IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-704

Filed: 16 April 2019

Moore County, No. 13CRS052419

STATE OF NORTH CAROLINA

v.

ADAM ANTHONY WHITE, Defendant.

Appeal by defendant from judgment entered 11 August 2017 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 28 February 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Anna M. Davis, for the State.

Glover & Petersen, P.A., by James R. Glover, for defendant-appellant.

BERGER, Judge.

On August 11, 2017, Adam Anthony White ("Defendant") was convicted of first degree murder and sentenced to life in prison. Defendant appeals, arguing that the trial court erred when it admitted a hearsay statement into evidence in violation of Defendant's constitutional right to confront the State's witness. The State conceded that it was error for the trial court to admit the statement. However, Defendant is not entitled to a new trial because the error was harmless beyond a reasonable doubt.

Factual and Procedural Background

On Saturday morning, August 17, 2013, William McCrimmon ("McCrimmon") and his son-in-law, Wesley Swinnie ("Swinnie"), drove to Burger King in Aberdeen, North Carolina. Swinnie entered the restaurant to get their breakfast while McCrimmon waited in his car. Swinnie returned to McCrimmon's car five minutes later "with a bag of food in his hand." After he had dropped the food off in McCrimmon's car, Swinnie was approached by "a tall man with dred locks (sic)" who began yelling at Swinnie. Moments later, McCrimmon heard shots and saw Swinnie fall down. The shooting occurred in front of dozens of witnesses, including McCrimmon. Defendant was arrested later that day.

At trial, Defendant admitted that he shot Swinnie multiple times from close range, paused to reload his gun, and then stood over Swinnie's body and "fired more shots into his head." Swinnie was struck ten times by .380 bullets. Defendant also testified that he "just started shooting" because he thought Swinnie was holding a knife. McCrimmon gave a statement to police, which was introduced at trial, that did not mention whether Swinnie had been holding a knife. Neither a knife nor any other weapon was recovered by law enforcement at the scene.

McCrimmon gave a statement to law enforcement hours after the shooting. It was introduced into evidence at trial over Defendant's objection. The trial court allowed this out-of-court statement into evidence because McCrimmon was

unavailable to testify as he had passed away two years before trial. Defendant's testimony conflicted with McCrimmon's written eye-witness statement. Defendant claimed at trial that he had killed Swinnie in self-defense. However, Defendant did not request a jury instruction on self-defense.

Defendant was indicted for first degree murder on October 7, 2013. Defendant was convicted of first degree murder and sentenced to life imprisonment without parole on August 11, 2017. Defendant timely appeals.

Analysis

Defendant argues his right to confront the witness against him was violated when McCrimmon's written, out-of-court statement was admitted into evidence. We disagree.

"It is well-settled that *de novo* review is ordinarily appropriate in cases where constitutional rights are implicated." *State v. Tate*, 187 N.C. App. 593, 599, 653 S.E.2d 892, 897 (2007) (citation and quotation marks omitted). "A violation of the defendant's rights under the Constitution of the United States is prejudicial unless the appellate court finds that it was harmless beyond a reasonable doubt. The burden is upon the State to demonstrate, beyond a reasonable doubt, that the error was harmless." N.C. Gen. Stat. § 15A-1443(b) (2017). "One way the State may meet its burden is by showing that there is overwhelming evidence of Defendant's guilt." *State v. Garcia*, 174 N.C. App. 498, 504, 621 S.E.2d 292, 297 (2005) (citation omitted).

"When the State fails to prove the error was harmless beyond a reasonable doubt, the violation is deemed prejudicial and a new trial is required." *State v. Glenn*, 220 N.C. App. 23, 25, 725 S.E.2d 58, 61 (2012) (citation and quotation marks omitted).

The Sixth Amendment of the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. Const. amend. VI. "The Sixth Amendment right of confrontation applies to the States through the Fourteenth Amendment of the United States Constitution." *State v. Clark*, 165 N.C. App. 279, 282, 598 S.E.2d 213, 216 (2004) (citation omitted). "The Confrontation Clause of the Sixth Amendment prohibits admission of testimonial statements of a witness who did not appear at trial unless: (1) the party is unavailable to testify and (2) the defendant had a prior opportunity to cross-examine the witness." *Glenn*, 220 N.C. App. at 25, 725 S.E.2d at 61 (citation and quotation marks omitted).

> First-degree murder is the intentional and unlawful killing of a human being with malice and with premeditation and deliberation. Murder in the second degree is the unlawful killing of a human being with malice but without premeditation and deliberation. . . .
>
> First, malice is presumed where the defendant intentionally assaults another with a deadly weapon, thereby causing the other's death. . . . Premeditation means that the act was thought over beforehand for some length of time, however short. Deliberation means an intent to kill, carried out in a cool state of blood, and not under the influence of a violent passion or a sufficient legal provocation. Premeditation and deliberation are ordinarily not susceptible to proof by direct evidence and therefore

> must usually be proven by circumstantial evidence. Premeditation and deliberation can be inferred from many circumstances, some of which include: (1) absence of provocation on the part of 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. Leazer, 353 N.C. 234, 237-38, 539 S.E.2d 922, 924-25 (2000) (*purgandum*).

Here, the State concedes that McCrimmon's written statement was testimonial hearsay prohibited by the Confrontation Clause as "McCrimmon died in 2015 and was never cross-examined." However, the State argues that this constitutional error is harmless beyond a reasonable doubt because the record reflects "overwhelming evidence" proving that Defendant was guilty of first degree murder.

The evidence in the record tends to show that Defendant shot Swinnie ten times. Defendant testified that he had witnessed Swinnie nearly kill Defendant's twin brother by stabbing him multiple times on August 3, 2013. Between the stabbing on August 3 and the shooting on August 17, Defendant had purchased the murder weapon, a .380 semi-automatic handgun, and fifty rounds of .380 ammunition. On the morning of August 17, a verbal confrontation ensued between Defendant and Swinnie when they saw each other in the Burger King parking lot. Defendant testified that after he had fired the first few shots at Swinnie, Defendant

went to his car to reload the weapon. He then returned, "stood over [Swinnie's body]," and "fired more shots into his head." Taken together, this overwhelming evidence tended to show that Defendant had intentionally killed Swinnie with malice aforethought, and premeditation and deliberation. Thus, there was sufficient evidence for a jury to have found Defendant guilty of first degree murder beyond a reasonable doubt. Even without McCrimmon's written statement, the State satisfied its burden of introducing overwhelming evidence of Defendant's guilt.

Conclusion

The admission of McCrimmon's written statement into evidence violated Defendant's constitutional rights. However, this error is harmless beyond a reasonable doubt.

NO ERROR.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).