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NO. COA10-303

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

STATE OF NORTH CAROLINA

v.

Edgecombe County

No. 08 CRS 52475

DARNELL LYNCH

Appeal by defendant from judgment entered 11 August 2009 by Judge Walter H. Godwin, Jr., in Edgecombe County Superior Court. Heard in the Court of Appeals 11 October 2010.

*Attorney General Roy Cooper, by Special Deputy Attorney General Robert C. Montgomery, for the State.*

*Glover & Peterson, P.A., by Ann B. Petersen, for defendant-appellant.*

ELMORE, Judge.

Defendant Darnell Lynch (defendant) appeals from the judgment entered after a jury found him guilty of first-degree murder. Defendant contends that the State presented insufficient evidence that he acted with premeditation and deliberation to support submitting the charge of first-degree murder to the jury, and that the trial court erred by denying his motion to dismiss the charge. We find no error.

Late in the afternoon on 26 June 2008, a man found the body of Benita Knight in an alley behind a church in Rocky Mount. The man called 911, and Rocky Mount Police Officer Larry Antill was the

first to arrive on the scene, shortly after 6:00 p.m. Officer Antill identified Ms. Knight when he found her purse and photo identification near her body. After Officer Antill spoke with the man who discovered the body, other officers and evidence technicians arrived at the scene. Officers observed that Ms. Knight's body had a circular mark or wound on her left side, marks on her neck, and some facial swelling.

On 27 June 2008, Dr. Thomas Clark, a forensic pathologist in the Office of the Chief Medical Examiner, was present during Ms. Knight's autopsy. Dr. Clark testified that he observed narrow ligature marks on the front, sides, and back of Ms. Knight's neck. The muscles under the ligature marks suffered bleeding and other injuries, and Dr. Clark observed hemorrhaging in each of Ms. Knight's eyes. Based on these observations, Dr. Clark believed that Ms. Knight died as a result of ligature strangulation with a thin ligature such as a wire or cord. Dr. Clark also saw a small puncture wound on the left side of Ms. Knight's abdomen, but he did not believe that the injury contributed to Ms. Knight's death.

Detectives Jeffrey Scott Hale and Michael Lewis contacted Ms. Knight's employer and reviewed Ms. Knight's caller I.D. at work. The detectives called one of the numbers from which Ms. Knight received a call shortly before her death, and defendant answered. Defendant agreed to meet with the detectives. Defendant admitted that he was in a romantic relationship with Ms. Knight, but initially claimed that he had not seen her since 9 June 2008. Defendant did not show much emotion when the detectives informed him

that Ms. Knight was dead. Defendant told the detectives that he sought to cool his relationship with Ms. Knight because he believed his girlfriend suspected that he was seeing someone else. In a second interview, however, defendant admitted that he had seen Ms. Knight on 23 June 2008. Defendant also initially claimed to the detectives that he was with his girlfriend all day on 26 June 2008, but he later admitted that he lied to the detectives about being with his girlfriend that day.

When officers informed Ms. Knight's boyfriend, Nakita Smith, that she was dead, he was "very visibly upset" and crying. Although Mr. Smith knew that Ms. Knight was seeing other men, he was planning to marry Ms. Knight in 2010. Mr. Smith received numerous anonymous phone calls the week of 14 June 2008 from a man who claimed he had been dating Ms. Knight for about three months. Mr. Smith threatened to beat the man up if he continued making the harassing phone calls. Officers obtained phone records showing that defendant had repeatedly called Mr. Smith during the same time period, and defendant ultimately admitted that he made the harassing phone calls to Mr. Smith.

Ms. Knight's father had dropped her off at Edgecombe County Community College on the morning of 26 June 2008. When officers viewed security video from the college, they saw defendant leave with Ms. Knight shortly after 7:00 a.m. on both 25 and 26 June 2008. In the 26 June 2008 video, defendant was wearing an orange shirt and khaki shorts. Officers later searched defendant's apartment and found an orange shirt similar to the one defendant wore in the

video, as well as two pairs of shoes that each had one shoelace missing. Officers later obtained security video from a nearby business that also appeared to show defendant and Ms. Knight walking together at about 8:00 a.m. on 26 June 2008.

After viewing the surveillance video, officers obtained an arrest warrant for defendant on 2 July 2008. Defendant, however, had already left for Hampton, Virginia. Virginia police officers subsequently arrested defendant. On 5 July 2008, the detectives investigating Ms. Knight's murder interviewed defendant in a Virginia jail. During questioning, defendant confessed that he had killed Ms. Knight by strangling her with a shoelace. Defendant admitted he killed Ms. Knight because "she made [him] mad . . . and [he] lost [his] cool." Defendant claimed that he started choking Ms. Knight because she told him she was going to have him "beat up." Ms. Knight also wanted to "slow down" their relationship, and she planned to tell her boyfriend about it. Defendant initially claimed that he found the shoelace he used to choke Ms. Knight on the ground, but later he admitted that he had brought his own shoelace with him from home. The detectives made an audio recording of defendant's statement. With defendant's consent, an edited version of the statement was introduced into evidence as State's Exhibit 31B and played for the jury.

Defendant moved to dismiss the first-degree murder charge because the State had presented insufficient evidence of premeditation or deliberation. The trial court denied the motion to dismiss, and defendant did not present any evidence. The jury found

defendant guilty of first-degree murder, and the trial court imposed a term of life in prison without parole. Defendant gave oral notice of appeal.

Defendant's sole argument on appeal is that the trial court erred when it denied his motion to dismiss the first-degree murder charge because the State introduced insufficient evidence that he acted with premeditation and deliberation to support submitting the charge to the jury. We disagree.

"When a defendant moves for dismissal, the trial court is 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). "The trial court must review the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom." *State v. Squires*, 357 N.C. 529, 535, 591 S.E.2d 837, 841 (2003).

"Murder in the first degree is the unlawful killing of another human being with malice and with premeditation and deliberation." *State v. Bonney*, 329 N.C. 61, 77, 405 S.E.2d 145, 154 (1991); N.C. Gen. Stat. § 14-17 (2009). "'Premeditation means that the act was thought out beforehand for some length of time, however short, but no particular amount of time is necessary for the mental process of premeditation.'" *State v. Cozart*, 131 N.C. App. 199, 202, 505 S.E.2d 906, 909 (1998) (quoting *State v. Conner*, 335 N.C. 618, 635,

440 S.E.2d 826, 835-36 (1994)). "'Deliberation means an intent to kill, carried out 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.'" *Id.*

Premeditation and deliberation are not generally provable by direct evidence, but must be inferred from circumstantial evidence. *State v. Gladden*, 315 N.C. 398, 430, 340 S.E.2d 673, 693 (1986). In evaluating the State's evidence of premeditation and deliberation, the relevant factors to consider include:

(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.

*Id.*

Additionally, evidence of a defendant's actions before a killing, including evidence that he carried the murder weapon to the fatal confrontation, constitutes proof of premeditation and deliberation. *See State v. Ginyard*, 334 N.C. 155, 159, 431 S.E.2d 11, 13 (1993) (evidence that the defendant brought the murder weapon demonstrated that the defendant "anticipated a possible confrontation and given some forethought to how he would deal with a confrontation").

Based on the relevant criteria, we hold that the State presented sufficient evidence that defendant acted with premeditation and deliberation to support the trial court's denial of defendant's motion to dismiss the charge of first-degree murder. First, based on the combination of defendant's confession and Dr. Clark's testimony, there is no question that Ms. Knight died by strangulation at defendant's hand, and defendant does not now contest that fact on appeal. That being the case, death by strangulation is a slow, brutal death from which a jury may infer premeditation and deliberation. *See State v. Richardson*, 328 N.C. 505, 513, 402 S.E.2d 401, 406 (1991).

Further, although defendant initially denied it, he subsequently admitted in his recorded police statement that he brought the murder weapon, a shoelace, to his confrontation with Ms. Knight and used it to strangle her. Officers discovered two shoes in defendant's apartment that were each missing one shoelace, which corroborates defendant's admission. Although a shoelace is not as obvious a weapon as a gun or a knife, we conclude that defendant's having taken the steps of removing the shoelace from his shoe and bringing it with him to his meeting with Ms. Knight, and then using it to strangle her, constitutes evidence that he anticipated the confrontation and prepared to carry out the murder, and thus provides another circumstance from which the jury could infer premeditation and deliberation.

Finally, contrary to defendant's arguments on appeal, we hold that there is no evidence of the type of sudden or violent

provocation that could justify defendant's actions and overcome the State's evidence of premeditation and deliberation. Defendant claims that the State was bound by the exculpatory elements of his statement to police, particularly his claim that Ms. Knight "made [him] mad" and that he "lost [his] cool" at the time of the killing, and that those self-serving statements compel the dismissal of the first-degree murder charge. To the contrary, however, the exculpatory components of defendant's police statement:

may not be regarded as conclusive if there be other evidence tending to throw a different light on the circumstances of the homicide. The State was not bound by that statement if other evidence offered pointed to a different conclusion and raised the reasonable inference from all the testimony that the [murder] of the deceased was intentional and unlawful.

*State v. Bright*, 237 N.C. 475, 477, 75 S.E.2d 407, 408 (1953). In this case, the circumstances surrounding defendant's actions are sufficiently incriminating to "throw a different light on the circumstances of the homicide." *Id.* As we have already discussed, the State provided evidence that defendant strangled Ms. Knight with a ligature that he brought to their meeting. Thus, we decline to hold that defendant's statement alone required dismissal of the first-degree murder charge.

The circumstances of this case are also dissimilar to those of the cases relied upon by defendant on this point, *State v. Corn*, 303 N.C. 293, 278 S.E.2d 221 (1981), and *State v. Williams*, 144 N.C. App. 526, 548 S.E.2d 802 (2001), *aff'd per curiam*, 355 N.C. 272, 559 S.E.2d 787 (2002). In *Corn*, the victim entered the defendant's home in an intoxicated state. *Corn*, 303 N.C. at 295, 278 S.E.2d at 222.

Defendant was lying down, and the victim sat next to the defendant and proceeded to insult him in a provocative manner. *Id.* The defendant responded by shooting the victim; the entire incident lasted a matter of moments. *Id.* In *Williams*, the victim and the defendant became involved in a shoving match outside a night club. *Williams*, 144 N.C. App. at 527, 548 S.E.2d at 803. When the victim punched the defendant in the jaw, the defendant responded by shooting the victim in the neck. *Id.* In both cases, the Court held that there was insufficient evidence to show that the defendants had acted with premeditation or deliberation. *Id.* at 531, 548 S.E.2d at 805-06; *Corn*, 303 S.E.2d at 298, 278 S.E.2d at 224. By contrast, in this case there is no indication that Ms. Knight offered a sudden or violent act that provoked defendant's actions. Instead, the only evidence of provocation is defendant's claim that Ms. Knight made vague remarks that she would have him "beat up" and that she wanted to "slow down" their relationship. Defendant did not respond with an abrupt outburst, but by strangling Ms. Knight with a weapon he had brought to the confrontation. Thus, we decline to expand the rationale of *Corn* and *Williams* to cover the circumstances of this case.

In sum, we conclude that the State provided sufficient evidence of premeditation and deliberation to overcome defendant's motion to dismiss the charge of first-degree murder, and that the trial court properly submitted that charge to the jury. Accordingly, we find no error in the trial court's judgment.

No error.

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Chief Judge MARTIN and Judge JACKSON concur.

Report per Rule 30(e).