IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-649

No. COA20-444

Filed 16 November 2021

Onslow County, Nos. 17 CRS 51435, 51450; 19 CRS 211

STATE OF NORTH CAROLINA

v.

SHAWN D. STURDIVANT

Appeal by defendant from judgments entered 6 June 2019 by Judge Phyllis M. Gorham in Onslow County Superior Court. Heard in the Court of Appeals 8 September 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Francisco Benzoni, for the State.

Glover & Petersen, P.A., by Ann B. Petersen, for defendant.

DIETZ, Judge.

¶ 1 Defendant Shawn Sturdivant appeals his conviction for first degree murder, arguing that there was insufficient evidence of premeditation and deliberation.

¶ 2 We reject this argument. The State presented evidence that, after an argument with the victim, Sturdivant acquired a gun, pointed it at the unarmed victim, pulled the trigger and then, after the gun failed to fire, stepped back and fired a second shot

into the victim's face, killing him. This is sufficient evidence to send the issue of premeditation and deliberation to the jury. Accordingly, we find no error in the trial court's judgments.

Facts and Procedural History

¶ 3 In 2017, Defendant Shawn Sturdivant got into an argument with Joshua Lindauer. Several days later, Sturdivant and Lindauer encountered each other again at someone else's home and again began to argue. As the argument continued, Sturdivant retrieved a gun. Sturdivant then asked Lindauer what he had in his pocket and Lindauer stated that "the only thing he had were his fists." Lindauer then suggested that they go outside and fight "like men." Sturdivant agreed. Lindauer walked outside and Sturdivant soon followed.

¶ 4 Lysander Burnette testified that he witnessed the shooting that followed. Burnette saw Sturdivant pointing a .22 revolver at Lindauer's forehead. Sturdivant pulled the trigger once, but the gun did not fire. Sturdivant backed up and pulled the trigger a second time, hitting Lindauer in the face and killing him. Sturdivant was three or four feet from Lindauer when he fired the fatal shot.

¶ 5 Another witness, Aaron Rosenbaum, testified that Sturdivant said either "I shot the motherfucker in the face" or "I shot him in the face" to people nearby. Sturdivant attempted to flee the scene and he burned his shirt in an attempt to conceal his involvement in the shooting. Sturdivant also asked others how to get

gunshot residue off his hands. He later rubbed his hands with pine straw to try to get rid of the gunshot residue. Sturdivant also lied on multiple occasions to police, claiming that he had not shot, or even argued, with Lindauer.

¶ 6 The State charged Sturdivant with first degree murder and two counts of possession of a firearm by a felon. The jury convicted Sturdivant of all charges. The trial court arrested judgment on one of the convictions for possession of a firearm by a felon and sentenced Sturdivant to life imprisonment without parole for first degree murder and 19 to 32 months for possession of a firearm by a felon. Sturdivant appealed.

Analysis

¶ 7 Sturdivant contends on appeal that there was insufficient evidence of premeditation and deliberation, an essential element of first degree murder. Thus, he argues, the trial court erred by denying his motion to dismiss the first degree murder charge.

¶ 8 "This Court reviews the trial court's denial of a motion to dismiss de novo." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). On a motion to dismiss, "the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). "Substantial

evidence is such relevant evidence as 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). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192–93, 451 S.E.2d 211, 223 (1994).

¶ 9 Our Supreme Court has recognized "that it is difficult to prove premeditation and deliberation and that these factors are usually proven by circumstantial evidence because they are mental processes that are not readily susceptible to proof by direct evidence." *State v. Sierra*, 335 N.C. 753, 758, 440 S.E.2d 791, 794 (1994). The Court has also identified examples of circumstantial evidence that may support a finding of premeditation and deliberation, including the statements and conduct of the defendant before and after the killing; ill will or previous difficulties between the parties; the relative helplessness of the deceased when the killing occurred; the defendant's possession of the murder weapon when arriving at the scene; and whether the defendant fired multiple shots from a firearm during the killing. *See, e.g.*, *State v. Olson*, 330 N.C. 557, 565, 411 S.E.2d 592, 596 (1992); *State v. Taylor*, 362 N.C. 514, 531, 669 S.E.2d 239, 256 (2008).

¶ 10 Here, the State presented evidence that Sturdivant and Lindauer previously had argued. On the day of the shooting, shortly after the two began arguing again,

Sturdivant acquired a gun and then continued the argument. During the argument, despite Lindauer telling him he was unarmed, Sturdivant pointed the gun at Lindauer's face and pulled the trigger. When the gun did not go off, Sturdivant stepped back and pulled the trigger again, hitting Lindauer in the face and killing him. Sturdivant then announced either "I shot the motherfucker in the face" or "I shot him in the face." Finally, after the shooting, Sturdivant sought to conceal the killing in various ways, including efforts to destroy evidence and lie to law enforcement officers about his involvement.

¶ 11 Under our precedent, this is substantial evidence from which the jury properly could infer premeditation and deliberation. *See State v. Childress*, 367 N.C. 693, 695, 766 S.E.2d 328, 330 (2014). Accordingly, the trial court did not err by denying Sturdivant's motion to dismiss.

Conclusion

¶ 12 We find no error in the trial court's judgments.

NO ERROR.

Judges INMAN and GRIFFIN concur.

Report per Rule 30(e).