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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-372

Filed: 18 December 2018

Johnston County, No. 01 CRS 51693

STATE OF NORTH CAROLINA

v.

DELMONTE PERCELL JEFFERSON, JR.

Appeal by defendant from order entered 21 September 2015 by Judge W. Douglas Parsons in Johnston County Superior Court. Heard in the Court of Appeals 18 October 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for defendant.

DAVIS, Judge.

In this case, we must determine whether the trial court erred in concluding that the factual basis for the defendant's guilty plea to first-degree murder supported a finding of premeditation and deliberation. After a thorough review of the record and applicable law, we affirm.

Factual and Procedural Background

On 21 March 2001, a Johnston County grand jury indicted Delmonte Percell Jefferson, Jr. (“Defendant”) for the murder of Sandra Hopper Manley, which occurred when Defendant was seventeen years old. Defendant pled guilty to first-degree murder — as well as to charges of robbery with a dangerous weapon and breaking or entering arising out of the same incident — on 15 April 2002 in Johnston County Superior Court before the Honorable Jack A. Thompson. During the plea hearing, Special Agent Greg Tart with the State Bureau of Investigation testified as to the factual basis for Defendant’s plea. Much of his testimony was based upon statements that Defendant made to his father. Special Agent Tart testified, in pertinent part, as follows:

[Defendant’s father] told [Tart] that his son told him he did not attend school on [20 February 2001]. That he had walked around a neighborhood near the school looking for a house to break into. And that [Defendant] had told his father he had been breaking into houses around Clayton High School.

He told his father he went to the house and entered the rear of the house through an unlocked door. He told his father that he did not think anyone was at home at the time. And that once he got inside the residence, he was going through a pocketbook in the kitchen when a white female subject came out of the back of the house and surprised him. And [Defendant’s father] stated his son told him again he did not think anyone was at home when he went inside the house. He told his father he became scared

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when the white female confronted him, and he grabbed her and pushed her down on the floor.

He told his father that the white female subject got up and they began struggling inside the residence, and he knocked the female subject down again. He told his father that he discovered a large kitchen knife and grabbed the knife during the struggle and stabbed the white female in the chest. He told his father afterwards he went back through her pocketbook and grabbed her wallet, and went out the back door and ran back to the school.

He got back to the school and got inside [a car that belonged to a friend]. He told his father he got inside the [car] and drove to the Amoco station located on Barbour Mill Road and Highway 42 West. He attempted to use the white female's State Employees' Credit Union ATM card to get money, but he did not have the valid pin number and could not actually retrieve any money.

He told his father that he got some cash money out of the wallet but did not say how much he actually took.

...

[The wallet and credit cards belonging to Manley] were found behind the Winn Dixie Shopping Center in Clayton . . . [a] quarter of a mile, half a mile [from Clayton High School].

Manley's body was found by her mother later in the morning of 21 February 2011. The knife was still in her chest, and there was a wooden chair broken into pieces next to her body. An autopsy later determined that Manley had "died as a result of a stab wound to the chest . . . [T]he knife penetrated the right ventricle of

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her heart approximately five inches deep in her chest. She also suffered blunt-force injury to her abdomen which resulted in laceration of her liver. She suffered blunt force injuries to her extremities which resulted in lacerations, abrasions, and contusions.” Both the stab wound to Manley’s chest and the blow that caused laceration to her liver were “fatal blow[s] from which she would not have recovered.”

After it was determined that Manley’s ATM card was missing, an alert was placed on the account, and Defendant’s attempt to withdraw funds from Manley’s account led agents to identify him as a suspect. On 23 February 2011, Special Agent Tart called Clayton High School, where Defendant was enrolled, and requested to speak with him. Because Defendant was 17 years old, the school notified his parents, and Defendant was brought by his father to the Clayton Police Department. Special Agent Tart explained the situation to Defendant’s father, and Defendant’s father subsequently spoke with Defendant in private. During this conversation, Defendant admitted to the facts detailed in the above-quoted portion of Special Agent Tart’s testimony.

After accepting Defendant’s guilty plea at the 21 March 2001 hearing, the trial court imposed consecutive sentences of life imprisonment without the possibility of parole for the crime of first-degree murder, 64-85 months imprisonment for robbery with a dangerous weapon, and 6-8 months imprisonment for breaking and entering. On 11 June 2015, Defendant filed a motion for appropriate relief (“MAR”) in which

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he argued that because he was a juvenile at the time of his crime he was entitled to resentencing under *Miller v. Alabama*, 567 U.S. 460, 183 L. Ed. 2d 407 (2012).¹ A hearing on Defendant's MAR was held on 11 September 2015 before the Honorable W. Douglas Parsons. On 21 September 2015, the trial court entered an order granting Defendant's MAR and finding that Defendant was entitled to resentencing based on *Miller*. The court also determined that the factual basis for Defendant's plea of guilty "supports a conviction of first degree murder based on premeditation and deliberation and the felony murder rule."

On 13 October 2015, the State filed with this Court a petition for *certiorari* in which it sought review of the portion of the trial court's 21 September 2015 order determining that Defendant was entitled to a resentencing hearing under *Miller* and requested a stay of the trial court's order. Defendant filed a cross-petition for *certiorari* on 21 October 2015 seeking review of the trial court's finding that the factual basis for Defendant's plea could support a conviction based on premeditation and deliberation. We allowed the State's petition on 29 October 2015 and ordered that the appeal be held in abeyance pending our Supreme Court's determination as to whether *Miller* should be applied retroactively to juvenile defendants previously

¹ In *Miller*, the United States Supreme Court held the Eighth Amendment requires that before a juvenile defendant may be sentenced to life imprisonment without the possibility of parole, mitigating circumstances related to youth and youthful characteristics must be considered. *Miller*, 567 U.S. at 489, 183 L. Ed. 2d at 430.

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sentenced to life without parole. We also allowed Defendant's cross-petition for *certiorari*.

Our Supreme Court subsequently ruled that *Miller* did, in fact, apply retroactively. See *State v. Young*, 369 N.C. 118, 794 S.E.2d 274 (2016); *State v. Seam*, 369 N.C. 418, 794 S.E.2d 439 (2016); *State v. Perry*, 369 N.C. 390, 794 S.E.2d 280 (2016). Therefore, on 30 June 2017 this Court entered an order dismissing the State's appeal from Judge Parsons' 21 September 2015 order and allowing Defendant's appeal to go forward solely on the issue of whether the trial court had correctly determined that the factual basis for Defendant's plea to first-degree murder supported a finding of premeditation and deliberation.

Analysis

In response to the United States Supreme Court's decision in *Miller*, the North Carolina General Assembly enacted N.C. Gen. Stat. § 15A-1340.19A *et seq.*, a statutory sentencing scheme for juveniles subject to life imprisonment without the possibility of parole. N.C. Gen. Stat. § 15A-1340.19B states, in pertinent part, as follows:

(a) In determining a sentence under this Part, the court shall do one of the following:

(1) If the sole basis for conviction of a count or each count of first degree murder was the felony murder rule, then the court shall sentence the defendant to life imprisonment with parole.

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(2) If the court does not sentence the defendant pursuant to subdivision (1) of this subsection, then the court shall conduct a hearing to determine whether the defendant should be sentenced to life imprisonment without parole, as set forth in G.S. 14-17, or a lesser sentence of life imprisonment with parole.

N.C. Gen. Stat. § 15A-1340.19B (2017).²

Therefore, in the present case a determination that the factual basis for Defendant's guilty plea did not support a finding of premeditation and deliberation would require Defendant to be automatically sentenced to life with the possibility of parole pursuant to N.C. Gen. Stat. § 15A-1340.19B(a)(1). Conversely, a ruling that the factual basis for his guilty plea supports a finding of premeditation and deliberation would mean that Defendant would receive a *Miller* hearing under N.C. Gen. Stat. § 15A-1340.19B(a)(2) to determine whether a sentence of life imprisonment without the possibility of parole was appropriate.

First-degree murder is defined as “the unlawful killing of a human being with malice, premeditation and deliberation.” *State v. Vause*, 328 N.C. 231, 238, 400 S.E.2d 57, 62 (1991).

Premeditation and deliberation generally must be established by circumstantial evidence, because they ordinarily are not susceptible to proof by direct evidence. Premeditation means that the defendant formed the

² At a *Miller* hearing that is to be held pursuant to N.C. Gen. Stat. § 15A-1340.19B(a)(2), the defendant may submit any “mitigating factor or circumstance” for consideration, including the defendant's age and the defendant's age-related characteristics as described in N.C. Gen. Stat. § 15A-1340.19B(c).

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specific intent to kill the victim some period of time, however short, before the actual killing. Deliberation means that the intent to kill was formed while the defendant was in a cool state of blood and not under the influence of a violent passion suddenly aroused by sufficient provocation. In the context of determining the existence of deliberation, however, the term cool state of blood does not mean an absence of passion and emotion. One may deliberate, may premeditate, and may intend to kill after premeditation and deliberation, although prompted and to a large extent controlled by passion at the time.”

Id. (internal citations, quotation marks, and brackets omitted).

Our Supreme Court has “identified several examples of circumstantial evidence, any one of which may support a finding” of premeditation and deliberation.

State v. Childress, 367 N.C. 693, 695, 766 S.E.2d 328, 330 (2014). These 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.

Id.

During the 11 September 2015 hearing, the court stated the following in support of its ruling:

The Court finds that the record in this case does not solely mandate . . . a felony murder. The Court finds that the evidence presented in this case could be felony murder or it could be murder by premeditation and deliberation.

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The Court specifically, but not limited to, finds the following evidentiary issues/facts in making its determination. On page 19 and 20 of the transcript, the detail of the defendant's statement, the defendant indicates that he grabbed Ms. Manley, he pushed her down on the floor, that she got up. They began struggling inside the resident [sic] and he knocked her down again.

After this, the defendant indicated in his statement that he grabbed -- discovered a large kitchen knife, stabbed her in the chest. [The] Court further finds as evidence of premeditation and deliberation that additionally, there's a blunt forced [sic] injury as indicated in the autopsy report . . . to the head and a pattern surrounding the right eye.

There's a . . . one-half inch laceration above the right eyebrow which is deep enough to expose the skull.

The Court further finds as evidence of premeditation and deliberation that there's a two inch by one and three-quarter inch abrasion just below the rib cage on the right side of the abdomen. Examination showed a three and one-half inch vertical laceration of the liver, almost resulting in transection of the liver.

The autopsy report finds that this blunt force injury to the abdomen/liver results in extensive laceration of the liver. The autopsy report . . . finds that either this previously described extensive laceration of the liver, as a result of blunt force trauma to the abdomen, as well as the penetration of the ventricle of the heart with a five inch stab wound, either of these could have been almost immediately fatal.

The Court further finds as evidence of premeditation and deliberation, the [numerous] lacerations, abrasions, contusions throughout Ms. Manley's body. Specifically, there's a one and a half by three-quarter inch abrasion on

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the left deltoid region, seminal laceration on the lateral left forearm, approximately one inch.

The posterior left forearm has two significant abrasions, one circular, approximately 7/8 inch in diameter located just above the left wrist, proximal to which is a rectangular abrasion measured approximately two-inch by three-quarter inch with an underlying fracture of the ulnar.

On the right arm, there's a three inch by 1/8 inch linear abrasion [and] two additional lesser abrasions, one on the posterior right forearm just above the elbow, approximately one-half inch in length, and a second being a small superficial abrasion of the base of the forefinger of the right hand on the posterior surface.

In examining the autopsy report . . . the Court observes [that there were] nine abrasions [on] Ms. Manley's body.

The Court additionally considers the photographs which entered [sic] into evidence which shows a chair in Ms. Manley's residence, which the back is completely broken off from the seat. One of the armrest [sic] is broken off and lying adjacent to the scene.

In summary, the Court finds that as opposed to a set amount of abrasions, such as would have taken place during a struggle, particularly falling over a chair, as opposed to that, the Court specifically finds that the laceration of the forehead exposing the skull . . . [and] the severe blunt force trauma to the abdomen resulting in extensive laceration of the liver as well as the abrasions located throughout the entire upper body, show evidence that this was more than just a brief struggle and then stab wound to the heart.

(Brackets omitted.)

Defendant contends that the nature of Manley's wounds alone is not enough to support a finding of premeditation and deliberation. We find instructive our Supreme

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Court's decision in *State v. Barts*, 321 N.C. 170, 362 S.E.2d 235 (1987). The victim in *Barts* "suffered at least seven forceful blows to the head which had crushed his skull and caused bone fragments to be driven into his brain. Among numerous bruises and lacerations were defensive wounds on one hand." *Id.* at 172, 362 S.E.2d at 236. In holding that there was a sufficient factual basis for a finding of premeditation and deliberation, the Court explained as follows:

It is well settled that premeditation and deliberation can be inferred from circumstances such as the brutality of the killing, the nature and number of the victim's wounds, and the dealing of lethal blows after the victim has already been felled. The medical findings contained in the prosecution's summary tended to show that multiple injuries had been inflicted upon the victim in a particularly brutal and vicious beating. This provided sufficient evidence from which premeditation and deliberation could be inferred for the purposes of establishing a factual basis for defendant's plea.

Id. at 177, 362 S.E.2d at 239.

Similarly, an examination of the record in this case reveals that there was sufficient evidence to support a finding that Defendant acted with premeditation and deliberation based upon the nature and extent of Manley's wounds. Defendant dealt two lethal blows to Manley — a blunt force blow that was enough to nearly transect her liver and a knife wound directly into her heart. He also cut her face with a knife so deeply that her skull was exposed. In addition to her other wounds, Manley had nine different abrasions on her upper body. *See Vause*, 328 N.C. at 239, 400 S.E.2d at 62 (holding that evidence was sufficient to show defendant acted with

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premeditation and deliberation where defendant stabbed victim at least 39 times, had to use a second knife after the first knife bent from the force of the blows, and struck deadly blows after victim had fallen and was helpless).

Moreover, Defendant's conduct following Manley's murder also supports such a finding. *See Childress*, 367 N.C. at 695, 766 S.E.2d at 330. After killing Manley, Defendant did not contact emergency medical services or law enforcement authorities. Instead, he resumed his search through her purse, took her wallet, and attempted to obtain money from her bank account before abandoning her belongings behind a grocery store. Defendant only confessed his crimes after he was already in custody at the police department.

Thus, we are satisfied that the trial court properly determined the factual basis for Defendant's guilty plea was sufficient to support a finding of premeditation and deliberation. Accordingly, we affirm the trial court's ruling on this issue.

Conclusion

For the reasons stated above, the trial court did not err in determining that the factual basis for Defendant's guilty plea supported a finding of premeditation and deliberation.

AFFIRMED.

Judges HUNTER, JR. and MURPHY concur.

Report per Rule 30(e).