non-interrogational interview with defendant. Defendant told the agents that she could not remember much, but she

specifically did not remember wiping blood off the rug or putting a cloth in the sink. Agent Williams also conducted a crime scene search of the residence and surrounding areas, finding numerous blood stains and smears, and recovering the suitcase containing defendant's bloody clothes, along with a bottle of Awesome cleaner with bloodstained paper towels, the sandals in the back seat of her car, and the washcloth hidden under the mobile home.

Following this second discussion with defendant, Agent Sharpe obtained an arrest warrant and returned to Huskins' Court to serve the warrant. Defendant asked Agent Sharpe what degree of murder she was charged with. He responded that it was a generic warrant and the indictment would specify the charges. Defendant voluntarily replied, "What the hell? How about manslaughter? I had no forethought or malice. I have gone from a condo in Hawaii to a Listerine den in Newland. What a life." Defendant attempted to suppress these statements at trial. The trial court conducted a *voir dire* to review the contested evidence and ultimately denied her request to suppress the evidence.

At trial, forensic pathologist, Dr. Brent Hall, testified that based on the autopsy, Sam probably died between 9:00 p.m.

and 11:00 p.m. on 8 June 2005. Sam's body suffered multiple hematomas of the head, trunk, and extremities, along with five fractured ribs. One of the fractured ribs penetrated the internal surface of the chest while another lacerated the left lobe of the liver, which bled into the abdominal cavity and most likely would have been fatal within a matter of minutes. The laceration would require a significant degree of force and is most commonly caused by car crashes. Sam was only five feet eight inches tall and weighed one hundred and twenty-four pounds. Dr. Hall opined that Sam died as a result of blunt force trauma to the head and abdomen, which could not have been accidental. The injuries were consistent with blows by hands and feet and the injuries on Sam's forearms were defensive in nature. DNA analysis of the blood from the recovered items and defendant's leg all matched that of Sam.

Also at trial, the State presented three witnesses who had been inmates with defendant in the Avery County jail. Each witness testified to defendant having admitted that she beat Sam up, but he did not fight back. She told them that she and Sam had been fighting for a few days, initially over the Listerine. She also admitted to trying to clean up all the blood after the fight. Each inmate received some form of a concession, however

minimal, from the State for testifying against defendant. Defendant made a motion to suppress and a motion in limine in regard to the testimony of each inmate due to the deals, but the trial court denied the motions.

Defendant made a motion to dismiss at the end of the State's evidence, which the trial court denied. Defense counsel also renewed all previous motions and made a motion for mistrial, which was denied. Defendant did not present any evidence and renewed her motion to dismiss. The trial court again denied it.

Defendant was indicted for Sam's murder on 5 July 2005. Defendant's trial began on 31 December 2007 in Mitchell County Superior Court before Judge Bridges. The jury found defendant guilty of first-degree murder on 11 January 2008. She was sentenced to life in prison without parole. Defendant appealed. The trial court initially dismissed defendant's appeal due to her failure to timely prepare a proposed record on appeal, but on 10 January 2011, our Court granted her 3 January 2011 Petition for Writ of Certiorari.

II. Analysis

Defendant raises four issues on appeal, but as a preliminary matter, we note defense counsel's flagrant

violations of Rules 26(g) & 28(j) of the North Carolina Rules of Appellate Procedure.¹ See N.C.R. App. P. 26(g) and 28(j) (2009). Defense counsel failed to properly double-space his brief as each page contains thirty lines of text, while Rule 26(g)(1) clearly requires “[n]o more than twenty-seven lines of double-spaced text may appear on a page[.]” N.C.R. App. P. 26(g)(1). Plaintiff also failed to use the proper font size, 12-point, as required by both rules. N.C.R. App. P. 26(g) and 28(j). Even more, we note defense counsel’s run on of text in failing to use a single paragraph indentation for eight consecutive pages. Finally, we point out defense counsel’s decision to use twenty-five pages, of the allotted thirty-five, in his brief for facts, while using only ten pages for actual argument. While this is not a violation of the rules, we note it is not an advised procedure.

The instant case is not the first occasion that defendant’s counsel has been admonished by this Court for violations of the Rules of Appellate Procedure. See *State v. Gettys*, No. COA08-927, 2009 N.C. App. LEXIS 1236 at *4 n.1 (2009) (unpublished) (admonishing counsel for omission of appropriate standard of

¹ Appellate defense counsel and trial defense counsel are the same, so, for brevity, we will refer to him as “defense counsel” throughout this opinion.

review); *State v. Patton*, 119 N.C. App. 229, 230, 458 S.E.2d 230, 232 (1995) (admonishing and personally sanctioning counsel for exceeding brief page limitations), *rev'd on other grounds*, 342 N.C. 633, 466 S.E.2d 708 (1996). Even though defense counsel's mistakes are flagrant violations of the rules of our Court, we recognize the significance of this being a criminal appeal and will not fault defendant for defense counsel's mistakes. In doing so, we will reach defendant's arguments. Nonetheless, we admonish defense counsel for his errors and pursuant to Rule 34 of the Rules of Appellate Procedure, we impose double the costs of appeal on defense counsel as a sanction.

A. Allowance of Evidence at Trial

In defendant's first issue on appeal, she argues the trial court erred by allowing certain evidence to be submitted to the jury over defendant's objection. Defendant contends her statements to Agent Sharpe and the testimony of the three inmates was highly prejudicial. Specifically, defendant argues the trial court erred in denying her motion to suppress the incriminating statements. We disagree.

"Generally, an appellate court's review of a trial court's order on a motion to suppress is strictly limited to a

determination of whether its findings are supported by competent evidence, and in turn, whether the findings support the trial court's ultimate conclusion.'" *State v. White*, 184 N.C. App. 519, 523, 646 S.E.2d 609, 611 (2007) (quoting *State v. Robinson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36 (2004)). "Findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting. However, the trial court's conclusions of law are fully reviewable on appeal." *State v. Robinson*, 189 N.C. App. 454, 458, 658 S.E.2d 501, 504 (2008) (internal quotation marks and citations omitted).

When ruling on a motion to suppress "[t]he judge must set forth in the record his findings of facts and conclusions of law." N.C. Gen. Stat. § 15A-977(f) (2009). "This statute has been interpreted as mandating a written order unless (1) the trial court provides its rationale from the bench, and (2) there are no material conflicts in the evidence at the suppression hearing." *State v. Williams*, 195 N.C. App. 554, 555, 673 S.E.2d 394, 395 (2009). "If these two criteria are met, the necessary findings of fact are implied from the denial of the motion to suppress." *Id.*

In the case at hand, the trial court gave its rationale for denying the motion to suppress from the bench, and there were no material conflicts in the evidence. Only Agent Sharpe testified regarding defendant's incriminating statement; the three inmates' statements were not conflicting; and defendant did not present any evidence. As a result, we may infer the trial court made sufficient findings to support the denial of the motion. Thus, we must review whether the evidence presented supports the trial court's denial of the motion to suppress.

Defendant contends her incriminating statements to Agent Sharpe were highly prejudicial and the result of persistent and repeated questioning in the absence of counsel when Agent Sharpe knew or should have known of defendant's alcoholism, mental illness, and use of medications. Defendant all but confessed in her statement to Agent Sharpe in which she stated, "[w]hat the hell? How about manslaughter? I had no forethought or malice. I have gone from a condo in Hawaii to a Listerine den in Newland. What a life." Defendant argues confessions elicited from the mentally incompetent must be suppressed as involuntary as required by the Fourteenth Amendment to the United States Constitution. See U.S. Const. amend. XIV; *State v. Ross*, 297 N.C. 137, 141, 254 S.E.2d 10, 12 (1979). However, the State

notes defendant did not offer sufficient evidence at trial of the effects of her purported diminished capacity or bipolar disorder. Even if defendant was bipolar and took medication based on her diagnosis, it does not raise a presumption that her statement or a potential waiver of her *Miranda* rights was involuntary. See *State v. Pittman*, 332 N.C. 244, 260-61, 420 S.E.2d 437, 446-47 (1992). Mere evidence of a mental illness, by itself, does not render a confession incompetent. *State v. Taylor*, 290 N.C. 220, 231, 226 S.E.2d 23, 29 (1976). Therefore, defendant's alleged mental illness was not enough to support the suppression of her statements to Agent Sharpe. Even more, as the trial court noted, *Miranda* did not apply because it was not a custodial interrogation. The trial court specifically noted:

Special Agent Sharpe explained to the defendant on a number of occasions that she was not under arrest, she was free to leave, she did not have to answer any questions and secondly, that the statements provided by defendant to the agent were knowingly, understandingly and voluntarily made without any threats, duress or coercion whatsoever and would subsequently find that [Agent Sharpe] was completely forthright in his presentations to her as to the reasons and questions and purpose of the investigation what was being done and for that reason the motion to suppress is denied.

Consequently, the trial court was correct in denying defendant's motion to suppress in regard to her incriminating statements to

Agent Sharpe because they were not the product of a custodial interrogation and were spontaneously and voluntarily made.

Defendant also contends the trial court erred in denying a motion to suppress and a motion in limine regarding the statements made by three inmates. The State presented three inmates, whom at various points, were incarcerated with defendant. Each inmate prepared a statement addressing defendant's demeanor and her confessions to the murder of Sam. Defendant fails to acknowledge that a defendant's confession in any criminal case could be considered highly prejudicial. At trial, the State did not present the statements of each inmate, but merely had them testify regarding their statements. Each witness received a minor concession in return for testifying, with examples being the erasure of a bond or being able to attend a doctor's appointment in plain clothes.

Defendant's arguments in regard to the testimony of the witnesses go more to the credibility of the witnesses than to any potential prejudice caused by their testimony. The credibility of a witness is an issue for the jury to weigh, except in rare instances where the court will intervene. *State v. Green*, 296 N.C. 183, 188, 250 S.E.2d 197, 200-01 (1978). The rare cases are extreme and include instances of hypnotically

refreshed testimony and testimony shown to be physically impossible. See *State v. Peoples*, 311 N.C. 515, 532, 319 S.E.2d 177, 187 (1984); *State v. Miller*, 270 N.C. 726, 731, 154 S.E.2d 902, 905 (1967).

The trial court gave defendant wide latitude in cross-examining each witness and attacking their credibility in an attempt to weaken their impact on the jury. The trial court even gave instructions to the jury on law enforcement informants, strongly advising it to weigh the inmates' testimony against each inmate's self-interest. Therefore, the trial court fully reviewed and weighed the evidence in denying defendant's motion to suppress and motion in limine. Thus, the trial court's denial of the motions was not in error.

B. Defendant's Motion to Dismiss

Defendant's second issue on appeal is that the trial court erred in failing to grant defendant's motions to dismiss at the close of the State's evidence and at the close of all evidence. We disagree.

When we review a trial court's denial of a defendant's motion to dismiss we must consider "whether there is substantial evidence of each essential element of the offense charged, or of a lesser included offense of that charged."

State v. Aldridge, 139 N.C. App. 706, 718, 534 S.E.2d 629, 637 (2000) (quoting *State v. Robbins*, 309 N.C. 771, 774, 309 S.E.2d 188, 190 (1983)). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 718, 534 S.E.2d at 637-38 (quoting *State v. Scott*, 323 N.C. 350, 353, 372 S.E.2d 572, 575 (1988)). In reviewing such a motion, “[t]he evidence must be considered in the light most favorable to the State, and the State is entitled to every reasonable inference.” *Id.* at 718, 534 S.E.2d at 638.

Defendant alleges the trial court erred in denying her motions to dismiss because the State failed to prove every element of first-degree murder. “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). In making her argument, defendant contends that without the improper admission of her alleged statement and testimony of the three inmates, the evidence was insufficient to justify submitting the case to the

jury. However, as stated above, defendant's statement to Agent Sharpe and testimony of the three inmates were properly admitted at trial.

Even further, the evidence tends to show defendant committed the murder, as she and Sam were the only two persons present at the mobile home, the two had been in an argument, Sam's injuries were deemed not accidental, and some of the injuries were even defensive. The State presented sufficient evidence in the form of the medical examiner's opinion that Sam's injuries were likely inflicted by hands and feet to support the element of malice because our Supreme Court has held that hands and feet can be considered deadly weapons, for the purpose of showing malice, where the victim is "enfeebled by old age, sickness, or other apparent physical disability." *State v. Sallie*, 13 N.C. App. 499, 510, 186 S.E.2d 667, 674 (1972). The evidence clearly established Sam was a small and feeble man, only weighing 124 pounds, while also suffering from coronary artery disease, pulmonary disease, and emphysema. Also, the State's evidence met the requirements of premeditation and deliberation by showing severe brutality and attempts to conceal evidence. See *State v. Laws*, 345 N.C. 585, 593-94, 481 S.E.2d 641, 645 (1997). Therefore, considering the evidence in the

light most favorable to the State, we find the evidence was sufficient to support submitting the case to the jury on the basis of first-degree murder.

C. Trial Court's Responses to Jury Questions and Requests

Defendant next argues the trial court erred by improperly recharging the jury by emphasizing certain elements of the offense to the exclusion of others. We strongly disagree.

"Rule 10 of the North Carolina Rules of Appellate Procedure provides that '[i]n criminal cases, an issue that was not preserved by objection noted at trial . . . may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.'" *State v. Wright*, ___ N.C. App. ___, ___, 709 S.E.2d 471, 475 (2011) (quoting N.C.R. App. P. 10(a)(4) (2010)), *disc. review denied*, No. 145P08-2, 2011 WL 3841597 (N.C. Aug. 25, 2011). Here, defendant fails to contend the trial court's recharging of the jury amounted to plain error, and therefore, defendant's argument is waived. *See id.* at ___, 709 S.E.2d at 475.

We, however, will address an aspect of this issue to show defense counsel's mistake in his argument. Defendant contends the questions asked by the jury indicated their confusion in

reaching a verdict, however, defendant does not specify which questions are at issue. From the transcript, it appears the jury asked two questions: (1) if they could see all photographs entered into evidence, and (2) if they could be recharged on a portion of the crime of first-degree murder.

The issue could not be with the request for photographs as the trial court, with defense counsel's permission, allowed the jury to view all photographs admitted into evidence. The trial court even gave an instruction, for defendant's benefit, to remember certain photographs used on cross-examination that were not entered into evidence and therefore not available for the jury to view during deliberation. This shows the trial court's attempt at having the jury review all evidence equally.

More likely, defendant's issue would be with the trial court's recharging of the jury on the elements of first-degree murder. Nevertheless, the transcript shows the jury asked for clarification regarding a portion of the charge, but defense counsel requested that the trial court recharge the jury on all the elements of first-degree murder, along with self-defense and diminished capacity. Per defense counsel's request, the trial court repeated all the instructions for first-degree murder, second-degree murder, voluntary manslaughter, involuntary

manslaughter, self-defense, and voluntary intoxication, while even making the comment, "I'm trying to make sure I don't place undue emphasis on any particular aspect of my instructions to you." Clearly the trial court covered all potential offenses and defenses without putting any undue emphasis on one item over another. Defense counsel's argument is completely without merit.

D. Trial Court's Denial of Defendant's Motions

Defendant's final argument is that the trial court erred in failing to grant her motion to set aside the verdict of the jury, motion for a new trial, and motion for appropriate relief. We disagree.

A motion to set aside the verdict is addressed to the discretion of the trial court and its denial of the motion will not be set aside on appeal absent a showing of abuse of discretion. *State v. Pratt*, 306 N.C. 673, 681, 295 S.E.2d 462, 468 (1982). Defendant's argument is merely a recitation, in weaker form, of her previous argument that the State failed to prove the elements of each of the charged offenses beyond a reasonable doubt. Defendant specifically contends the State failed to rebut her argument of self-defense. Having addressed these issues above, we will not discuss them here and find no error on behalf of the trial court.

III. Conclusion

For the reasons discussed herein, we find no error.

No error.

Judges HUNTER (Robert C.) and STEELMAN concur.

Report per Rule 30(e).