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NO. COA10-194

NORTH CAROLINA COURT OF APPEALS

Filed: 5 October 2010

STATE OF NORTH CAROLINA

v. Onslow County
No. 08 CRS 59756

JONATHAN MATTHEW GOULD

Appeal by Defendant from judgment entered 7 October 2009 by Judge Jay D. Hockenbury in Onslow County Superior Court. Heard in the Court of Appeals 1 September 2010.

Attorney General Roy Cooper, by Assistant Attorney General Jane Ammons Gilchrist, for the State.

Hosford & Hosford, P.C., by Geoffrey W. Hosford, for Defendant.

BEASLEY, Judge.

On appeal, Defendant argues that the trial court erroneously failed to grant his motions to dismiss made at trial. Because there was substantial evidence in the record that Defendant committed the offense of attempted first-degree murder, we conclude that there is no error.

In the early morning hours of 20 December 2008, Onslow County sheriff deputies responded to a panic alarm from the home of

Defendant, Jonathan Matthew Gould. At the time, Defendant shared the home with his wife, A.A.[1] Deputies arriving at the scene, knocked on the front door to Defendant's home, and identified themselves as law enforcement officers. After a few moments, Defendant opened the door and allowed the deputies into his home. Upon entering, the deputies noticed A.A. lying on a couch in the living room gasping for air. There also appeared to be large amounts of blood and vomit on A.A. and the area immediately surrounding the couch. Because of the apparent seriousness of A.A.'s condition, deputies immediately called for paramedics. While waiting for the paramedics, the deputies noticed a knife and two hammers on the living room floor. Paramedics arrived quickly and provided A.A. with medical assistance. Defendant told deputies that he and A.A. were attacked by an unknown male intruder. Defendant was then transported to the hospital to obtain treatment for several minor injuries he sustained as a result of the attack.

Detective Jason Daughtry was dispatched to the hospital where he interviewed Defendant in an attempt to gain more information about the attack. After speaking briefly, Defendant agreed to accompany Detective Daughtry to the Sheriff's office to provide a detailed statement of events. While at the station, Defendant

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[1]A.A. is a pseudonym that will be used throughout this opinion to protect the victim's identity.

carefully recounted the attack that occurred in his home. However, after reviewing Defendant’s statement, Detective Daughtry noticed several inconsistences in Defendant’s story. Detectives conducted another interview to address the inconsistencies in Defendant's account of the events. It was during a subsequent interview that Defendant explained that when he returned home from work he saw A.A. sleeping on the couch in the living room. Upset about a series of arguments they had, Defendant struck A.A. in the head with a hammer while she slept.

Detective Daughtry recited Defendant’s *Miranda* rights, which Defendant promptly waived and again confessed to striking A.A. with a hammer. Thereafter, Defendant agreed to provide the detectives with a written statement of the events. Defendant also explained to the detectives that he used a knife in the home to injure himself and fabricated the story about an unknown intruder. A.A. suffered a severely fractured skull as a result of Defendant's attack. Despite several surgeries to repair her skull and limit damage to the brain, A.A. is expected to suffer from long-term mental deficits as a result of her injuries. Detectives also learned that A.A. was pregnant at the time of the attack.

On 5 May 2009, Defendant was indicted for the offenses of attempted first-degree murder and assault with a deadly weapon with intent to kill inflicting serious bodily injury. At trial,

Defendant maintained that he and his wife were attacked by an unknown intruder. Defendant explained that he only provided deputies with a confession because "it was obvious to me that they didn't think that anything was true. So, by that time, I got sick of listening to it. I told them what they wanted to hear." Following the trial, jurors convicted Defendant of the offenses for which he was indicted. Defendant appeals his convictions arguing that: (I) the trial court erroneously failed to grant his motions to dismiss the charge of attempted first-degree murder; and (II) the trial court improperly cross-examined Defendant during the course of the trial.

I.

At the conclusion of the State's case and at the close of the trial, Defendant made motions to dismiss the charge of attempted first-degree murder. The trial court denied both of the motions. Defendant first contends that the trial court erred in denying his motions to dismiss because there is insufficient evidence in the record that he assaulted his wife with a premeditated and deliberated intent to kill. We disagree.

"In ruling on a defendant's motion to dismiss, the trial court should consider if the state has presented substantial evidence on each element of the crime and substantial evidence that the defendant is the perpetrator." *State v. Fowler*, 353 N.C. 599,

621, 548 S.E.2d 684, 700 (2001) (citations omitted). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Crawford*, 344 N.C. 65, 73, 472 S.E.2d 920, 925 (1996). "[A]ll of the evidence, whether competent or incompetent, must be considered in the light most favorable to the state, and the state is entitled to every reasonable inference therefrom." *State v. Smith*, 300 N.C. 71, 78, 265 S.E.2d 164, 169 (1980). When reviewing the evidence,"[t]he trial court must also resolve any contradictions in the evidence in the State's favor." *State v. Parker*, 354 N.C. 268, 278, 553 S.E.2d 885, 894 (2001).

The offense of attempted first-degree murder occurs when: "(1) [an individual] intends to kill another person unlawfully and (2) acting with malice, premeditation, and deliberation does an overt act calculated to carry out that intent, which goes beyond mere preparation, but falls short of committing murder." *State v. Gartlan*, 132 N.C. App. 272, 275, 512 S.E.2d 74, 77 (1999). Specifically addressing the elements "premeditation" and "deliberation" our Supreme Court explained that:

> "Premeditation" means that the defendant formed the specific intent to kill the victim some period of time, however short, before the actual killing. "Deliberation" means an intent to kill executed by the defendant in a cool state of blood, in furtherance of a fixed design for revenge or to accomplish an

> unlawful purpose and not under the influence of a violent passion, suddenly aroused by lawful or just cause or legal provocation.

State v. Bonney, 329 N.C. 61, 77, 405 S.E.2d 145, 154 (1991) (internal citations omitted). "Premeditation and deliberation 'are usually proven by circumstantial evidence because they are mental processes that are not readily susceptible to proof by direct evidence.'" *State v. Mack*, 161 N.C. App. 595, 605, 589 S.E.2d 168, 175 (2003) (quoting *State v. Sierra*, 335 N.C. 753, 758, 440 S.E.2d 791, 794 (1994)).

Circumstantial evidence considered by our courts to determine whether a defendant acted with premeditation and deliberation includes:

> (1) want of provocation on the part of the deceased; (2) the conduct and statements of the defendant before and after the killing; (3) threats and declarations of the defendant before and during the course of the occurrence giving rise to the death of the deceased; (4) ill[-]will or previous difficulty between the parties; (5) the dealing of lethal blows after the deceased has been felled and rendered helpless; and (6) evidence that the killing was done in a brutal manner.

State v. Hamlet, 312 N.C. 162, 170, 321 S.E.2d 837, 843 (1984). Here, based on the evidence of Defendant's premeditation and deliberation presented at trial, the trial court properly denied Defendant's motions to dismiss. In his confession to police, Defendant explained that he returned home from work on the morning

of 20 December 2008, to find A.A. asleep on the living room couch. Defendant picked up a hammer that he found in the home, sat down, and began watching television. As Defendant watched television, he recalled an argument that he had with A.A. and grew angry. As he grew angrier, Defendant decided to scare A.A. awake by striking the hammer on the arm of the couch. However, as Defendant swung the hammer, he inadvertently grazed the left side of A.A.'s head. Defendant panicked and swung the hammer two more times, striking A.A. directly on the right side of her head.

Defendant's oral confession introduced at trial is sufficient evidence from which a reasonable juror could infer that Defendant formed the specific intent to kill A.A. while watching television, or between the grazing blow and the two direct blows that he inflicted upon A.A. *See State v. Austin*, 320 N.C. 276, 295, 357 S.E.2d 641, 653 (1987) (holding that "the premise of the 'felled victim' theory of premeditation and deliberation is that when numerous wounds are inflicted, the defendant has the opportunity to premeditate and deliberate from one shot to the next.") Additionally, the lack of provocation and the brutal nature of the crime are circumstantial evidence from which a reasonable juror could infer that Defendant premeditated and deliberated the attack upon A.A. Accordingly, we conclude that there was no error in the trial court's decision to deny Defendant's motions to dismiss.

II.

At trial, the State presented evidence that Defendant had a background in the mixed martial arts. Following an objection at trial, the trial court questioned Defendant briefly about his martial arts experience. In his final argument on appeal, Defendant contends that this questioning by the trial court was improper. We disagree.

A trial court, acting upon its own motion, may question a defendant for the purpose of clarifying the defendant's testimony or addressing a fact that was previously overlooked. *See* N.C. Gen. Stat. § 8C-1, Rule 614(b) (2009); *see also State v. Bond*, 20 N.C. App. 128, 134, 201 S.E.2d 71, 74 (1973) (holding that a trial "court may ask a witness questions designed to obtain a proper understanding and clarification of the witness' testimony or to bring out some fact overlooked"). However, we also recognize "that a trial judge can very easily and unwittingly influence a jury by seemingly impartial remarks and should, therefore, exercise the greatest restraint in his comments." *State v. Hill*, 105 N.C. App. 489, 494, 414 S.E.2d 73, 77 (1992).

> "In evaluating whether a judge's comments cross into the realm of impermissible opinion, a totality of the circumstances test is utilized. Unless it is apparent that such infraction of the rules might reasonably have had a prejudicial effect on the result of the trial, the error will be considered harmless."

Mack, 161 N.C. App. at 598, 589 S.E.2d at 171 (quoting *State v. Larrimore*, 340 N.C. 119, 154, 456 S.E.2d 789, 808 (1995)). A trial court's decision to interrogate a witness at trial will not be disturbed on appeal absent a manifest abuse of discretion. *State v. Rios*, 169 N.C. App. 270, 281, 610 S.E.2d 764, 771 (2005). The defendant "bears the burden of showing [that] the trial court's comments were prejudicial." *State v. Carmon*, 169 N.C. App. 750, 757, 611 S.E.2d 211, 216 (2005).

Here, Defendant was not prejudiced as a result of a brief series of questions from the trial court. During the trial, Defendant was cross-examined extensively about his participation in mixed martial arts tournaments. During the cross-examination, Defendant's counsel objected arguing that the testimony was irrelevant to the proceeding. Thereafter, in response to the objection by Defendant's counsel, the following colloquy between the trial court and Defendant occurred:

> THE COURT: Let me ask a question. You say all these took place in 2008, is that when they took place?
>
> THE WITNESS: I believe between June and -- I believe my last fight was in November.
>
> THE COURT: So it was November, 2008?
>
> THE WITNESS: Yes.
>
> THE COURT: And this is an organization that sanctions these? Is it licensed by the state,

like a boxing fight?

THE WITNESS: I was a state-licensed amateur fighter, yes.

THE COURT: All right. So there was no money that exchanged hands? You didn't get money for winning any of these fights?

THE WITNESS: No, sir.

THE COURT: The referees there are, I guess, licensed by the state, is that right?

THE WITNESS: Yes, sir.

THE COURT: How long are the rounds?

THE WITNESS: In an amateur fight, if it's not a title fight, then it's -- you have three -- three rounds at three minutes each.

THE COURT: Title fights?

THE WITNESS: The possibility of five rounds at five minutes each.

THE COURT: Did you ever go to any title fights, or just the three-minute fights?

THE WITNESS: Just three-minutes fights.

THE COURT: Were there different weight classes, like fighting?

THE WITNESS: Yes.

THE COURT: What was your weight class?

THE WITNESS: Light heavy weight, which is 205.

THE COURT: All right. You say the last fight you were in -- do you remember where that was?

THE WITNESS: I do not exactly remember.

> THE COURT: But it was in November, 2008?
>
> THE WITNESS: It was either -- it was late October -- it was either late October or was in the first couple weeks of November.
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> THE COURT: All right. All right. We'll let Mr. Maultsby go a little bit farther with this, but I think we've covered it pretty good. So, at this time, objection overruled. . . .

A review of the record reveals that the trial court's questions were designed to clarify Defendant's testimony about his martial arts background and to derive more information to appropriately rule on Defendant's objection. Moreover, witnesses at trial already testified that Defendant had participated in, and received trophies for, several mixed martial arts tournaments in the past. Finally, during the jury instructions, the trial court cautioned jurors that they should not draw any inference from questions that he asked witnesses during trial. Based on a totality of the circumstances, it is unlikely that the trial court's brief and impartial remarks prejudiced Defendant at trial.

Accordingly, we find no error as to the trial court's decision to briefly question Defendant at trial.

No Error.

Judges BRYANT and STEELMAN concur.

Report per Rule 30(e).