NO. COA08-354

NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2009

STATE OF NORTH CAROLINA

v. Gaston County
No. 04 CRS 69848

THOMAS WAYNE WEAVER

Appeal by defendant from judgment entered 21 September 2007 by Judge Linwood O. Foust in Gaston County Superior Court. Heard in the Court of Appeals 22 October 2008.

Attorney General Roy A. Cooper, III, by Assistant Attorney General John G. Barnwell, for the State.

D. Tucker Charns, for defendant-appellant.

JACKSON, Judge.

Thomas Wayne Weaver ("defendant") appeals his 21 September 2007 conviction for first-degree murder. For the reasons stated below, we affirm in part and hold no error in part.

At approximately 1:30 p.m. on 3 December 2004, defendant went to see Mischa Rhodes ("Rhodes") to inform her that he would be unable to pay for the crack cocaine he had purchased from her earlier in the day. A struggle ensued. Ultimately, defendant stabbed Rhodes with a knife. When that knife bent, he used another knife that broke. He continued to slice her with that knife until he grabbed a third knife with which to stab her. That knife also

broke and he used it to cut her until he grabbed a screwdriver with which to stab her. Rhodes bled to death from at least thirty wounds.

After Rhodes stopped struggling, defendant got up and washed his hands in her sink. He searched for more crack cocaine, then got a yellow plastic bag from under the sink, picked up all the knives and the screwdriver, and put them in the bag. Defendant then went across the street to his mother's house, took a shower, and changed his clothes. He put his bloody clothes in the yellow bag. He then got a white bag from underneath his mother's sink and put the yellow bag into it. He also put a rag he had used to try to wipe the blood off his boots into the white bag. He then returned to his own home, where he threw the white bag containing the yellow bag in the home's crawl space.

Rhodes' body was found by her daughter when she returned home from school. When she ran outside, she saw defendant, who had returned to his mother's house, and told him it looked like her mother was dead. He accompanied her inside and told her to call 911. They went back outside and defendant talked to the 911 operator. There was nothing paramedics could do for Rhodes.

During the course of the police investigation that evening, defendant gave several statements. The first was at the scene, describing what he knew about the incident. Defendant reviewed the statement and signed it. He also made several corrections. Police told defendant that he was not under arrest and was free to leave, but asked him to go to the police department with them to talk

further. Defendant went to the police department and made a second statement there, which he reviewed and signed. Neither defendant's first nor second statement was challenged. Neither was incriminating.

After defendant's second statement, he and two detectives went into an interview room. Defendant was informed that he was not under arrest and was free to leave. Defendant later stated that he did not believe he was under arrest until he was taken to the magistrate. While in the interview room, he asked to call his mother, asked for a smoke break, asked for a soda, and asked to use the restroom; each request was granted. He voluntarily gave permission to search his house, to take his photograph, and to take DNA and gun shot residue swabs.

After detectives repeatedly encouraged defendant to "tell the truth," defendant asked if he needed an attorney. He was told that whether he needed an attorney was his decision to make. After defendant inquired about his need for an attorney, detectives began to read him his *Miranda* rights so that he could make an informed decision. They not only read the rights to defendant, but also explained them.

When detectives reached the question about whether defendant was willing to discuss the offense under investigation without an attorney present, having been informed of his rights, there was a long pause. Then defendant said he would tell them everything. Defendant began to talk about the knives and other details of the crime; however, detectives reminded him that they needed to finish

the rights form. Defendant continued to agree and signed the rights form. After giving his third statement, defendant reviewed, corrected, and signed it. Defendant took another smoke break, then detectives took an audio-taped statement explaining what had happened. Defendant's third and fourth statements were incriminating.

On 27 August 2007, defendant filed a motion to suppress his third statement, as violative of his constitutional rights. The motion was heard on 10 through 12 September 2007. The court considered the evidence and arguments of counsel overnight, and determined that defendant's constitutional rights were not violated. Defendant's motion to suppress was denied in open court on 13 September 2007.

Defendant's case proceeded to trial on one count of first-degree murder and one count of robbery with a dangerous weapon. The jury found defendant not guilty of robbery with a dangerous weapon, but guilty of first-degree murder, based upon malice, premeditation, and deliberation. The trial court sentenced defendant to life imprisonment without the possibility of parole. Defendant appeals.

Defendant first argues that the trial court erred in failing to suppress allegedly involuntary incriminating statements. Defendant supports his argument on two bases: (1) his mental impairment due to low intelligence and high cocaine use and (2) the denial of his right to counsel. We are not persuaded.

"Our review of a trial court's denial of a motion to suppress is strictly limited to a determination of whether it's [sic] findings are supported by competent evidence, and in turn, whether the findings support the trial court's ultimate conclusion." *State v. Allison*, 148 N.C. App. 702, 704, 559 S.E.2d 828, 829 (2002) (citing *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982)). The trial court's findings of fact are binding on appeal if supported by any competent evidence. *State v. Barden*, 356 N.C. 316, 332, 572 S.E.2d 108, 120 (2002) (citation omitted), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074 (2003). The trial court's conclusions of law are reviewable *de novo*. *State v. Haislip*, 362 N.C. 499, 500, 666 S.E.2d 757, 758 (2008) (citation omitted). When the trial court's findings of fact "are not challenged on appeal, they are deemed to be supported by competent evidence and are binding on appeal." *State v. Roberson*, 163 N.C. App. 129, 132, 592 S.E.2d 733, 735-36 (citing *State v. Baker*, 312 N.C. 34, 37, 320 S.E.2d 670, 673 (1984)), *disc. rev. denied*, 358 N.C. 240, 594 S.E.2d 199 (2004).

Here, defendant states that he does not challenge the trial court's findings of fact, only the conclusions of law based thereon. He then presents the facts not as found by the trial court, but in a light favorable to his argument. Because defendant has not challenged the trial court's findings of fact, pursuant to *Roberson*, they are deemed supported by competent evidence and binding upon this Court.

Addressing the bases for defendant's contention that his third and fourth statements were inadmissible, we note that contrary to the facts as presented by defendant in his brief, the trial court found as fact that defendant was not impaired to such an extent that his statements were not voluntary. Further, the trial court found as fact that the police officers did not deny defendant a lawyer, because he did not ask for a lawyer. These, and the other unchallenged – and binding – findings of fact, support the trial court's conclusion of law that the confessions "were freely and voluntarily given and that [defendant's] waiver of right to counsel was signed knowingly and willingly and voluntarily." Therefore, this assignment of error is overruled.

Defendant next argues that the trial court erred in failing to dismiss the charge of first-degree murder, contending the State failed to prove premeditation and deliberation. Defendant's arguments do not persuade us.

Upon a defendant's motion to dismiss criminal charges, this Court reviews the ruling "to determine whether there is substantial evidence (a) of each essential element of the offense charged, or of a lesser offense included therein, and (b) of defendant's being the perpetrator of the offense. If so, the motion to dismiss is properly denied." *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651-52 (1982) (citing *State v. Roseman*, 279 N.C. 573, 580, 184 S.E.2d 289, 294 (1971)).

> In reviewing challenges to the sufficiency of evidence, we must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable

> inferences. Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve. The test for sufficiency of the evidence is the same whether the evidence is direct or circumstantial or both. Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence. If the evidence presented is circumstantial, the court must consider whether a reasonable inference of defendant's guilt may be drawn from the circumstances. Once the court decides that a reasonable inference of defendant's guilt may be drawn from the circumstances, then it is for the jury to decide whether the facts, *taken singly or in combination*, satisfy [it] beyond a reasonable doubt that the defendant is actually guilty.

State v. Fritsch, 351 N.C. 373, 378-79, 526 S.E.2d 451, 455, *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000) (internal citations and quotation marks omitted) (emphasis in original) (alteration in original). "The trial court need only satisfy itself that the evidence is sufficient to take the case to the jury; it need not be concerned with the weight of that evidence." *State v. Franklin*, 327 N.C. 162, 171, 393 S.E.2d 781, 787 (1990) (citing *Earnhardt*, 307 N.C. at 67, 296 S.E.2d at 653).

Defendant contends that the evidence showed that he acted in at least imperfect self-defense, thus negating the specific intent of premeditation and deliberation element of first-degree murder. As defendant had presented evidence of self-defense, the trial court instructed the jury not only on first-degree murder, but also second degree murder and voluntary manslaughter, as well as perfect and imperfect self-defense.

Because premeditation and deliberation are mental processes that are not readily susceptible to proof by direct evidence, they usually are proven by circumstantial evidence. *State v. Thomas*, 332 N.C. 544, 556, 423 S.E.2d 75, 82 (1992), *disapproved of on other grounds by State v. Richmond*, 347 N.C. 412, 430, 495 S.E.2d 677, 687 (citation omitted), *cert. denied*, 525 U.S. 843, 142 L. Ed. 2d 88 (1998). Circumstances that are illustrative of the existence of premeditation and deliberation include:

> (1) absence of provocation on the part of the deceased, (2) the statements and conduct of the defendant before and after the killing, (3) threats and declarations of the defendant before and during the occurrence giving rise to the death of the deceased, (4) ill will or previous difficulties between the parties, (5) the dealing of lethal blows after the deceased has been felled and rendered helpless, (6) evidence that the killing was done in a brutal manner, and (7) the nature and number of the victim's wounds.

State v. Olson, 330 N.C. 557, 565, 411 S.E.2d 592, 596 (1992) (citing *State v. Gladden*, 315 N.C. 398, 430-31, 340 S.E.2d 673, 693 (1986)). Here, the jury could infer from several of these factors that defendant had engaged premeditation and deliberation. Defendant retrieved and hid the weapons, showered and changed clothes, and eventually confessed to police. He continued to stab Rhodes after he had her subdued. He changed weapons several times, inflicting at least thirty wounds. *See State v. Vause*, 328 N.C. 231, 239, 400 S.E.2d 57, 62 (1991) (holding that evidence tending to show that the defendant stabbed the victim at least thirty-nine times with sufficient force to bend the first knife before grabbing a second tended to show premeditation and deliberation). As there

was some evidence presented from which a jury could infer that defendant had premeditated and deliberated, the trial court did not err in denying defendant's motion to dismiss the charge of first-degree murder.

Because the trial court properly denied defendant's motion to suppress, we affirm the trial court's ruling as to that issue. We likewise hold no error as to the motion to dismiss charges.

Affirm in part; No Error in part.

Judges STEELMAN and STROUD concur.

Report per Rule 30(e).