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NO. COA08-93

NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2008

STATE OF NORTH CAROLINA

v.

Nash County
No. 05 CRS 55248

ANTHONY WRIGHT

Court of Appeals

Appeal by Defendant from judgment entered 30 May 2007 by Judge William C. Griffin, Jr. in Nash County Superior Court. Heard in the Court of Appeals 21 October 2008.

Attorney General Roy Cooper, by Assistant Attorney General Derrick C. North, for the State

Slip Opinion

Glover & Petersen, P.A., by Ann B. Petersen and James R. Glover, for Defendant.

ARROWOOD, Judge.

Anthony Wright (Defendant) appeals from judgment entered 30 May 2007 convicting him of the first degree murder of Belinda Davis (Davis). We find no error.

This case was tried at the 29 May 2007 Criminal Session of Nash County Superior Court, and the State presented evidence at trial which tended to show the following: On 31 July 2005, Belinda Davis went to the Bingo Place on 301 North in Nash County, North Carolina. Davis played bingo at the parlor regularly and sometimes worked there. That night, as Davis was leaving, she pulled her car

up to Lewis Searles (Searles) because she noticed her tire was flat. She asked Searles if he could pump air into or change her tire. Searles began inspecting Davis' tire; he noticed the valve stem was loose, so he tightened it. He then retrieved an air tank from his truck and pumped air into the tire. Davis then pulled out of the parking lot. Searles testified that immediately a "dark car got right on her bumper that had been sitting in the parking lot[,] and he got right on her as she turned left to go down 301 going South."

On the same night, Greg Lewis (Lewis) was staying with his uncle at the Cross Creek Trailer Park. Lewis was sitting at a computer when he heard a "loud booming noise[,] " and he went to the window, discovering that someone had "wreck[ed]." Lewis then walked to the door and saw someone striking the person sitting inside the car. Lewis told his uncle that they were "fighting[,] " and he testified that he heard the victim repeating "Anthony, no. Anthony, stop. Anthony, no - - stop." Although Lewis could not see what the assailant held in his hand, he testified and demonstrated for the jury that the assailant's hand was "motioning up and down." When the assailant noticed people coming out of their homes, he got into his car - a Geo Storm - and drove away. After the assailant left the scene, Lewis walked down to Davis' car and observed that the driver's side window was "broke[n] out" and that there was paint and damage on the driver's side door. He testified that the Geo Storm had struck Davis' car diagonally on her driver's side door. Davis was "slouched over" and "bleeding

real [sic] bad."

Daniel Cole (Cole) and Daniel Walker (Walker), paramedics with Stoney Creek Rescue, responded to the scene of the accident. Cole testified that Davis' car had been impacted on the driver's side door, that she was pinned in the car, and that the door would not open. Cole and Walker quickly extracted Davis from the car and took her to the ambulance. Cole and Walker cut off Davis' clothes, whereupon they observed she had "16 to 18 puncture wounds . . . [including] quite a few around the left breast, [and] a couple in the abdomen." Cole and Walker "noticed that [her] leg . . . looked like somebody had hit something and sheared all the way down[;] [t]he bone was exposed[, and s]he was [losing] a lot of blood." The paramedics noticed then that she was starting "to go in and out of consciousness." Cole and Walker attempted to control the bleeding, but Davis was bleeding internally and her blood pressure was dropping. Cole asked Davis what happened, and Davis told him that her ex-boyfriend "Anthony . . . stabbed her." Davis died at the hospital.

Defendant was arrested the next day by the Rocky Mount police. After being informed of his *Miranda* rights, Defendant initially told officers he "didn't kill anybody." However, Defendant eventually admitted that he "went into a jabbing motion, a bad jabbing motion[,]" with a "knife in my hand[.]" Furthermore, police found a small tool in Defendant's pants pocket - a tire valve stem remover. Defendant told officers about his relationship with Davis, including the statements that he "had to eliminate the

pain in [his] life[,]” and that “their past brought out the hulk in him which he could not control[.]” Defendant said, “I am not saying I did it. I am not saying I didn’t do it either.” Defendant then told officers the sequence of events leading to Davis’ death, beginning with Davis’ car leaving the bingo parlor and Defendant following her home in his car. Defendant told officers that when Davis turned into the trailer park where she lived, he pulled up beside her to pass her car. Defendant stated that Davis then turned her car in front of his, causing a collision. Defendant claimed that he “lost focus[,]” “lost control of myself[,] and . . . jumped out of the car.” Defendant then “looked at her[,] and I was just punching at her window . . . [when] her window shattered[.]” Continuing, Defendant admitted that “I already had the knife in my hand, [and] I just started jabbing and [sic] she was like baby, baby, let me out of the car. I could just hear myself saying it’s too late for that. I got back in the car and left.” Defendant told officers that he was not “sure if he even struck [Davis] with a knife” but indicated that he had a knife in his hand. Defendant identified the weapon as a “Japanese sword[,]” and it was the dagger from a set. Defendant claimed that he kept the knife in his car as a “tool.”

At trial, Defendant testified that Davis had been his girlfriend for three years. He testified that when his car collided with Davis’ car, he “immediately jumped out of the car” and approached Davis’ car. Davis testified he “had no thoughts[,]” and he was “just gone.” After breaking Davis’ car window,

Defendant testified that he "leaned inside the car, but I never looked at her. But I went into a jabbing motion, a bad jabbing motion; I want to say four to five times as far as I can see." Defendant claimed that he did not know he had a knife in his hand until after he had stabbed Davis. Defendant also claimed he kept the knife in his car to use as a cleaning implement. When Defendant was asked whether he remembered stabbing Davis, he responded: "I remember from movement, knowing I did it? No. Can I feel that I stabbed her? No. Can I see that I stabbed her? No. Do I believe I stabbed her? No." Defendant only admitted that he knew he had "done something." Defendant finally testified that he had not planned on harming Davis, and he did not know what he was doing when he stabbed her. Greg Lewis (Greg) and his uncle, Herbert Lewis (Herbert), witnessed the wreck, saw Defendant "hitting inside the car[,] " heard Davis say "Anthony, no. Anthony, stop. Anthony, no - stop[,] " and watched Defendant drive away.

Defendant was convicted of first-degree murder and sentenced to life imprisonment without parole. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by allowing a crime scene investigator to offer speculative opinions about accident reconstruction which he was not qualified to offer. Chris Ballard (Ballard), a crime scene investigator for the Rocky Mount Police Department, testified that he removed the taillights of Defendant's car, the Geo Storm, to determine whether the car was braking when it collided with Davis' car. Ballard testified that: "When the filament of a light bulb gets hot it

gets soft. The impact and kinetic energy from when the vehicles impacted causes the filament to elongate and point in [the] direction of the kinetic energy." Defendant objected to Ballard's testimony. The motion was denied. Ballard then testified that the filaments in Defendant's car were in "perfect condition."

Defendant contends that the State elicited the evidence from Ballard to attempt to show that Defendant was stalking Davis and rammed into her car deliberately. Defendant asserts that Ballard's testimony was inadmissible because Ballard was not qualified as an expert. Defendant further asserts that the evidence was prejudicial because the evidence offered support to the State's argument that Defendant formed the specific intent to kill after premeditation and deliberation. We are not persuaded.

Even assuming *arguendo* that the trial court erred by allowing Ballard to testify regarding Defendant's taillights, we conclude Defendant waived any objection by testifying to the same or similar evidence. Defendant was asked whether he "hit" his brakes before colliding with Davis' car. Defendant testified: "No, I didn't at that time, because the [car was] moving . . . real [sic] quick." Thus, any purported error was waived. *State v. Alford*, 339 N.C. 562, 570, 453 S.E.2d 512, 516 (1995) (stating that "[w]here evidence is admitted over objection and the same evidence has been previously admitted or is later admitted without objection, the benefit of the objection is lost"); *State v. Moses*, 316 N.C. 356, 362, 341 S.E.2d 551, 555 (1986) (benefit of Defendant's objection to introduction of letter lost when Defendant later read from

letter).

Defendant has further failed to show that he was prejudiced by the admission of Ballard's testimony. See *State v. Hardy*, 104 N.C. App. 226, 409 S.E.2d 96 (1991) (stating that "[a]n error is not prejudicial unless a different result would have been reached at the trial if the error in question had not been committed"); N.C. Gen. Stat. § 15A-1443 (2007). Evidence besides Ballard's testimony corroborated the State's theory of premeditation of murder, which was supported by the inference that Defendant did not brake when his car collided with Davis' car, including: (1) photographs of the scene; (2) Defendant's own testimony that he did not brake; (3) and Defendant's admission of his subsequent attack on Davis. Defendant's testimony included, in pertinent part, the following:

Q: Now when [Davis] left what, if anything, did you do?

A: The only thing I done [sic] was to pursue behind her.

Q: Did there come a time when something unusual happened?

A: At that point, no. Until I was getting up behind her she was so far off [sic] me that I speeded up some more and I got around on the side of her so that I could pursue her to her driver's side so that she could look at me, then she would pull over. But as I got up to her that is when I seen her blinker flashing and then she made a left turn.

Q: Did she know you were there?

A: I don't believe she did.

Q: Did you hit your brakes?

A: No, I didn't at that time, because the

moving was real quick. . . .

When Defendant was asked about the series of events following the accident, Defendant responded:

A: I was just gone. I jumped out the [sic] car and I ran to her window and I hit her window twice and it shattered.

Q: You hit it with [your] hand?

A: With my fist.

Q: Did you have any gloves or anything on?

A: I had gloves on.

Q: But you were so pumped up you hit the window twice?

A: Twice.

Q: Twice with your hand?

A: Yes.

Q: And it broke?

A: Yes.

Q: What, if anything, did you do then?

A: I leaned inside the car, but I never looked at her. But I went into a jabbing motion, a bad jabbing motion; I want to say four to five times as far as I can see. She said my name, Anthony, Anthony, baby, baby, let me get out of the car. . . .

Q: You did stab Belinda Davis, is that correct?

A: Yes, I did.

Q: Do you remember doing it?

A: I remember from movement, knowing I did it? No. Can I feel that I stabbed her? No. Can I see that I stabbed her? No. Do I believe I stabbed her? No.

Q: But you know you did it?

A: But I know I have done something.

In addition to Defendant's own testimony that he remembered stabbing Davis "from movement" and Defendant's failure to brake, which was supported by his own admission and by Ballard's testimony.

The State offered additional evidence which corroborated the State's theory of premeditation. This evidence included the following: A month before Davis' death, Defendant stated, "if he couldn't have [Davis] that no one could." *State v. Robinson*, 355 N.C. 320, 337, 561 S.E.2d 245, 256 (2002) (stating that "[d]eclarations of the defendant before and during the occurrence giving rise to the death of the deceased" are also "circumstances from which premeditation and deliberation may be inferred") (internal quotations omitted). Defendant also removed a dagger from a set at home, along with his work gloves, to travel to Bingo Place where Davis often played. See *State v. Leary*, 344 N.C. 109, 121, 472 S.E.2d 753, 760 (1996) (stating that "[a] defendant's conduct before . . . the killing is a circumstance to be considered in determining whether he acted with premeditation and deliberation"). Defendant took a valve stem remover with him, and the valve stem on Davis' vehicle had been tampered with during the course of her bingo game. When Davis left Bingo Place, Defendant followed Davis from the parking lot, and as Defendant stated, he "pursued" her. Even after Defendant "went into a jabbing motion, a bad jabbing motion[,]" and Davis begged Defendant to let her out

of the car, Defendant told police that he replied to Davis, "[I]t's too late for that."

Assuming *arguendo* that the admission of Ballard's testimony was error, Defendant has not persuaded us that there exists any reasonable possibility that the outcome of the trial would have been different had the testimony not been admitted. This assignment of error is overruled, and we find no error.

No Error.

Judges WYNN and BRYANT concur.

Report per Rule 30(e).