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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-247

Filed: 5 November 2019

Mecklenburg County, No. 16 CRS 243664, 32663

STATE OF NORTH CAROLINA

v.

MONTDREKUS LAMONT MOORE, Defendant.

Appeal by defendant from judgments entered 12 June 2018 by Judge Lisa C. Bell in Mecklenburg County Superior Court. Heard in the Court of Appeals 16 October 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Stuart (Jeb) M. Saunders, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender, Katy Dickinson-Schultz, for defendant-appellant.

YOUNG, Judge.

This appeal arises from convictions for first-degree murder and possession of a firearm by a felon. We find that the trial court conducted a sufficient inquiry into Defendant's complaints about his counsel, and that those complaints did not establish that Defendant's counsel was ineffective. We also find that the trial court did not err

in denying Defendant's request for an instruction on second-degree murder. Therefore, we affirm the decision of the lower court.

I. Factual and Procedural History

On 22 November 2016, Montdrekus Lamont Moore ("Defendant") had an altercation with his girlfriend. His girlfriend's daughter, Christina Shields ("Shields"), lived with them, and was inside at the time of the altercation. Shields' boyfriend, Christian Mojica ("Mojica"), was waiting for her outside the home. When Shields went outside, Defendant followed her, and Mojica asked what was going on. Mojica tried to diffuse the situation but did not act aggressively. Defendant then told Shields he was going to Cookout and asked if she wanted any food. Shields said no. Defendant left in his vehicle, while Shields and Mojica left walking toward the laundromat. As they were walking, Defendant pulled his vehicle close to Shields and Mojica and shot Mojica. Mojica was deceased when police arrived.

Beginning on 28 March 2017, Defendant wrote letters to the trial court complaining that his attorney did not allow him to inspect and examine the discovery in his case. Defendant also wrote a letter to his attorney stating that he did not feel comfortable with the attorney's representation and asked the attorney to recuse himself from the case. On 24 July 2017, Defendant filed a *pro se* Motion to Relieve Counsel as Ineffective and a Motion to Appoint New Counsel. On 17 August 2017,

the trial court denied Defendant's motions. After the trial court hearing, Defendant sent additional letters and filed two additional motions concerning his attorney.

On 4 June 2018, the jury found Defendant guilty of first-degree murder and possession of a firearm by a felon. The trial court sentenced Defendant to consecutive sentences of life and 19 to 32 months imprisonment. On 12 June 2018, Defendant gave notice of appeal in open court.

II. Sufficient Inquiry

a. Standard of Review

This Court uses an abuse of discretion standard to determine whether the trial court erred in denying a motion to have defense counsel removed. *State v. Hutchins*, 303 N.C. 321, 336, 279 S.E.2d 788, 798 (1981) (holding that "the decision of whether appointed counsel shall be replaced is a matter committed to the sound discretion of the trial court"). Abuse of discretion occurs when the trial court's ruling is "manifestly unsupported by reason[.]" *State v. T.D.R.*, 347 N.C. 489, 503, 495 S.E.2d 700, 708 (1998).

b. Analysis

Defendant contends that the trial court erred by failing to make any inquiry into his complaints about his counsel's ineffectiveness. We disagree.

An indigent defendant does not have the right to have counsel of his choice appointed to represent him. *State v. McNeil*, 263 N.C. 260, 270, 139 S.E.2d 667, 674

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(1965). While an indigent defendant's right to appointed counsel is guaranteed by both the North Carolina Constitution and the Sixth Amendment to the United States Constitution, this right does not "include the privilege to insist that counsel be removed and replaced with other counsel merely because defendant becomes dissatisfied with his attorney's services." *State v. Sweezy*, 291 N.C. 366, 371, 230 S.E.2d 524, 528 (1976). Trial counsel "is in charge of and has the responsibility for the conduction of the trial, including the selection of witnesses to be called to the stand on behalf of his client and the interrogation of them." *State v. Robinson*, 290 N.C. 56, 66, 224 S.E.2d 174, 179 (1976). Even when disagreement over trial tactics is compounded by communication problems between the defendant and his counsel, a trial court may properly decline to appoint substitute counsel if the court finds no evidence of ineffective assistance of counsel. *State v. Thacker*, 301 N.C. 348, 352-53, 271 S.E.2d 252, 255 (1980).

Our Courts have not adopted a specific set of criteria for trial courts to consider in determining whether to appoint substitute counsel. *Id.* at 353, 271 S.E.2d at 255-56. Rather, "each case must be examined on an individual basis[.]" and "[i]n the absence of any substantial reason for the appointment of replacement counsel, an indigent defendant must accept counsel appointed by the court, unless he wishes to present his own defense." *Hutchins*, 303 N.C. at 335-36, 279 S.E.2d at 797-98.

During the 17 August 2017 hearing on the Motion to Relieve Counsel as Ineffective and the Motion to Appoint New Counsel, Defendant told the court that he would “no longer be complying with [his attorney]” because his attorney had not prepared a defense, and did not provide him the opportunity to review the discovery. Defendant’s attorney indicated that he attempted to show the discovery to Defendant, but Defendant refused to meet with him at that time. Defendant further argued that there was a lack of communication between him and his counsel, there were “lies” and a “lack of clear direction,” missing exculpatory evidence in discovery, and no respect for Defendant’s family. The trial court allowed him to explain why he wanted substitute counsel appointed. While Defendant expressed his dissatisfaction with the attorney’s services, the evidence supports the trial court’s finding that Defendant failed to show that his counsel was ineffective. Therefore, the trial court did not err in denying Defendant’s motion for substitute counsel. *Thacker*, 301 N.C. at 353, 271 S.E.2d at 256. Defendant made similar arguments in his subsequent motions and letters, but again failed to show that his counsel was ineffective. The trial court’s decision that counsel was effective was supported by reason since Defendant did not prove otherwise. Therefore, the trial court did not abuse its discretion.

III. Jury Instructions

a. Standard of Review

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“It is the duty of the trial court to instruct the jury on all substantial features of a case raised by the evidence.” *State v. Shaw*, 322 N.C. 797, 803, 370 S.E.2d 546, 549 (1988). “Failure to instruct upon all substantive or material features of the crime charged is error.” *State v. Bogle*, 324 N.C. 190, 195, 376 S.E.2d 745, 748 (1989). “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

Defendant contends that the trial court erred by denying Defendant’s request for a jury instruction on second degree murder. We disagree.

During the jury charge conference, Defendant requested an instruction on the lesser-included charge of second-degree murder. The trial court denied the request and Defendant objected. Defendant argues that there was evidence in the record supporting a charge of second-degree murder because a reasonable juror could have found that Defendant’s act of shooting and killing the victim was the result of a “spontaneous and unexpected confrontation” on the street rather than an act involving the requisite premeditation and deliberation. We hold that the record shows premeditation and deliberation.

“Murder in the first degree is the unlawful killing of a human being with malice and with premeditation and deliberation.” *State v. Love*, 296 N.C. 194, 203, 250

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S.E.2d 220, 226 (1978). Murder in the second degree is the unlawful killing of a human being with malice but without premeditation and deliberation. *State v. Flowers*, 347 N.C. 1, 29, 489 S.E.2d 391, 407 (1997).

Defendant acted with premeditation and deliberation when he approached Shields and Mojica without provocation. The prior altercation between Defendant and his girlfriend had already ended. Mojica had no involvement in that incident other than to make sure Shields was okay and attempt to diffuse the situation without acting aggressively. Defendant appeared to have cooled off from the incident because he told Shields he was going to Cookout and asked her if she wanted food. Shields said that she did not want anything, and Defendant, Shields, and Mojica all left the scene. Defendant was driving his car, and Shields and Mojica were walking towards the laundromat. Defendant then approached Shields and Mojica while they were walking. This return shows forethought and deliberation. This evidence shows that the shooting was not the “result of a spontaneous and unexpected confrontation on the street.” Even if Defendant was angry or emotional prior to and at the time of the killing, that fact “will not negate the element of deliberation during the killing unless there was evidence the anger or emotion was strong enough to disturb defendant’s ability to reason.” *State v. Rios*, 169 N.C. App. 270, 279, 610 S.E.2d 764, 771 (2005). There is no evidence that Defendant’s ability to reason was disturbed. In fact, the evidence tends to show that Defendant had cooled off from the situation

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when he asked Shields if she wanted anything from Cookout. As a result, there would not have been a continued emotional state leading up to the death of Mojica. This evidence would not permit the jury to rationally find Defendant guilty of anything less than first-degree murder. Accordingly, the trial court did not err in declining to instruct the jury on the lesser-included offense.

AFFIRMED.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).