NO. COA02-442

NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2002

STATE OF NORTH CAROLINA

v. Harnett County
No. 98 CRS 14102

WOODIE LOCKLEAR

Appeal by defendant from judgment entered 8 November 2001 by Judge Wiley F. Bowen in Harnett County Superior Court. Heard in the Court of Appeals 28 October 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General John F. Maddrey, for the State.

J. Clark Fischer for defendant appellant.

EAGLES, Chief Judge.

Woodie Locklear ("defendant") appeals from the trial court's judgment entered on a jury verdict finding him guilty of first degree murder by premeditation and deliberation and first degree murder by lying in wait. On appeal, defendant asserts two assignments of error: that the trial court improperly denied defendant's motion to dismiss, and that a hearsay statement was improperly admitted into evidence. After careful review of the record and briefs, we find no error.

The State's evidence tended to show the following: Peggy Locklear ("Mrs. Locklear") was defendant's estranged wife. At the time of her death Mrs. Locklear lived with her daughter, Tamsha, in the Cooper's Ranch area of Spring Lake. At 3:30 p.m. on 22 October 1998, Kona Fortrell Scott arrived at Mrs. Locklear's residence to drive her to work. As they were leaving, Mrs. Locklear pointed to defendant, who was standing outside a nearby convenience store, and told Scott that defendant was her husband. Scott drove Mrs. Locklear home from work at approximately 2:00 a.m. on 23 October 1998. After getting out of the car, Mrs. Locklear stood outside briefly, talking with Scott. She then "made a sound as if someone scared her" and began to run toward her residence. Scott saw defendant "r[u]n up on" Mrs. Locklear and stab her to death. When he had finished, defendant ran away. An autopsy revealed multiple stab wounds to Mrs. Locklear's upper torso, including three abdominal wounds and a cluster of five wounds in the left chest which were "rapidly fatal."

Troy Chavez, Jr. drove defendant from Robeson County to the convenience store in Spring Lake at noon on 22 October 1998. Chavez loaned defendant $5 "so he'd have money to pay somebody to bring him back to Robeson." Tamsha saw defendant at the store at 3:00 p.m. At defendant's request, Tamsha went to her house, made a sandwich, and brought it back to him. While speaking with defendant, Tamsha "noticed a kitchen knife up under the kerosene drum" next to the store. Tamsha put the knife in her back pocket, but defendant took it away from her, telling Tamsha that she

"shouldn't be picking up stuff like that, knowing somebody could be robbed or kill somebody with it." Tamsha returned home and told her mother about defendant and the knife. Mrs. Locklear phoned the district attorney's office, which told Mrs. Locklear to call the sheriff. Tamsha convinced her mother to go to work with Scott and promised to call the sheriff for her. After Mrs. Locklear left for work with Scott, Tamsha saw defendant standing around the corner from the residence and went to speak with him. Defendant asked Tamsha if Mrs. Locklear had gone to work. When Tamsha asked defendant "why [he was] really up here[,]" he replied that he had a gun and was going to kill Mrs. Locklear.

Defendant testified that he was standing three trailers away from Mrs. Locklear's residence when she arrived home from work with Scott. Defendant walked over and engaged his wife in conversation, hoping to reconcile with her. According to defendant, Scott drove away while defendant was talking with Mrs. Locklear. Mrs. Locklear then threw a beer at defendant and began cursing at him. Defendant lost his temper, took a knife from his pocket and "hit her a couple times" with it. He then walked back to the trailer where he had been standing. When Scott returned to the scene an hour later, defendant walked down the road.

Defendant made a motion to dismiss for insufficient evidence at the conclusion of the State's case and at the conclusion of all the evidence. The trial court denied the motion. During the charge conference, the trial court proposed to instruct the jury on two theories of first degree murder: (1) premeditation and

deliberation, and (2) lying in wait. Defendant offered no objection to these instructions but requested a charge on the lesser offense of second-degree murder. The jury was thus presented with the following possible verdicts: "Guilty of first degree murder by premeditation [and] deliberation, or by lying in wait, or by both; or second degree murder; or not guilty."

The jury found defendant guilty of first degree murder both by premeditation and deliberation and by lying in wait. The trial transcript and the verdict form in the record on appeal reflects both findings. Defendant was sentenced to life imprisonment without parole.

Defendant contends that the trial court erred in denying his motion to dismiss. On a motion to dismiss, the trial court must find whether there is "substantial evidence of each essential element of the offense charged." *State v. Surrett*, 109 N.C. App. 344, 347, 427 S.E.2d 124, 126 (1993). The evidence should be considered in the light most favorable to the State. *Id.* at 347-48, 427 S.E.2d at 126. When considered in the light most favorable to the state, the evidence here was sufficient to support the trial court's decision not to dismiss the first degree murder charge against defendant.

Defendant argues that the trial court erred in charging the jury on the theory of lying in wait as a basis for first degree murder, because the State adduced no evidence to support this theory. However, defendant failed to object to the instruction and has not preserved this issue for appeal. *See* N.C.R. App. P.

10(b)(2). Moreover, the jury unanimously found defendant guilty of first degree murder based on premeditation and deliberation. Inasmuch as defendant does not challenge the sufficiency of the evidence supporting the jury's finding of guilt on this theory, he was not prejudiced by the instruction on lying in wait. *See State v. Richardson*, 346 N.C. 520, 538, 488 S.E.2d 148, 158 (1997) (citing *State v. McLemore*, 343 N.C. 240, 249, 470 S.E.2d 2, 7 (1996)), *cert. denied*, 522 U.S. 1056, 239 L. Ed. 2d 652 (1998). We note there was ample evidence to support a finding that defendant waited in the dark for Mrs. Locklear to return home and then surprised and killed her before she could run inside. *State v. Leroux*, 326 N.C. 368, 375, 390 S.E.2d 314, 320 (quoting *State v. Allison*, 298 N.C. 135, 147, 257 S.E.2d 417, 425 (1979)), *cert. denied*, 498 U.S. 871, 112 L. Ed. 2d 155 (1990).

Defendant also contends the court erred in allowing into evidence a portion of an out-of-court statement given by Scott to State Bureau of Investigations Special Agent Michael East during the homicide investigation. While acknowledging that the statement was admitted only to corroborate Scott's trial testimony, defendant contests the following sentence made by Scott, as related by East: "'I think he,' referring to [defendant], 'knew what he was going to do.' End quote." Defendant avers that Scott's hearsay opinion of his intentions did not tend to corroborate her in-court testimony and was highly prejudicial.

Defendant offered only a general objection before East read Scott's statement to the jury. He did not object to any specific

portion of the statement as noncorroborative; nor did he renew his general objection when the challenged sentence was read into evidence. "In a noncapital case, where portions of a statement corroborate and other portions are incompetent because they do not corroborate, the defendant must specifically object to the incompetent portions." *State v. Harrison*, 328 N.C. 678, 682, 403 S.E.2d 301, 304 (1991). Defendant's preliminary broad objection to Scott's statement waived this assignment of error to a specific portion of the statement. *See State v. Benson*, 331 N.C. 537, 549, 417 S.E.2d 756, 764 (1992) (citing *Harrison*, 328 N.C. at 682, 403 S.E.2d at 304). Moreover, in light of the compelling evidence of defendant's guilt, defendant suffered no prejudice from the brief bit of conjecture contained in Scott's written statement. *See* N.C. Gen. Stat. § 15A-1443(a) (2001).

Defendant's remaining assignments of error are not addressed in his brief to this Court. Therefore, we deem them abandoned. *See* N.C.R. App. P. 28(b)(6).

No error.

Judges McCULLOUGH and HUDSON concur.

Report per Rule 30(e).