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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-936

Filed: 6 October 2020

Nash County, No. 17 CRS 53689

STATE OF NORTH CAROLINA

v.

SHANTONIO LUCAS

Appeal by defendant from judgments entered 4 April 2019 by Judge Quentin T. Sumner in Nash County Criminal Superior Court. Heard in the Court of Appeals 8 September 2020.

*Joshua H. Stein Attorney General, by Special Deputy Attorney General Sandra Wallace-Smith, for the State.*

*Winifred H. Dillon for defendant.*

ARROWOOD, Judge.

Shantonio Lucas (“defendant”) petitions this Court for *writ of certiorari* to hear his appeal of judgments entered, and contemporaneous sentences imposed, pursuant to the entry of a guilty plea for second-degree murder and first-degree kidnapping.

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For the following reasons, we grant the petition for *writ of certiorari* and affirm the judgment of the trial court.

I. Background

In late August 2017, the family of Glorika Cherta Townsend (the “victim”) reported her missing. Based upon leads received from his family, law enforcement questioned defendant about the disappearance and his relationship with the victim. Defendant claimed that he and an unidentified third-party had “consensual sex” with the victim shortly before she was reported missing and that the latter individual thereafter attacked the victim with a knife.

Upon learning this information, local law enforcement solicited defendant’s help in locating the victim. At this point, defendant provided law enforcement with numerous fictitious stories about the incident and his involvement therein. He also directed deputies to multiple locations with no connection to the alleged assault or the location of the victim.

Eventually, after being advised of his rights, defendant led investigators to a location off a highway exit where the victim’s body was ultimately discovered. Defendant was placed in police custody and interviewed by investigators. During the interrogation, defendant admitted that he alone killed the victim. According to defendant, he and the victim had “consensual sex” after which the victim became angry and attempted to hit him with her car. Defendant then repeatedly stabbed the

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victim with a knife, inflicting multiple lethal wounds on the victim. As the victim pleaded for help, defendant placed the victim in the trunk of her car and drove her to the location where her body was later recovered.

Meanwhile, the sheriff's office located the victim's car in a parking lot of a restaurant in Rocky Mount, North Carolina. Video surveillance from the scene showed the victim's car pulling into the parking lot in the early hours of 1 September 2017. The footage showed a black male exiting the car, opening the trunk, and "wiping down" the vehicle. The video also displayed the man discarding a bag from the victim's vehicle in a nearby trash can (which was never recovered).

Following an examination of the victim's body by medical professionals, it was determined that the victim had multiple broken bones in addition to the knife wounds. The doctor opined that the broken bones may have been caused by trauma from a car, prompting law enforcement to examine the undercarriage of the victim's vehicle. The victim's blood was found on the bottom of her car, indicating that she had been hit or run over at some point causing the broken bones. The pathologist was of the opinion that the victim may have been still alive when placed in the trunk of the vehicle.

In March 2018, defendant was indicted for first-degree murder and first-degree kidnapping. On 4 April 2019, defendant pleaded guilty to second-degree murder and first-degree kidnapping. During colloquy with the court regarding the plea

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arrangement, defendant unequivocally admitted under oath to killing the victim and to doing so in a manner that was especially “heinous, atrocious, or cruel.” Defendant also admitted to the aggravating factor of being “armed with and/or used a deadly weapon at the time of the crime.” Based on defendant’s admissions to these aggravating factors—which were listed as a part of his plea agreement with the State—the trial court found the aggravating factors and entered judgments. The judgments imposed the agreed upon terms of 345 to 426 months for second-degree murder and a consecutive 104 to 137 months’ incarceration for first-degree kidnapping.

II. Discussion

Defendant seeks to have this Court hear his appeal pursuant to Rule 21 of the North Carolina Rules of Appellate Procedure. Defendant argues that his appeal is meritorious because evidence proffered in the trial court indicating that he was armed with or used a deadly weapon was necessary to prove one of the elements of second-degree murder, to wit, malice, and therefore the sentencing court erred in using this evidence to support an aggravating factor in his sentencing under N.C. Gen. Stat. § 15A-1340.16.

A. Petition for *Writ of Certiorari*

Defendant filed a *pro se* written notice of appeal on 18 April 2019, which was dated 11 April 2019, and filed within the time required under Rule 4(a)(2) of the

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North Carolina Rules of Appellate Procedure. The filing, however, contained a technical defect (*i.e.*, the filing did not specify the court to which he appeals) pursuant to Rule 4(b). Because defendant failed to file a proper notice of appeal in compliance with Rule 4, this Court is deprived of jurisdiction and must dismiss defendant's appeal. *State v. Hughes*, 210 N.C. App. 482, 485, 707 S.E.2d 777, 779 (2011). However, defendant also filed a petition for *writ of certiorari* requesting appellate review. This Court has allowed for the issuance of a *writ of certiorari* despite technical defects in a notice of appeal by a *pro se* defendant in a variety of circumstances, especially where the State has not been misled by the mistake. *See, e.g., State v. Springle*, 244 N.C. App. 760, 763, 781 S.E.2d 518, 521 (2016); *State v. Salter*, 264 N.C. App. 724, 729, 826 S.E.2d 803, 807 (2019). Here, the State does not contend it has been prejudiced or misled by the defects in defendant's appeal—which would otherwise be ripe pursuant to N.C. Gen. Stat. § 15A-1444(a1). As such, in our discretion, we grant defendant's petition for *writ of certiorari* for the purpose of reviewing the merits of the appeal. *See* N.C.R. App. P. 21(a)(1) (2020).

B. Aggravated Sentence

This Court reviews alleged sentencing errors to determine whether the sentence is supported by evidence introduced at the sentencing hearing. *State v. Jeffery*, 167 N.C. App. 575, 578, 605 S.E.2d 672, 674 (2004) (citation omitted). Pursuant to N.C. Gen. Stat. § 15A-1340.16(a), the court must consider evidence of

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aggravating or mitigating factors, “but the decision to depart from the presumptive range is in the discretion of the court.” N.C. Gen. Stat. § 15A-1340.16(a) (2019). “The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury . . . .” N.C. Gen. Stat. § 15A-1340.16(a1). “If aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range . . . .” N.C. Gen. Stat. § 15A-1340.16(b). However, “[e]vidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation.” N.C. Gen. Stat. § 15A-1340.16(d). Otherwise, “all circumstances which are transactionally related to the admitted offense and which are reasonably related to the purposes of sentencing must be considered during sentencing.” *State v. Melton*, 307 N.C. 370, 378, 298 S.E.2d 673, 679 (1983) (citations omitted).

The elements of second-degree murder are “‘the (1) unlawful killing (2) of a human being (3) with malice, but without premeditation and deliberation.’” *State v. Mack*, 206 N.C. App. 512, 516, 697 S.E.2d 490, 493 (2010) (quoting *State v. Vassey*, 154 N.C. App. 384, 390, 572 S.E.2d 248, 252 (2002)). North Carolina recognizes at least three theories of establishing the essential element of malice. *See, e.g., State v. Mosley*, 256 N.C. App. 148, 150-51, 806 S.E.2d 365, 367 (2017) (describing theories).

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One theory, depraved-heart malice, may be implied by evidence showing the use of a deadly weapon. *State v. Lail*, 251 N.C. App. 463, 473-74, 795 S.E.2d 401, 409-410 (2016). Malice can also be implied where “an act which imports danger to another is done so recklessly or wantonly as to manifest depravity of mind and disregard of human life.” *State v. Trott*, 190 N.C. 674, 679, 130 S.E. 627, 629 (1925).

Here, defendant’s argument on appeal presupposes that the State relied on his use of a particular deadly weapon to establish the element of malice. While the State could have relied on the vehicle (which defendant admittedly used to run over the victim) or the knife (which defendant admittedly used to stab the victim), the element of malice would have been established under either theory. The State did not and does not contend that the combined use of the deadly weapons caused the victim’s death. Rather, the State and the sentencing court correctly recognized that the manner of use of either deadly weapon could have caused death and thus either weapon could have been used to establish the element of malice—with the other being used as an aggravating factor during sentencing. To be sure, though, malice could have also been established from evidence showing that defendant placed the victim in the trunk of her car as she gripped to life from the wounds inflicted by defendant. The multiple injuries (and methods of injury) and brutality inflicted on the victim by defendant support a finding of malice independent of the fact that defendant was armed with and used a deadly weapon. Accordingly, the State did not have to rely on

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the latter evidence to supply the element of malice in second-degree murder, and the trial court could properly find, as an aggravating factor, that defendant used a deadly weapon (or weapons) at the time of the crime without violating the proscription set out in § 15A-1340.16(d). Because we cannot conclude that evidence that defendant used a specific deadly weapon was necessarily used to prove malice and that the same evidence (*i.e.*, use of the very same deadly weapon) was then used to support an aggravated sentence, defendant's assignment of error is without merit and overruled.

III. Conclusion

For the foregoing reasons, we hold that the acceptance of defendant's guilty plea did not prevent the sentencing judge from finding the aggravating factor that the murder was committed using a deadly weapon. The judgment of the trial court is affirmed.

AFFIRMED.

Judges BRYANT and ZACHARY concur.

Report per Rule 30(e)