IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-201

Filed: 5 November 2019

Lenoir County, Nos. 15 CRS 50852, 50879

STATE OF NORTH CAROLINA

v.

RODERICK RECO WYCHE, Defendant.

Appeal by defendant from judgments entered 26 October 2017 by Judge Richard Kent Harrell in Lenoir County Superior Court. Heard in the Court of Appeals 2 October 2019.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Anne M. Middleton, for the State.*

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

YOUNG, Judge.

Where the evidence would not permit the jury rationally to convict defendant of the lesser included offense of second-degree murder and acquit him of first-degree murder, the trial court did not err in denying defendant's request to instruct the jury on second-degree murder. We find no error.

## I. Factual and Procedural Background

In the early morning hours of 12 April 2015, A.G.,[1] a minor 13 years of age, called 911 to report that she had heard screaming, that her mother was not breathing, and there was a knife by the bed. The mother, Wanda Lee Dethlefsen (Dethlefsen), was found dead, with three fatal stab wounds to the neck. A.G. and her infant brother were taken from the scene by EMS.

After officers secured the crime scene, but while they awaited a search warrant, Roderick Reco Wyche (defendant) arrived on a bicycle. Officers interviewed defendant, who informed them that A.G. and Dethlefsen did not have a good relationship, and argued. When defendant learned officers would search A.G.'s room, he became concerned, and asked if A.G. could be released to him.

When the search warrant arrived, officers searched A.G.'s room, where they found Dethlefsen's wallet. Officers also found pregnancy tests, a book bag packed with clothing, a hair dryer, condoms, and other items. They also found beer bottles, mostly carbonated and cool to the touch, and a bong with green, leafy vegetable matter in it. Officers also discovered defendant's wallet, containing his identification and EBT food stamp card.

A.G. and her infant brother were taken to the La Grange Sheriff's Office. Some time thereafter, defendant arrived at the Sheriff's Office, requesting to speak with A.G.

[1] A pseudonym is used for ease of reading and to protect the privacy of the minor child.

Later, officers located defendant, and asked to speak with him. He agreed, and accompanied them to the Kinston Sheriff's Office. Officers again asked to speak with defendant, advised defendant of his *Miranda* rights, and recorded the interview. Defendant stated that he was twenty years old, that he had met A.G. the week prior, and that he decided he wanted to date her. He visited her at home, and had sex with her. When asked about the murder, defendant confessed that he had taken a knife from the kitchen and stabbed Dethlefsen in the neck.

On 1 March 2016, defendant was indicted for the first-degree murder of Dethlefsen with premeditation and deliberation, conspiracy with A.G. to commit the murder of Dethlefsen, statutory rape of A.G., a minor between thirteen and fifteen years of age, and statutory sex offense of A.G., a minor between thirteen and fifteen years of age. The matter proceeded to trial, and at the close of the State's evidence, defendant moved to dismiss the charges. The trial court denied the motions to dismiss the first-degree murder, conspiracy, and statutory sex offense charges, but reserved its ruling on the motion to dismiss the charge of statutory rape. Subsequently, the trial court dismissed the charge of statutory rape based upon insufficient evidence.

Defendant filed a written motion requesting that the jury be instructed on the lesser included offense of second-degree murder. At the trial conference, defendant argued that he was entitled to the instruction, based upon (1) the fact that defendant

blacked out, suggesting diminished capacity, and (2) the fact that, when the death penalty is involved, a second-degree murder charge must necessarily be given. The trial court expressed some doubt as to defendant's evidence of diminished capacity, and noted that there was a difference between a noncapital case where the sentence was life without parole, as was the case here, and one involving the death penalty. The court therefore denied the request, and proceeded only on the first-degree murder instruction.

The jury returned verdicts finding defendant guilty of first-degree murder, conspiracy to commit murder, and statutory sex offense. The trial court consolidated the charges of first-degree murder and felony conspiracy to commit murder, and sentenced defendant to life imprisonment without parole. The trial court also sentenced defendant on the charge of statutory sex offense to a minimum of 240 and a maximum of 348 months in the custody of the North Carolina Department of Adult Correction. These sentences were to run consecutively. The court further required defendant to register as a sex offender, and entered findings accordingly.

Defendant appeals.

## II. Lesser Included Offense

In his sole argument on appeal, defendant contends that the trial court erred in denying his request to instruct the jury on the lesser included offense of second-degree murder. We disagree.

A. Standard of Review

"[Arguments] challenging the trial court's decisions regarding jury instructions are reviewed *de novo* by this Court." *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009). "An instruction on a lesser-included offense must be given only if the evidence would permit the jury rationally to find defendant guilty of the lesser offense and to acquit him of the greater." *State v. Millsaps*, 356 N.C. 556, 561, 572 S.E.2d 767, 771 (2002).

B. Analysis

First-degree murder is the unlawful killing of a human being with malice, premeditation and deliberation. *State v. Bullock*, 326 N.C. 253, 257, 388 S.E.2d 81, 83 (1990). 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. *Id.* 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.* Second-degree murder is a lesser included offense of first-degree murder; it lacks the elements of premeditation and deliberation. *See* N.C. Gen. Stat. § 14-17 (2017).

At trial, defendant testified that he did not participate in the murder of Dethlefsen. That was, in essence, his defense – that he did not participate at all. On

appeal, rather than rely on this defense – which would not support a jury instruction on second-degree murder – defendant instead relies on his statements to officers.

At trial, the State presented the testimony of Christopher Eric Jenkins (Officer Jenkins), who at the time was a deputy sheriff working as a patrol officer. It was Officer Jenkins who advised defendant of his *Miranda* rights and interviewed him at the Kinston Sheriff's Office. During the interview, defendant claimed that he had initially said no to A.G.'s request that he kill Dethlefsen, but that he then blacked out and did not know what he was doing. Defendant argued during the jury charge conference, and now contends on appeal, that these unsworn statements to officers constituted evidence that he did not form the requisite intent to support a conviction of first-degree murder, but rather that he was operating in a diminished mental state which would support an instruction on the lesser included offense of second-degree murder.

As a preliminary matter, we note that defendant was also charged with, and found guilty of, conspiracy to commit murder. This Court has held that, "when a jury finds that a defendant has agreed with another person to commit a murder, it necessarily finds premeditation and deliberation as well." *State v. Brewton*, 173 N.C. App. 323, 331, 618 S.E.2d 850, 856 (2005). Specifically, we held that, "[i]f a defendant plans and enters into an agreement to commit murder, he also must have thought about and considered his act before it was committed (premeditation) and he must

have had a design or plan to kill (deliberation)." *Id*. at 331, 618 S.E.2d at 856-57. This is consistent with precedent binding upon this Court. For example, our Supreme Court, in examining the mindset of a jury instructed on the crime of conspiracy to commit murder, held:

> [The trial] court did not instruct the jurors that an unintentional killing during a felony would support a finding of first-degree murder by reason of felony murder. Rather, they were instructed that to find a conspiracy to commit murder, they must first find an agreement to commit first-degree murder. *When they found an agreement to kill, the jurors eliminated the possibility that an unintentional felony murder formed the basis for the specific intent underlying the conspiracy of which they convicted defendant.*

*State v. Gibbs*, 335 N.C. 1, 52, 436 S.E.2d 321, 350 (1993) (emphasis added). In short, according to our precedent and according to logic, it is impossible for a jury to find a defendant guilty of conspiracy to commit murder – a crime requiring premeditation and deliberation – and to also find the defendant guilty of an unintentional or involuntary murder, or one committed in the absence of premeditation and deliberation.

Even assuming *arguendo* that the jury could have found defendant guilty of conspiracy and not found him guilty of first-degree murder, however, defendant's defense at trial was not one which would permit the jury to find him guilty of the lesser included offense of second-degree murder. Our Supreme Court addressed this specific issue in *State v. Larrimore*, 340 N.C. 119, 456 S.E.2d 789 (1995).

In *Larrimore*, the defendant was charged with first-degree murder and conspiracy to commit murder. The defendant denied any involvement in the crime. On appeal, he contended that the trial court erred in refusing to instruct the jury on the charge of second-degree murder. Our Supreme Court held:

> The State's evidence tended to establish each and every element of first-degree murder, including premeditation and deliberation. The defendant denied any involvement in the crime and denied knowing [the victim]. If the jury believed the State's evidence, it had to find the defendant guilty of first-degree murder. If it believed the defendant's evidence, it would have had to find him not guilty. It thus would have been error to have submitted second-degree murder.

*Larrimore*, 340 N.C. at 157-58, 456 S.E.2d at 809-10.

In the instant case, as in *Larrimore*, defendant argued at trial that he was in no way involved in the murder. Notwithstanding his unsworn statements to officers, his sworn testimony remained that he did not commit the crime, not that he did so in a diminished mental state or without the requisite premeditation or deliberation. As in *Larrimore*, if the jury in the instant case believed the State's evidence, it had to find defendant guilty of first-degree murder; if the jury believed defendant's sworn testimony, it had to find defendant not guilty. Defendant's testimony formed the basis for acquittal, if that, not for a conviction of second-degree murder.

Indeed, aside from defendant's confession to officers, defendant presented no evidence at trial that he was operating in any kind of diminished or hot-blooded state.

And with regard to that statement, defendant disavowed it at trial, insisting that he "told [Officer Jenkins] twice that [he] did not do it[,]" and that "he just won't take no for an answer, so I gave him what he wanted." Defendant testified that the statement to officers was false, and the product of coercion.

Nor would his statement that he "blacked out" have been sufficient to show that he had not formed intent. Our Supreme Court has held, for example, that where a defendant argued that he could not remember murders clearly and he must have been severely intoxicated at the time, his actions in committing and attempting to conceal the murder were "indicative of a capacity for premeditation and deliberation[,]" and therefore the defendant "has not made the necessary showing that he was utterly incapable of forming the requisite intent." *State v. Richmond*, 347 N.C. 412, 433, 495 S.E.2d 677, 688 (1998) (citation and quotation marks omitted). Moreover, our Supreme Court has held that where numerous wounds are inflicted, it may in fact be evidence of premeditation and deliberation. *State v. Austin*, 320 N.C. 276, 295, 357 S.E.2d 641, 653 (1987) (holding that "when numerous wounds are inflicted, the defendant has the opportunity to premeditate and deliberate from one [blow] to the next").

In the instant case, the murder weapon was taken from the kitchen to the bedroom, where the victim was asleep. The perpetrator repeatedly stabbed Dethlefsen. Defendant raised no evidence of provocation at trial. To the contrary,

between the conspiracy with A.G., the deliberate action in obtaining the weapon and bringing it to the bedroom, and the act of repeatedly stabbing a sleeping victim, all the evidence supported a determination that defendant acted subject to premeditation and deliberation. Because the evidence would not permit the jury rationally to convict defendant of the lesser included offense and acquit him of the greater, we hold that the trial court did not err in denying defendant's request for an instruction on second-degree murder.

NO ERROR.

Judges STROUD and DILLON concur.

Report per Rule 30(e).