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NO. COA01-1456

NORTH CAROLINA COURT OF APPEALS

Filed: 1 October 2002

STATE OF NORTH CAROLINA

v.

Cumberland County  
No. 99 CRS 60865

LESTER MALLOY,  
Defendant.

Appeal by Defendant from judgment entered 16 February 2001 by Judge Wiley F. Bowen in Superior Court, Cumberland County. Heard in the Court of Appeals 10 September 2002.

*Attorney General Roy Cooper, by Special Deputy Attorney General Gary R. Govert, for the State.*

*Parish, Cooke, Boose & Bullard, by James R. Parish, for the Defendant-Appellant.*

WYNN, Judge.

Defendant, Lester Malloy, brings two issues on appeal from his conviction on the charge of second-degree murder: (I) Did the trial court erroneously allow, under Rule 403, the prosecutor to cross-examine defendant regarding statements that he made to his probation officer; and (II) did the trial court erroneously fail to dismiss the second-degree murder charge due to insufficient evidence. We answer both issues, no, and therefore uphold the defendant's conviction.

At trial, the State's evidence tended to show that defendant

killed Preston Melvin by shooting him in the back of his head as he walked with his girlfriend, Annie Reddick. Defendant had been involved in a relationship with Ms. Reddick about two years before the incident. The State theorized that jealousy motivated the shooting; defendant contended that the shooting occurred in self-defense. From his conviction and sentence of a minimum of 176 months and a maximum of 221 months imprisonment, defendant appeals.

On appeal, defendant first contends that under Rule 403, the trial court erred by admitting statements that he made to his probation officer one month before the shooting incident--that he had broken up with his girlfriend; that she was dating another man he knew; that he was upset about it; and that he had been drinking heavily because of it. Defendant asserts that these statements were irrelevant because the statements did not refer to either Ms. Reddick or Mr. Melvin; and, the prejudicial effect of the statements outweighed any probative value due to the remoteness in time of the relationship between Ms. Reddick and defendant. We disagree.

"Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. Gen. Stat. § 8C-1, Rule 401 (2001).

In a criminal case every circumstance calculated to throw light on the supposed crime is admissible. It is not necessary that the evidence bear directly on the question; it is competent and relevant if it is one of the circumstances surrounding the parties, and necessary to be known to properly understand their conduct or motives, or if it reasonably

allows the jury to draw an inference as to a disputed fact.

*State v. Pate*, 40 N.C. App. 580, 585, 253 S.E.2d 266, 270 (1979) (referencing *State v. Arnold*, 284 N.C. 41, 199 S.E.2d 423 (1973)).

In this case, defendant's statements were admitted as evidence of motive. Although the defendant denied the statements referred to his relationship with Ms. Reddick, it was a fact that the jury could infer from all of the testimony. We, therefore, hold that defendant's statements were relevant.

Defendant also argues the statements should not have been admitted because any probative value of the statements was substantially outweighed by its prejudicial effect due to the remoteness in time of his relationship with Ms. Reddick.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." N.C. Gen. Stat. § 8C-1, Rule 403 (2001). Whether to exclude evidence under Rule 403 is in the sound discretion of the court. See *State v. Mason*, 315 N.C. 724, 731, 340 S.E.2d 430, 435 (1986). An abuse of discretion occurs only where a trial court's ruling is neither supported by reason nor the result of a reasoned decision. See *State v. Riddick*, 315 N.C. 749, 756, 340 S.E.2d 55, 59 (1986).

In this case, defendant has not shown the trial court abused its discretion when it concluded that the probative value of the

evidence outweighed its prejudicial effect. Reason supports the trial court's admission of this statement to allow the jury to decide whether the statements made about one month before the shooting of Mr. Melvin, referred to Ms. Reddick and Mr. Melvin. Accordingly, we find no abuse of discretion by the trial court in allowing these statements into evidence.

Defendant next argues that the trial court erred by failing to dismiss the charge of murder due to insufficient evidence.

The standard of review on a motion to dismiss based upon insufficiency of the evidence is well settled:

In ruling on a motion to dismiss for insufficiency of the evidence, the trial court must consider the evidence in the light most favorable to the State and give the State every reasonable inference to be drawn therefrom ... If there is substantial evidence, either direct or circumstantial, that the defendant committed the offense charged, then a motion to dismiss is properly denied.

*State v. Gainey*, 355 N.C. 73, 89, 558 S.E.2d 463, 474 (2002) (citations omitted). "If there is more than a scintilla of competent evidence to support the allegations in the warrant or indictment, it is the court's duty to submit the case to the jury." *State v. Horner*, 248 N.C. 342, 344-45, 103 S.E.2d 694, 696 (1958) (Huggins, J., dissenting). "Contradictions and discrepancies [in the evidence] are for the jury to resolve and do not warrant [dismissal]." *State v. Pallas*, 144 N.C. App. 277, 286, 548 S.E.2d 773, 780 (2001).

In this case, defendant argues that Ms. Reddick's testimony was patently incredible in light of contravening medical testimony,

inconsistent testimony by the first deputy on the scene of the incident, and defendant's version of the incident. In essence, defendant argues that the court should have rejected as a matter of law, the State's evidence that the shooting was motivated by jealousy, and instead, accepted his evidence that the shooting occurred in self-defense. However, in reviewing sufficiency rulings, we view the evidence at trial in the light most favorable to the State. Under that standard, the testimony of the eyewitness, Ms. Reddick, as well as the other corroborating evidence presented by the State presented more than a scintilla of evidence to justify the submission of second-degree murder to the jury for consideration. Accordingly, we uphold the trial court's denial of defendant's motion to dismiss the charge of murder.

No error.

Judges GREENE and BIGGS concur.

Report per Rule 30(e).