IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-155

Filed 17 October 2023

Columbus County, No. 19 CRS 662

STATE OF NORTH CAROLINA

v.

DAVID MARK FIELDS

Appeal by defendant from judgment entered 1 June 2022 by Judge James S. Carmical in Columbus County Superior Court. Heard in the Court of Appeals 20 September 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Thomas H. Moore, for the State.

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

ARROWOOD, Judge.

David Mark Fields ("defendant") appeals from judgment entered upon his conviction for first-degree murder. On appeal, defendant argues the trial court erred in denying his motion to dismiss for insufficient evidence and in instructing the jury on flight. For the following reasons, we find no error.

I. Background

Defendant was indicted for first-degree murder on 11 December 2019. The matter came on for trial in the Columbus County Superior Court on 23 May 2022, Judge Carmical presiding. The evidence at trial tended to show the following facts.

On 28 September 2019 at approximately 9:47 p.m., Correctional Officer Elroy Leggett ("Officer Leggett") was monitoring the C and D wings of Columbus Correctional Institution's Hickory dorm when defendant approached him and told him to check the D wing. Officer Leggett went to the back of the D wing and found an inmate Scott Whitmeyer ("Whitmeyer") bleeding on his bunk with apparent stab wounds. Whitmeyer later died from his injuries.

Law enforcement and prison officials obtained video footage of the C and D wings at the time of the incident. The video, admitted into evidence, showed a physical altercation lasting approximately ten seconds between defendant and Whitmeyer at approximately 8:45 p.m. The altercation occurred between two bunk beds at the back of the D wing, and the camera was positioned at the front of the D wing, showing only the top of defendant and Whitmeyer's heads behind the bunks.

For an hour after the altercation, defendant walked up and down the aisle of bunks, occasionally stopping at Whitmeyer's bunk where they previously fought and speaking to Whitmeyer. On multiple occasions during that time, another inmate Anthony McMillan ("McMillan") spoke to defendant and Whitmeyer individually as well as together at Whitmeyer's bunk.

The video showed another altercation at 9:45 p.m., lasting approximately thirteen seconds, at the bunk between Whitmeyer and defendant. McMillan was standing in the aisle near the bunk when it occurred. After the fight, defendant walked down the aisle with his hands in his pockets and in the direction of the bathroom shared between the C and D wings. Whitmeyer had disappeared from view of the camera, and McMillan stepped from the aisle into the bunks where the fight occurred. Officer Leggett arrived in D wing at approximately 9:47 p.m. and went to Whitmeyer's bunk.

Additional camera footage from C wing showed defendant emerging from the bathroom area into the C wing without a shirt at approximately 9:47 p.m. Defendant had been wearing a t-shirt when he entered the bathroom area. Defendant walked back to C wing and put on another t-shirt before moving off camera.

McMillan gave a statement to law enforcement after the incident and told them that defendant and Whitmeyer had gotten in an argument over the direction of a fan. He stated that he talked to defendant and Whitmeyer a few times to try to get them to "just chill out," and he "was just trying to be a peacemaker." McMillan told officers that defendant approached him on multiple occasions saying, "I just don't trust that dude," "I ain't gonna feel comfortable in here," and expressing his desire that Whitmeyer be transferred to another dorm. McMillan stated that after the 9:45 p.m. fight, Whitmeyer fell on the bunk, and he was about to walk away when he saw Whitmeyer was seriously hurt and leaned down to help him. McMillan also stated

he did not know there had been a weapon until that point because from his perspective, Whitmeyer's bunk was on his left, and he could see only defendant's left and Whitmeyer's right sides. He further stated that he could not see defendant's right side during the fight, and to him, it looked like defendant was just punching Whitmeyer. After reviewing the video footage, investigators identified defendant as a suspect.

At trial, McMillan testified that he did not strike or stab Whitmeyer and that he did not have a weapon at any point. McMillan further testified that although he stood nearby and watched the 9:45 p.m. fight as it occurred, he did not see defendant with a weapon at any point.

Officer James Spillman ("Officer Spillman") testified that when he arrived on the scene, his supervisor directed him to search the bathroom because defendant was observed on video entering and exiting the bathroom area after the fight. Officer Spillman stated he found a bloody shirt and towel rolled up in a bath mat in the bathroom. Officer Spillman further testified that when he questioned defendant about the incident, defendant said, "It is what it is," and, "It's on camera." Officer Spillman additionally stated that he observed "what appeared in [his] experience" to be blood on defendant's shorts and boots, and he also observed "what appeared to be skin tissue" on the boots.

Detective Amy Corder ("Detective Corder") with the Columbus County Sheriff's Office testified that when she received defendant's shorts from Officer

Spillman, she observed "blood located throughout" the shorts, and the "majority" of the blood on the shorts was "pretty deep down inside the pocket." Detective Corder further testified that she observed blood on the bottom edge of the shirt found in the bathroom "on the right-hand side where the pocket on the shorts were." On cross examination, Detective Corder testified that although she had collected the tissue-like substance, she did not collect any fibers or run any biological tests on the clothes collected from defendant or the clothes found in the bathroom.

Timothy Moody ("Mr. Moody"), who worked in the maintenance department for the Department of Corrections, testified that on 30 September 2019, he was called to check the drain trap in the plumbing system under the C and D wings and found a metal item in the drain. On cross examination, Mr. Moody stated he did not know how long the item had been in the trap or from whom the weapon could have come. Detective Samantha Hickman testified that she collected the item from Mr. Moody on 30 September 2019 and described the metal item as a "prison-made weapon" called a "shank" with a "little handle and a sharp object."

Dr. Nabila Haikal ("Dr. Haikal"), an expert in forensic pathology for the State, testified that Whitmeyer died from a total of fourteen sharp force injuries. Although Dr. Haikal did not perform the autopsy in this case, she testified using the report and photos offered into evidence. Dr. Haikal further testified that, although she could not be certain it was the murder weapon, the shank retrieved from the drain was consistent with the kinds of stab wounds she observed from the photos of Whitmeyer's

body.

Defendant was convicted of first-degree murder and sentenced to life in prison without the possibility of parole. Defendant gave oral notice of appeal in open court.

II. Discussion

On appeal, Defendant contends that the trial court erred (1) in denying his motion to dismiss for insufficient evidence and (2) by giving a jury instruction on flight. We address these contentions in turn.

A. Motion to Dismiss

Defendant contends the court erred in denying his motion to dismiss at the close of all the evidence because the State offered no direct evidence linking him to Whitmeyer's murder and that the circumstantial evidence introduced was sufficient only to raise a suspicion that he was the perpetrator. We disagree.

"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) (citation omitted). When ruling 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 the defendant's being the perpetrator[.]" *State v. Griffin*, 264 N.C. App. 490, 493, 826 S.E.2d 253, 255-56 (2019) (internal quotation marks omitted) (quoting *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455, *cert. denied*, 531 U.S. 890, 121 S.Ct. 213, 148 L. Ed. 2d 150 (2000)). "[I]f the record developed before the trial court contains substantial evidence, whether direct or

circumstantial, . . . to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied." *State v. Massey*, 287 N.C. App. 501, 509-10, 882 S.E.2d 740, 748 (2023) (quoting *State v. Osborne*, 372 N.C. 619, 626, 831 S.E.2d 328, 333 (2019)).

"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) (citations omitted). When determining whether the evidence is substantial, this 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) (citation omitted), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

Our Supreme Court has held that "[c]ircumstantial evidence may withstand a motion to dismiss and support a conviction *even when the evidence does not rule out every hypothesis of innocence*." *State v. Blagg*, 377 N.C. 482, 488, 858 S.E.2d 268, 273 (2021) (alteration in original) (emphasis in original) (citation and internal quotation marks omitted); *see also State v. Miles*, 222 N.C. App. 593, 730 S.E.2d 816 (2012). If the evidence establishing a defendant as the perpetrator is circumstantial, "the court must consider whether a reasonable inference of defendant's guilt may be drawn from the circumstances." *Fritsch*, 351 N.C. at 379, 526 S.E.2d at 455.

For example, in *Miles*, this Court held that even though the only evidence

tending to show the defendant murdered the victim was circumstantial, it raised a reasonable inference that he "possessed the motive, means, and opportunity" to commit the offense. 222 N.C. App. at 600, 730 S.E.2d at 823. In that case, the defendant contacted the victim at least ninety-four times over the course of one month until the day of the murder, threatened to kill the victim if he did not receive repayment of money owed, and was in the vicinity of the scene of the crime at the victim's time of death. *Id.* at 601, 730 S.E.2d at 823.

On the other hand, "[i]f the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it, the motion should be allowed." *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993) (quoting *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980)). Strong suspicion is still insufficient to remove a case from the "realm of surmise and conjecture." *See State v. White*, 293 N.C. 91, 95, 235 S.E.2d 55, 58 (1977) (citing *State v. Cutler*, 271 N.C. 379, 156 S.E.2d 679 (1967)). In *State v. Cutler*, the evidence presented a reasonable inference that defendant, found with blood on his clothes and on his knife, was at the deceased's home at the time of or shortly after his death. 271 N.C. 379, 383, 156 S.E.2d 679, 682 (1967). However, the Court found that because the State offered no evidence of ill will between the defendant and the deceased and no direct evidence tying blood on his person or on his knife to the deceased, the evidence of his opportunity raised only a strong suspicion of the defendant's guilt that was insufficient to survive a motion to dismiss. *Id.* at 384, 156

S.E.2d at 682.

To determine whether a defendant's guilt may be reasonably inferred, "courts often [look to] proof of motive, opportunity, capability and identity[.]" *State v. Pastuer*, 205 N.C. App. 566, 571, 697 S.E.2d 381, 385 (2010) (alteration in original) (citation and internal quotation marks omitted). In this determination, we must "assess the quality and strength of the evidence as a whole." *Miles*, 222 N.C. App. at 600, 730 S.E.2d at 823.

Here, defendant argues the altercations between he and Whitmeyer are evidence of opportunity alone, which is insufficient to support a finding that defendant is the perpetrator. *See State v. Bell*, 65 N.C. App. 234, 238-39, 309 S.E.2d 464, 467 (1983) ("It is clear, for instance, that evidence of *either* motive or opportunity alone is insufficient to carry a case to the jury." (emphasis in original) (citations omitted)). However, in this case the outbreaks of violence provide sufficient evidence of both defendant's motive and opportunity to commit the murder. *See State v. Hayden*, 212 N.C. App. 482, 486-87, 711 S.E.2d 492, 495-96 (2011) (noting that the State's evidence "tended to show hostility between the victim and defendant that erupted at times in physical violence" and concluding that this hostility presented "sufficient evidence from which a rational juror could conclude the existence of a motive to kill the victim."); *see also State v. Gray*, 261 N.C. App. 499, 503-504, 820 S.E.2d 364, 368 (noting that "motive tended to be sufficiently established with testimony concerning the hostility that existed between Defendant and [the victim]").

Like the evidence in *Miles* of the defendant's hostility toward the victim, the State presented substantial evidence of the ill will between defendant and Whitmeyer prior to Whitmeyer's death. Similar to the defendant in *Miles* continually contacting the victim before the murder, defendant repeatedly walked to and from Whitmeyer's bunk for an hour, continuing to talk to Whitmeyer. Additionally, defendant told McMillan, "I don't trust that dude," on multiple occasions before his second fight with Whitmeyer. Thus, defendant exhibited both a motive and opportunity to kill Whitmeyer.

"When the question is whether evidence of *both* motive and opportunity will be sufficient to survive a motion to dismiss, the answer is much less clear." *Bell*, 65 N.C. App. at 239, 309 S.E.2d at 468 (emphasis in original). However, this Court has suggested that "[t]he answer appears to rest more upon the strength of the evidence of motive and opportunity, as well as other available evidence, rather than an easily quantifiable 'bright line' test." *Id.*

The State's evidence of defendant's behavior after the fight also presents a "chain of circumstantial evidence" that is sufficient to overcome defendant's motion to dismiss. *See State v. Thomas*, 296 N.C. 236, 246, 250 S.E.2d 204, 209 (1978) ("Though none of this evidence, taken separately, would be sufficient to raise more than a mere suspicion of defendant's guilt, it is clear that '(t)he chain of circumstantial evidence in this case was clearly sufficient to establish . . . that defendant was the perpetrator of the crime.' " (alteration in original) (quoting *State*

v. Rowland, 263 N.C. 353, 358, 139 S.E.2d 661, 665 (1965))). For example, in *Thomas*, the sufficient chain of evidence included that the defendant arrived at his friend's home with blood on the front of his body, the defendant told his friend he killed a woman on the street where her body was found by police, lab results confirmed the presence of blood on defendant's clothes he wore the night of the murder, and the defendant's fingerprint was found in the victim's home. 296 N.C. at 245, 250 S.E.2d at 209.

Here, in the light most favorable to the State, the chain of circumstantial evidence raises a strong inference of defendant's guilt. First, defendant's altercation with Whitmeyer mere minutes before officers discovered the latter injured not only places him at the scene of the crime like the defendant's fingerprint in *Thomas*, but the violence between the two also raises the reasonable inference that defendant was the perpetrator; a rational juror need not make any logical leap to conclude that the person who physically fought with the victim just before their death was the perpetrator.

Additionally, defendant walked away from the bunk after the fight with his hands in his pockets. Defendant entered the bathroom area immediately after the fight at 9:45 p.m. with a shirt on and emerged at 9:47 p.m. without a shirt. A bloody t-shirt and towel were later found stuffed into a rolled up bath mat in the bathroom. Two days after the incident, a shank was found in the plumbing trap in sewer pipes that came from the C and D wing bathrooms.

Like the defendant in *Thomas* who was seen shortly after the murder with blood on his clothes, both Officer Spillman and Detective Corder testified that they observed blood on defendant's shorts and boots as well as what appeared to be skin-like tissue when they questioned defendant after the incident. On the shorts Detective Corder collected from defendant, she observed blood inside the right pocket. Additionally, the t-shirt collected from the bathroom had blood on the bottom right edge of the shirt adjacent to where the right pocket of the shorts would be.

Taking the evidence as a whole, with all reasonable inferences being resolved in the light most favorable to the State, the evidence presents a chain of events from which a rational juror could conclude that defendant stabbed Whitmeyer, walked away concealing the weapon in his pocket, and disposed of his bloody shirt and the murder weapon in the bathroom.

Defendant also argues that the circumstantial evidence is insufficient because it leaves in question other theories to explain Whitmeyer's injuries, citing, for example, McMillan's proximity to Whitmeyer after defendant had walked away from the fight. This argument is unpersuasive, not only because there was no evidence connecting McMillan to Whitmeyer's injuries, but also because our law is clear that circumstantial evidence need not rule out "every hypothesis of innocence" to support a finding that defendant was the perpetrator. *See Blagg*, 377 N.C. at 488, 858 S.E.2d at 273. Here, the State presented substantial circumstantial evidence of motive, means, and opportunity sufficient for a jury to find that defendant was the

perpetrator; therefore, the trial court did not err in denying defendant's motion to dismiss.

B. Jury Instruction on Flight

Defendant next contends the trial court erred in instructing the jury that it could consider evidence of flight in determining his guilt because there was no evidence to support the instruction. We disagree.

Over defendant's objection, the trial court instructed the jury as follows:

> The state contends and the defendant denies that the defendant fled. Evidence of flight may be considered by you together with all other facts and circumstances in this case in determining whether the combined circumstances amount to an admission or show a consciousness of guilt. However, proof of this circumstance is not sufficient in itself to establish the defendant's guilt. Further, this circumstance has no bearing on the question of whether the defendant acted with premeditation and deliberation. Therefore, it must not be considered by you as evidence of premeditation or deliberation.

We review a challenge to the trial court's decisions regarding jury instructions de novo. *State v. Locklear*, 259 N.C. App. 374, 376-77, 816 S.E.2d 197, 200 (2018) (citation omitted). "A trial judge is not required to instruct a jury on defendant's flight unless 'there is some evidence in the record reasonably supporting the theory that defendant fled after commission of the crime charged.' " *State v. Thompson*, 328 N.C. 477, 489-90, 402 S.E.2d 386, 392 (1991) (quoting *State v. Levan*, 326 N.C. 155, 164-65, 388 S.E.2d 429, 435 (1990)). When there is "some evidence supporting the theory of the defendant's flight, the jury must decide whether the facts and circumstances support the State's contention that the defendant fled." *State v.*

Norwood, 344 N.C. 511, 535, 476 S.E.2d 349, 360 (1996) (citation omitted). Flight from the scene of a crime "may properly be considered by a jury as evidence of guilt or consciousness of guilt." *State v. King*, 343 N.C. 29, 38, 468 S.E.2d 232, 238 (1996).

Evidence that a defendant simply left the scene of the crime "is not enough to support an instruction on flight. There must also be some evidence that defendant took steps to avoid apprehension." *Thompson*, 328 N.C. at 490, 402 S.E.2d at 392 (citation omitted). Additionally, "[t]he fact that there may be other reasonable explanations for defendant's conduct does not render the instruction improper." *State v. Irick*, 291 N.C. 480, 494, 231 S.E.2d 833, 842 (1977).

"Jury instructions based upon a state of facts not supported by the evidence and which are prejudicial to the defendant entitle the defendant to a new trial." *State v. Lee*, 287 N.C. 536, 540, 215 S.E.2d 146, 149 (1975) (citations omitted). Erroneous jury instructions are prejudicial "only if there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." *Locklear*, 259 N.C. App. at 377, 816 S.E.2d at 201 (citation and internal quotation marks omitted).

Our law says little regarding flight within a prison that is short of escape from custody. *See Levan*, 326 N.C. at 165, 388 S.E.2d at 434 ("It is well settled in this state that an escape from custody constitutes evidence of flight."); *see also State v. Miller*, 26 N.C. App. 190, 192, 215 S.E.2d 181, 182 (1975) (holding that flight instruction was proper where a defendant escaped from jail awaiting trial). Regardless of the prison

context, a flight instruction may be appropriate if there is some evidence an incarcerated defendant left the scene of the crime and took steps to avoid apprehension. In that case, a trial court should not be barred from instructing the jury on flight simply because an incarcerated defendant is unable to leave the prison.

As discussed above, in the light most favorable to the State, the evidence is that defendant left the scene of the crime, went into a bathroom in another corridor of the prison, concealed his bloody shirt in a rolled up bath mat, and disposed of the shank he used to stab Whitmeyer that later was found in the sewer system of this bathroom. Based on these inferences, there is some evidence supporting the State's theory that defendant left the scene of Whitmeyer's murder and attempted to avoid apprehension. Thus, the trial court did not err in instructing on flight.

III. Conclusion

For all the foregoing reasons, we find that defendant had a fair trial free from error.

NO ERROR.

Judges DILLON and GORE concur.

Report per Rule 30(e).