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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-21

Filed: 1 December 2020

Columbus County, Nos. 16 CRS 050373–74, 050225

STATE OF NORTH CAROLINA

v.

MEGAN ALICIA HAYNES

Appeal by defendant from judgments entered 5 June and 12 July 2019 by Judge Douglas B. Sasser in Columbus County Superior Court. Heard in the Court of Appeals 8 September 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Nicholas Vlahos, for the State.

Sarah Holladay for defendant-appellant.

BRYANT, Judge.

Where the State’s evidence was sufficient to show a series of events forming a continuous transaction between the victim’s death and the taking of her property, the trial court did not err in denying defendant’s motion to dismiss the charge of robbery with a dangerous weapon. Where defendant did not receive notice and an opportunity to be heard on the matter of attorney’s fees in accordance with N.C. Gen. Stat. § 7A-

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455 and a civil judgment was imposed on defendant, we vacate and remand for further proceedings.

On 17 February 2016, a Columbus County grand jury indicted defendant Megan Haynes on two counts of first-degree murder and one count of robbery with a dangerous weapon. The case proceeded to jury trial on 20 May 2019 at the criminal session of Columbus County Superior Court before the Honorable Douglas B. Sasser, Judge presiding.

On 5 June 2019, the jury found defendant guilty of one count of first-degree murder, one count of second-degree murder, and one count of robbery with a dangerous weapon. The trial court consolidated the first-degree murder and armed robbery convictions and sentenced defendant to life imprisonment without parole. Defendant was sentenced concurrently to 317 to 393 months imprisonment on the second-degree murder conviction. Defendant gave oral notice of appeal in open court.

The State's evidence tended to show the following: On 22 October 2014, Deputy Joshua Rising ("Deputy Rising") of the Columbus County Sheriff's Department responded to a call from Jeanette Thut, who reported a larceny and breaking and entering at her home in Bolton, North Carolina. Ms. Thut informed Deputy Rising she suspected that defendant and defendant's boyfriend, Justin Reynolds, had stolen her power tools, prescription Xanax, and money that was in her vehicle, which she let Reynolds use. Defendant and Reynolds lived in Ms. Thut's camper located behind

her residence. Deputy Rising confronted defendant and Reynolds about the stolen items in the presence of Ms. Thut and Donna Gore, Ms. Thut's roommate and Reynolds' mother. When an argument ensued, Deputy Rising asked defendant and Reynolds to leave the premises. The following day, on 23 October 2014, Ms. Thut went to the sheriff's department to report additional items had been stolen and inform law enforcement that she was going to ask defendant and Reynolds to vacate her property.

Approximately one week later, on 3 November 2014, law enforcement discovered the bodies of Ms. Thut and Ms. Gore in a metal shed behind Ms. Thut's house. Testimony revealed that Ms. Thut died of multiple stab wounds to her body. The cause of Ms. Gore's death could not be definitively determined but the likely cause was asphyxia, due to neck compression.

Prior to trial, Reynolds pled guilty to first-degree murder and armed robbery and testified for the State. At trial, Reynolds testified and admitted he and defendant had stolen items from Ms. Thut and sold them for drugs prior to 23 October 2014. As to events that occurred on 23 October 2014 and beyond, Reynolds testified that upon returning to Ms. Thut's home after running errands which included buying and using drugs, he observed defendant sitting on Ms. Thut's porch with blood visible on her shirt and arms. After asking an unresponsive defendant if she was ok, Reynolds went inside the house and saw Ms. Thut's body on the kitchen floor in a pool of blood with

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a kitchen knife beside her. Fifteen to twenty minutes later, Ms. Gore entered the residence and saw Ms. Thut's body on the kitchen floor. Reynolds testified that his mother looked at him in disbelief and pulled out her phone. Defendant, who was inside the residence at the time, yelled to Reynolds, "Get her." Reynolds then grabbed and choked his mother to death and laid her on the floor. After Reynolds laid her body on the floor, defendant choked Ms. Gore again to make sure she was dead. Reynolds and defendant then sat down and used drugs before deciding to leave the premises. Reynolds and defendant loaded two of Ms. Thut's vehicles with items taken from the home. Among other things, defendant took Ms. Thut's jewelry, credit cards and musical instruments while Reynolds took \$2,000 cash and a television. Reynolds testified that when they left Ms. Thut's home, he and defendant each drove one of Ms. Thut's vehicles. They visited several shops and pawned the items for drug money. Defendant and Reynolds engaged in further drug use and Reynolds wound up in the hospital after overdosing.

Approximately two days after Ms. Thut and Ms. Gore were killed, Reynolds and defendant returned to Ms. Thut's residence to clean up the scene. They then put the bodies in a metal shed located in the back of Ms. Thut's house. They returned to Ms. Thut's residence a few days later and took more of Ms. Thut's belongings, including another vehicle, to sell for drug money while the bodies were in the shed.

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Jill Taylor, an inmate incarcerated with defendant, was called as a witness for the State. Taylor testified that defendant confided in her that she stabbed Ms. Thut and slit her throat. Afterwards, according to Taylor, defendant used Ms. Thut's credit cards. Defendant also told Taylor where the knife had been discarded after they cleaned up the crime scene.

At the close of the State's evidence, defendant made a motion to dismiss which was denied. Defendant did not present any evidence at trial and made a second motion to dismiss at the close of all the evidence. That motion was also denied.

The record reflects the trial court did not address attorney's fees at defendant's sentencing hearing. However, in the civil judgment entered on 12 July 2019, the court ordered defendant to pay \$27,848.87 in attorney's fees.

As an initial matter, we must determine whether this Court has jurisdiction over defendant's appeal on the issue of attorney's fees. On 9 March 2020, defendant filed a petition for writ of certiorari to review the 12 July 2019 judgment against her. Pursuant to Rule 21(a)(1) of the Appellate Rules, this Court may grant a petition for writ of certiorari and review a judgment entered by the trial court "when the right to prosecute an appeal has been lost by failure to take timely action." N.C.R. App. P. 21(a)(1). While defendant gave oral notice of appeal, she failed to file written notice of appeal for the civil judgment for attorney's fees. As a result, defendant lost her

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right to appeal the judgment for failure to take timely action. The State does not object to this Court granting defendant's petition. Thus, in our discretion, we grant defendant's petition for writ of certiorari and address the merits of her argument.

On appeal, defendant argues that the trial court erred by I) denying the motion to dismiss where there was insufficient evidence of robbery with a dangerous weapon, and II) ordering defendant to pay attorney's fees without providing an opportunity to be heard.

I

Defendant first argues the trial court erred by denying a motion to dismiss the charge of armed robbery at the close of evidence. In particular, defendant does not dispute the State's evidence that she took Ms. Thut's vehicles, personal belongings, credit cards, and money after the killing of Ms. Thut. Rather, defendant asserts that the taking of these items "was an afterthought, not sufficiently connected to the earlier homicide to justify a conviction for robbery with a dangerous weapon." Additionally, defendant contends the State cannot prove the robbery was part of a series of events forming a continuous transaction between the victim's death and the taking of her property. We disagree.

Upon a motion to dismiss for insufficient evidence, the State must present "substantial evidence (1) of each essential element of the offense charged and (2) of defendant's being the perpetrator of such offense." *State v. Fritsch*, 351 N.C. 373,

378, 526 S.E.2d 451, 455 (2000) (citation omitted). “Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78–79, 265 S.E.2d 164, 169 (1980). The trial court must view the evidence in the light most favorable to the State and give the State the benefit of all reasonable inferences. *Fritsch*, 351 N.C. at 378–79, 526 S.E.2d at 455.

The elements of robbery with a dangerous weapon are: “(1) an unlawful taking or an attempt to take personal property from the person or in the presence of another, (2) by use or threatened use of a firearm or other dangerous weapon, (3) whereby the life of a person is endangered or threatened.” *State v. Gettys*, 219 N.C. App. 93, 98, 724 S.E.2d 579, 584 (2012) (citation omitted). Robbery with a dangerous weapon requires that “the defendant’s use or threatened use of a dangerous weapon must precede or be concomitant with the taking, or be so joined with it in a continuous transaction by time and circumstances as to be inseparable.” *State v. Hope*, 317 N.C. 302, 306, 345 S.E.2d 361, 364 (1986).

The timing between “the violence and the actual taking is unimportant as long as there is one continuing transaction amounting to armed robbery with the elements of violence and of taking so joined in time and circumstances as to be inseparable.” *State v. Lilly*, 32 N.C. App. 467, 469, 232 S.E.2d 495, 496–97 (1977). Further, our Supreme Court has held that “to support convictions for a felony offense and related felony murder, all that is required is that the elements of the underlying offense and

the murder occur in a time frame that can be perceived as a single transaction.” *State v. Wilkinson*, 344 N.C. 198, 216, 474 S.E.2d 375, 384 (1996) (citation omitted).

In the instant case, the State presented evidence that defendant and Reynolds were living behind Ms. Thut’s residence. The day before Ms. Thut’s murder, law enforcement was called and Ms. Thut, in the presence of law enforcement, confronted defendant and Reynolds about the theft of her property. An altercation arose and defendant and Reynolds were asked to leave Ms. Thut’s property. The next day, Ms. Thut went to the sheriff’s office with a list of additional items defendant and Reynolds had stolen. When Ms. Thut returned home, she was killed, followed by the killing of Ms. Gore. Shortly thereafter, more property was taken from Ms. Thut’s residence. A week later, when her body was discovered, Ms. Thut still had the list of stolen items she had previously brought to the sheriff’s office on her person.

Defendant, relying on the holding in *State v. Dalton*, 122 N.C. App. 666, 471 S.E.2d 657 (1996), argues that the taking of Ms. Thut’s property did not occur in a continuous transaction. In *Dalton*, the defendant entered the victim’s house while the victim was asleep. *Id.* at 669, 471 S.E.2d at 659. While inside, the defendant grabbed a knife, took the victim’s purse, left the home to give it to an accomplice, and then re-entered the victim’s home to rape her at knifepoint. *Id.* at 672, 471 S.E.2d at 661. This Court found that there was not a continuous transaction because “[t]he taking of the purse occurred while [the victim] was asleep; therefore, she could not

have known of the presence of the knife and could not have been induced by it to part with her purse.” *Id.* at 671, 471 S.E.2d at 661. Additionally, “[the] defendant’s alleged use of the knife *while* attempting to rape [the victim] was [not] so joined in time and circumstances with the taking of the purse as to be part of one continuous transaction.” *Id.* at 672, 471 S.E.2d at 661 (emphasis added). However, we find the circumstances in *Dalton* to be distinct from the instant case.

Here, the jury heard evidence that defendant and Reynolds had a history of stealing Ms. Thut’s property before her death and selling it in exchange for drugs. Shortly after Ms. Thut and Ms. Gore were killed, defendant and Reynold took several items of property and cash from the residence. Defendant took one of Ms. Thut’s vehicles, Reynolds took another. Defendant then attempted to make purchases with Ms. Thut’s credit cards, visited several shops to pawn Ms. Thut’s items, and purchased and used more drugs with Reynolds.

When viewed in the light most favorable to the State, the evidence was sufficient for the jury to make a reasonable inference that there was a series of events that formed a continuous transaction between Ms. Thut’s death and the taking of her property. Therefore, the trial court properly denied defendant’s motion to dismiss the armed robbery charge. Defendant’s argument is overruled.

II

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Defendant next argues, and the State concedes, the trial court erred when a civil judgment was entered against her awarding attorney's fees when she was denied notice and an opportunity to be heard about fees. We agree.

Pursuant to N.C. Gen. Stat. § 7A-455, a trial court may enter a civil judgment and impose attorney's fees against a convicted, indigent defendant for the costs incurred by the defendant's appointed counsel. N.C. Gen. Stat. § 7A-455 (2019). Before the trial court can impose fees, it must provide the defendant with notice and an opportunity to be heard. *State v. Jacobs*, 172 N.C. App. 220, 236, 616 S.E.2d 306, 317 (2005). However, here, the trial court imposed attorney's fees in the 12 July 2019 civil judgment outside the presence of defendant. In addition to providing defendants with notice and an opportunity to be heard, this Court has established that a direct conversation between the trial court and the defendant about attorney's fees must happen before fees can be imposed. *State v. Friend*, 257 N.C. App. 516, 809 S.E.2d 902 (2018). In *Friend*, the Court held:

[a]bsent a colloquy directly with the defendant on this issue, the requirements of notice and opportunity to be heard will be satisfied only if there is other evidence in the record demonstrating that the defendant received notice, was aware of the opportunity to be heard on the issue, and chose not to be heard.

Id. at 523, 809 S.E.2d at 907.

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Here, there was no personal discussion or “colloquy” with defendant about attorney’s fees. Instead the court had the following discussion with defendant about her satisfaction with her counsel:

[DEFENSE COUNSEL]: Would you inquire if she’s satisfied with my services to date?

[DEFENDANT]: Yes, I am.

[THE COURT]: All right. Thank you ma’am. Anything else, Mr. Lee?

[DEFENSE COUNSEL]: No, Your Honor. With that, we would decline to introduce evidence and we would renew our motions.

There was no mention of attorney’s fees or the total number of hours defense counsel planned to submit. Further, as mentioned above, not only was the judgment entered outside defendant’s presence, the trial court waited more than one month to enter the civil judgment for attorney’s fees.

Because this Court finds nothing in the record to indicate that defendant received notice and an opportunity to be heard regarding attorney’s fees, we hold that the civil judgment should be vacated and remanded without prejudice for further proceedings on the State’s right to seek the imposition of attorney’s fees, provided defendant is given notice and an opportunity to be heard pursuant to N.C. Gen. Stat. § 7A-455.

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For the reasons stated above, we hold the trial court did not err in denying the motion to dismiss the armed robbery charge at the close of all the evidence. We vacate the civil judgment for attorney's fees and remand for further proceedings.

NO ERROR IN PART, VACATED AND REMANDED IN PART.

Judges ZACHARY and ARROWOOD concur.

Report per Rule 30(e).