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NO. COA02-192

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2002

STATE OF NORTH CAROLINA

v.

Robeson County  
No. 00-CRS-7808

SARAH LOCKLEAR CHAVIS,  
Defendant-appellant.

Appeal by defendant from judgment entered 8 May 2001 by Judge Robert F. Floyd, Jr., in Robeson County Superior Court. Heard in the Court of Appeals 29 October 2002.

*Attorney General Roy Cooper, by Special Deputy Attorney General James P. Longest, Jr., for the State.*

*Daniel Shatz, for defendant.*

BRYANT, Judge.

Defendant appeals from her conviction of first-degree murder. The State's evidence tended to show the following: Defendant, Sarah Locklear Chavis, lived with her husband, Johnny Chavis [Johnny], in Shannon, North Carolina. The couple had three children, two by defendant's previous marriage and one by the current marriage. On 4 April 2000, Johnny went to sleep before defendant. At approximately 10:00 pm that evening, defendant ran across the street to Johnny's mother's house, where Johnny's brother, Scott Chavis, lived with their mother, Shirley Chavis. Johnny's first cousin, Billy Dean Lambert, was also there.

Defendant wanted Scott to help her get into the bedroom because the door was locked for some reason. Scott and Billy followed defendant to the window outside Johnny's bedroom. The window was open and the screen had been cut six to eight inches.

Defendant grabbed the screen and finished ripping it open. Scott stuck his arm through the window and ignited a lighter to see inside. He heard defendant choking, so he entered the bedroom through the window. Scott testified that he could see that Johnny's head "was swoll [sic] up and busted" and blood was everywhere. Scott returned to Shirley's house to tell her that someone had killed Johnny.

When Scott returned to defendant's house, defendant's son from her first marriage, Harvey Locklear, kicked in the door to the bedroom. Defendant climbed on top of Johnny and yelled, "Johnny, don't leave me, don't leave me. I love you, Johnny, I love you Johnny." A paramedic responding to the scene applied a cardiac monitor to confirm death. Defendant's head had been shattered with a blunt object and his left wrist had been cut with a sharp object. When officers arrived, defendant and several family members went outside so that the officers could preserve evidence inside the house. Defendant's clothing was collected as evidence.

Defendant spoke with officers at the Robeson County police substation in the early morning of 5 April 2000. She told Special Agent Trent Bullard of the North Carolina State Bureau of Investigation that Johnny took a bath, watched television, and went to sleep just before 10:00 pm the night of the murder. Defendant

stated that Johnny asked her to get into bed with him so he could fall asleep. Defendant stayed for approximately two minutes before getting up to put the children to bed. She told Special Agent Bullard that she watched television with her son for approximately ten minutes, then went outside to smoke a cigarette. When she went inside to check on Johnny, she found the door locked. Johnny did not answer the door. Defendant told Special Agent Bullard that she went across the street to get help because she feared something was wrong. When Special Agent Bullard told defendant that "the perpetrator did not come into the house through the window, and the only person who could have done this . . . would have had to have been inside the house," defendant denied killing Johnny. Special Agent Bullard asked defendant if she would submit to a polygraph examination and defendant agreed.

On 10 April 2000, Special Agent Bullard and Lieutenant Ricky Lynn Britt of the Robeson County Sheriff's Department's homicide division, transported defendant to Fayetteville for the polygraph examination. After the examination, defendant asked for Lieutenant Britt and confessed to the murder. She then showed Lieutenant Britt where she hid the roofing knife she used to cut Johnny's wrist.

Defendant was arrested on 10 April 2000. She was indicted on one count of first-degree murder. Defendant was convicted by jury of first-degree murder and sentenced to life imprisonment without parole. Defendant now appeals.

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Defendant argues that the trial court erred by: I) denying her motion to dismiss for insufficiency of the evidence; II) expressing an opinion regarding the merits of the State's case; III) failing to properly exclude evidence that defendant had been given a polygraph test prior to her confession and subsequent arrest; and IV) imposing a judgment and sentence for first-degree murder based upon a "short-form" indictment. We disagree as to each and find no error.

I.

Defendant first argues that the trial court erred in denying her motion to dismiss for insufficiency of the evidence. Specifically, defendant argues that her confession was insufficient evidence to support a conviction because there was no direct or forensic evidence that defendant committed the murder and the confession was untrustworthy. We disagree.

A motion to dismiss is properly denied if "there is substantial evidence (1) of each essential element of the offense charged and (2) that [the] defendant is the perpetrator of the offense." *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990) (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Gilmore*, 142 N.C. App. 465, 469, 542 S.E.2d 694, 697 (2001) (quoting *State v. Franklin*, 327 N.C. 162, 171, 393 S.E.2d 781, 787 (1990)). In non-capital cases,

when the State relies upon the defendant's confession to obtain a conviction, it is no longer necessary that there be independent proof tending to establish the *corpus delicti*

of the crime charged if the accused's confession is supported by *substantial independent evidence* tending to establish its trustworthiness, including facts that tend to show the defendant had the opportunity to commit the crime.

*State v. Parker*, 315 N.C. 222, 236, 337 S.E.2d 487, 495 (1985) (second emphasis added).

Defendant's arguments are without merit. First, as noted above, independent proof, whether it be direct or circumstantial, is not necessary to establish the *corpus delicti* of a crime in light of the State's reliance on defendant's confession. Furthermore, substantial independent evidence existed to support the trustworthiness of defendant's confession. Defendant gave a lengthy and rather detailed confession to the crime. Notably, defendant admitted that she hit Johnny repeatedly with a dumbbell in his bedroom. She further stated that she tried to cut Johnny's wrists and sliced his palm with a knife. Finally, she noted that to leave the room, she raised a window and cut the screen.

The trial testimony presented by officers investigating the crime scene not only corroborated defendant's confession, but represented substantial independent evidence to support her conviction. Prior to giving her confession, defendant informed Special Agent Bullard that she was ready to tell the truth concerning what happened between her and Johnny. A bloodied dumbbell was found in a bathroom adjacent to the bedroom where the victim was killed. Blood was spattered throughout the bedroom, including on the wall above the victim's head, the ceiling, Johnny's clothing, and the bed linens. There was a bloody hand

print on a window shade, and the screen to a window near the victim was ripped or torn approximately six to eight inches. Blood was also found on the clothing worn by defendant at the crime scene. Furthermore, the autopsy of the victim revealed that he died of multiple blunt force injuries of the head and sustained an associated incised wound of the left wrist.

Also, many of Johnny's friends and family members testified that defendant argued with Johnny about other women, and threatened to kill Johnny a few days before the murder. Johnny's mother testified that after the murder, defendant called her on the telephone and stated, "Well, I killed Johnny and I'm coming over there and kill you." Upon being asked at the time of her confession whether she wished she had not killed Johnny, defendant responded that "she was relieved and it was like a burden had been lifted." Given the totality of this and similar evidence presented at trial, we conclude that there was evidence sufficient to establish that her confession was trustworthy, that she committed the charged crime and that her actions were willful, premeditated and deliberate in so doing. See N.C.G.S. § 14-17 (2001) (stating the elements of first-degree murder); *State v. Coplen*, 138 N.C. App. 48, 59, 530 S.E.2d 313, 321, cert. denied, 352 N.C. 677, 545 S.E.2d 438 (2000) (defining in detail the elements of first-degree murder). As there was sufficient evidence to support defendant's conviction, this assignment of error is overruled.

## II.

Defendant next argues that the trial court erred in expressing

an opinion regarding the merits of the State's case. The trial court "may not express during any stage of the trial, any opinion in the presence of the jury on any question of fact to be decided by the jury." N.C.G.S. § 15A-1222 (2001); see also N.C.G.S. § 15A-1232 (2001). Whether a comment is an improper expression of opinion on a question of fact to be decided by the jury is "determined by its probable meaning to the jury, not by the judge's motive." *State v. McEachern*, 283 N.C. 57, 59-60, 194 S.E.2d 787,789 (1973). In order to receive a new trial the burden is on the defendant, taking into consideration all the surrounding facts and circumstances, to show prejudice resulting from the trial court's expression of opinion. See *State v. Summerlin*, 98 N.C. App. 167, 174, 390 S.E.2d 358, 361 (1990).

In this case, in order to convict defendant of first-degree murder, the jury was required to find as a fact defendant killed her husband with premeditation and deliberation. N.C.G.S. § 14-17. In ruling on defendant's objection, the trial court commented that the State's version of events was a "reasonable inference" from the evidence presented. The probable meaning given to this comment by the jury was that because the knife was in the bathroom, and this was unusual, the logical conclusion to be drawn from the evidence was defendant had placed the knife in the bathroom earlier so she could use it to kill her husband, and thus acted with premeditation and deliberation. The court's statement that this was a "reasonable inference" from the evidence was more than a comment on a matter of procedure, see *State v. Cox*, 6 N.C. App. 18, 23, 169

S.E.2d 134, 138 (1969), or an ordinary ruling overruling an objection, see *State v. Weeks*, 322 N.C. 152, 158, 367 S.E.2d 895, 899 (1988), or denying a motion, see *State v. Welch*, 65 N.C. App. 390, 393-94, 308 S.E.2d 910, 912-13 (1983). It was an expression of opinion on a question of fact to be decided by the jury. See *State v. Todd*, 264 N.C. 524, 529, 142 S.E.2d 154, 158 (1965) (unless judicially admitted by the defendant, whether a killing was intentional is a jury question).

Although, the trial court's comment was an improper opinion expressed in the presence of the jury on the element of premeditation and deliberation, defendant has not shown any resulting prejudice. The trial court's comment did not, as defendant argues, undercut her defense that her confession was an effort to protect her son from suspicion for the murder, as the comment did not reflect on the reliability of the confession obtained by the police. Moreover, considering all the surrounding facts and circumstances, including other evidence presented by the State, defendant has not shown the jury probably would have reached a conclusion other than the murder was committed with premeditation and deliberation. See *State v. Lofton*, 66 N.C. App. 79, 84-85, 319 S.E.2d 633, 636 (1984) (prejudice determined by probable effect on the jury). The State presented evidence that defendant saw her husband sleeping, walked over to him, picked up a twelve-pound weight and beat him in the head numerous times. Further evidence showed following the beating, defendant was not sure her husband was dead so she walked into the bathroom for the knife and then



returned to cut open his wrist. This evidence, even without evidence the knife had been planted in the bathroom for the purpose of murder, was evidence from which a reasonable juror could conclude that defendant acted with premeditation and deliberation. See *State v. Johnston*, 331 N.C. 680, 685, 417 S.E.2d 228, 231 (1992) (listing circumstances which give rise to proof of premeditation and deliberation). Accordingly, defendant was not prejudiced by the trial court's improper expression of opinion. This assignment of error is overruled.

### III.

By her next assignment of error, defendant contends that the trial court erred in failing to properly strike from the jury's consideration two portions of trial testimony referencing her polygraph test. Specifically, defendant contends that the court's absolute failure to give any curative instruction concerning one polygraph reference and the court's inadequate curative instruction as to another, was highly prejudicial. According to defendant, given the sequence of events surrounding the polygraph, i.e., she was given a polygraph, confessed, and then charged with the crime, the jury would naturally infer that she had failed the polygraph.

Defendant's arguments are without merit, as she has failed to properly preserve them for appeal. Following one reference to the polygraph, defendant objected but did not move to strike or ask for a curative instruction as to the allegedly inadmissible reference. Nor did defendant object to the allegedly nonspecific context of

the curative instruction given to a second polygraph reference by another witness. Furthermore, a summary of one of defendant's interviews, in which defendant stated that she would be willing to submit to a polygraph examination and that she did not have a problem with doing so, was read into the record. Although there was a nonspecific, general objection to the admission of the summary, the entire summary, including those portions referencing the polygraph, was admitted into evidence and published to the jury without any specific or detailed objections.

Criminal defendants must render specific and detailed objections to a trial court's evidentiary rulings to preserve appellate review. See N.C.R. App. P. 10(b)(1). Furthermore, "[t]he admission of evidence without objection . . . waives *prior or subsequent* objection to the admission of evidence of a similar character." *State v. Jones*, 137 N.C. App. 221, 232, 527 S.E.2d 700, 707 (citation omitted), *review denied*, 352 N.C. 153, 544 S.E.2d 235 (2000). Although our Rules of Appellate Procedure permit plain error review in instances where a criminal defendant assigns error to a trial court's evidentiary ruling not properly objected to at trial, the Rules require that the defendant "specifically and distinctly" assert that the ruling amounted to plain error. See N.C.R. App. P. 10(c)(4). Because defendant has failed to argue on appeal that she is entitled to a plain error review, this assignment is summarily overruled.

#### IV.

Finally, defendant argues that the trial court erred in

imposing a judgment of first-degree murder based upon a "short-form" indictment. In addressing this very issue, our Supreme Court has recently re-affirmed the constitutionality of the "short-form" indictment, holding that the "short-form" indictment alleges all necessary elements of first-degree murder and is sufficient to indict on any theory of murder. See *State v. Holman*, 353 N.C. 174, 180, 540 S.E.2d 18, 23 (2000) (holding that the short-form indictment does not impinge upon defendant's Sixth Amendment right to notice or his rights under Article I, Section 19 of the North Carolina Constitution), *cert. denied*, \_\_\_ U.S. \_\_\_, 151 L. Ed. 2d 181 (2001); *State v. Braxton*, 352 N.C. 158, 175, 531 S.E.2d 428, 438 (2000) (holding that "premeditation and deliberation need not be separately alleged in the short-form indictment"), *cert. denied*, 531 U.S. 1130, 148 L. Ed. 2d 797 (2001).

Defendant, in fact, acknowledges that the exact assignment of error she presents has already been overruled by the North Carolina Supreme Court, but urges this Court to follow the allegedly contrary decisions of the United States Supreme Court and reverse her conviction. However, because our Supreme Court has addressed this issue in a written decision, we are prohibited from overruling or ignoring that precedent. See *State v. Parker*, 140 N.C. App. 169, 172, 539 S.E.2d 656, 659 (2000), *review denied*, 353 N.C. 394, 547 S.E.2d 37 (2001). Accordingly, we overrule defendant's assignment of error.

NO ERROR.

Judges GREENE and MARTIN concur.

Report per Rule 30(e) .