IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-264

Filed 6 February 2024

Brunswick County, No. 20 CRS 53070

STATE OF NORTH CAROLINA

v.

MICHAEL TODD HILL, Defendant.

Appeal by Defendant from judgment entered 27 May 2023 by Judge Joshua W. Willey, Jr., in Brunswick County Superior Court. Heard in the Court of Appeals 3 October 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Meredith L. Britt, for the State.

William D. Spence for Defendant.

GRIFFIN, Judge.

Defendant Michael Todd Hill appeals from the denial of a challenge for cause of a potential juror and the denial of his motion to dismiss the charge of first-degree murder. Defendant asserts the potential juror was unable to be an impartial and fair juror for a variety of reasons. Regarding the motion to dismiss, Defendant asserts the State failed to present substantial evidence of an intent to kill and of

premeditation and deliberation. Lastly, he argues the trial court committed plain error in failing to instruct the jury that they could find Defendant guilty of second-degree murder. We hold the trial court did not err.

I. Factual and Procedural History

On 19 July 2020, Defendant and 23-year-old Keonna Graham, the deceased, checked into the SureStay Hotel in Shallotte. Ms. Graham was in a relationship with another man, Jalen Brown, and Defendant, who was a married man. Defendant and Ms. Graham had been in a relationship for approximately one year. Defendant and Ms. Graham's relationship had grown increasingly volatile and threatening in the months preceding her death. A friend of Ms. Graham heard Defendant threaten to kill her on one occasion. Defendant shot Ms. Graham in the back of the head with a .45 caliber handgun as she was lying in bed in their hotel room. Defendant reached into his bag and "reached over there and shot her."

After shooting Ms. Graham, Defendant threw his handgun away in the northeast Cape Fear River. Defendant proceeded to go home, gather more firearms, change cars, and then drive around for a couple more hours before he was arrested on 20 July 2020. Defendant was read and waived his *Miranda* rights before admitting to police that he had intended to take a bunch of pills to kill himself, but after he realized he had forgotten them at his house, he intended to provoke law enforcement into killing him. Defendant admitted to SBI Agent Hunter Whitt that

he had shot Ms. Graham after hearing that he was the only person seen entering or leaving the hotel room where Ms. Graham was found.

Ms. Graham died instantly from a single gunshot wound to the back of her head after the bullet went through her brain stem and exited her right temple. Defendant stated that, before the fatal event, while he and Ms. Graham were in the hotel room, Ms. Graham said that she was going to go to sleep. Defendant got up and said he was going to smoke a cigar. She asked Defendant to cut the light out and then he reached into his bag, pulled out his handgun, and shot her. After shooting her, Defendant put on clothes and walked out the door, and was greeted by the housekeeper. Defendant stated that he had already turned the light off when he shot Ms. Graham and that he did not aim at any part of her body; that he did not even look at her when he shot; and that he did not check to see if she was dead before leaving.

Defendant was brought to trial on charges of first-degree murder and possession of a firearm by a felon. He pled guilty to possession of a firearm prior to trial and did not appeal that charge. On 27 May 2022, the jury found Defendant guilty of first-degree murder. The trial court sentenced Defendant to life in prison without parole on the conviction of first-degree murder and a concurrent sentence of 22 to 36 months on his plea of guilty to possession of a firearm by a felon. Defendant gave timely oral notice of appeal in open court.

II. Analysis

Defendant asserts the trial court erred in denying his challenge for cause of juror No. 8. Additionally, Defendant asserts the trial court erred in denying his motion to dismiss the charge of first-degree murder. He alternatively argues the trial court committed plain error in failing to include the instruction of second-degree murder to the jury. We disagree.

A. Challenge to Juror No. 8

Defendant argues the trial court erred in refusing to remove juror No. 8, Mr. Jones [1], from the jury. Defendant states that Mr. Jones "was first examined by ADA Ward who had previously prosecuted the drunk driver who had killed potential juror Jones'[s] grandparents." Defendant adds that Mr. Jones had a background in law enforcement and multiple family members who work for law enforcement agencies, and "knew several members of the Sheriff's department who were on the State's list of potential witnesses."

"We review a trial court's ruling on a challenge for cause for abuse of discretion." *State v. Lasiter*, 361 N.C. 299, 301, 643 S.E.2d 909, 911 (2007) (citation omitted). "An abuse of discretion is shown only where the court's ruling 'was manifestly unsupported by reason and could not have been the result of a reasoned decision.'" *State v. Lee*, 335 N.C. 244, 267, 439 S.E.2d 547, 558 (1994) (citations omitted).

[1] A pseudonym was used to protect the identity of juror No. 8.

Furthermore, "[t]he trial court holds a distinct advantage over appellate courts in determining whether to allow a challenge for cause." *State v. Reed*, 355 N.C. 150, 155, 558 S.E.2d 167, 171 (2002). "In our review, we consider not whether we might disagree with the trial court, but whether the trial court's actions are fairly supported by the record." *State v. Cummings*, 361 N.C. 438, 447, 648 S.E.2d 788, 794 (2007) (citations omitted). Our Supreme Court has stated, "[t]he duty of the appellate court is not to micromanage the jury selection process. Indeed, an appellate court should reverse only in the event that the decision of the trial court is so arbitrary that it is void of reason." *Id.* at 449–50, 648 S.E.2d at 798.

In the present case, the trial court was in the best position to observe Mr. Jones's demeanor and response to questioning. Mr. Jones indicated that he could serve as a fair and impartial juror. Mr. Jones added that he had not served in law enforcement for almost ten years and had described his contact as "little to none" when referencing ADA Ward. For these reasons, we hold that the trial court did not abuse its discretion by denying Defendant's motion.

B. Motion to Dismiss

Defendant next asserts the trial court erred in denying his motion to dismiss the charge of first-degree murder made at the close of evidence. He argues the State "failed to present substantial evidence of an intent to kill and of premeditation and deliberation." "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Mathis*, 261 N.C. App.

263, 274, 819 S.E.2d 627, 635 (2018) (citation and quotations omitted). "When ruling on a defendant's motion to dismiss, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged, and (2) that the defendant is the perpetrator of the offense." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "Whether the State presented substantial evidence of each essential element of the offense is a question of law; therefore, we review the denial of a motion to dismiss de novo." *State v. Lamp*, 383 N.C. 562, 569, 884 S.E.2d 623, 628 (2022) (citation and quotations omitted).

"'The [substantive] elements of first-degree murder are: (1) the unlawful killing, (2) of another human being, (3) with malice, and (4) with premeditation and deliberation.'" *State v. Guin*, 282 N.C. App. 160, 166, 870 S.E.2d 285, 290 (2022) (citation omitted). "Premeditation has been defined . . . as thought beforehand for some length of time, however short. No particular length of time is required; it is sufficient if the process of premeditation occurred at any point prior to the killing." *State v. Horskins*, 228 N.C. App. 217, 221, 743 S.E.2d 704, 708 (2013) (citation and quotation marks omitted). "Deliberation means an intent to kill executed by the defendant in a cool state of blood, in furtherance of a fixed design for revenge or to accomplish an unlawful purpose and not under the influence of a violent passion, suddenly aroused by lawful or just cause or legal provocation." *State v. Hicks*, 241 N.C. App. 345, 354, 772 S.E.2d 486, 492–93 (2015) (citation and quotation marks omitted).

Defendant asserts that "[t]here was no evidence of an intent to kill" and that he was not in a "cool state of blood" when the shooting occurred. Defendant points to his statements that he was upset with the condition of his relationship with the victim, and "it seemed like a dream, a nightmare." Defendant further adds that "[t]here was no planning or forethought on [his] part."

Despite Defendant's contention, in his interview with SBI agents, Defendant stated that no argument had occurred prior to the shooting. Ms. Graham did not see him draw the weapon from his bag when he fired at her as she lay with her back towards Defendant. Defendant's own words indicate that he deliberately reached into his bag, took out his handgun, and shot Ms. Graham.

Furthermore, "[t]he nature and number of the victim's wounds is another indicator of premeditation and deliberation." *State v. Leazer*, 353 N.C. 234, 239, 539 S.E.2d 922, 926 (2000) (citations omitted). In the present case, Ms. Graham died from a single gunshot wound to the back of the head. The bullet entered the back of her head and exited through her right temple. The nature of the wound suggests she was in a defenseless position and was unaware of what was happening. These details further support a premeditated and deliberate killing.

Based on the evidence presented and Defendant's own statements, we hold the trial court did not err in denying Defendant's motion to dismiss.

C. Jury Instructions

Defendant lastly argues the trial court "committed plain error in failing to instruct the jury that they could, alternatively, find [] Defendant guilty of second degree murder based on depraved heart malice."

Defendant asserts that "the evidence in the trial below shows that Defendant's reckless use of the handgun caused [Ms. Graham's] death." However, at the charge conference, Defense counsel requested the addition of a "gross negligence" instruction related to second-degree murder. Defense counsel did not clarify the request or provide the contents of the request orally or through writing.

"The trial court is required to give a requested instruction 'only if the proposed charge is *a correct statement of the law* and is supported by the evidence.'" *State v. Benner*, 380 N.C. 621, 628, 869 S.E.2d 199, 204 (2022) (citation and quotations omitted) (emphasis added). In other words, "if the requested jury instruction contains any errors of fact or law, the trial court acts properly in refusing it." *State v. Parker*, 277 N.C. App. 531, 548, 860 S.E.2d 21, 33 (2021) (citation omitted).

Here, defense counsel requested a "gross negligence" instruction in a second-degree murder context. There is no applicable "gross negligence" theory that exists in our jurisprudence, and defense counsel did not clarify the request. *See State v. Shepherd*, 156 N.C. App. 603, 609, 577 S.E.2d 341, 345 (2003) (holding the trial court did not err in denying the defendant's request for a jury instruction that was an erroneous interpretation of the law).

At the charge conference, defense counsel objected to the trial court's denial of a second-degree murder instruction and renewed his objection at the conclusion of the charge conference. However, the North Carolina Rules of Appellate procedure state:

> A party may not make any portion of the jury charge or omission therefrom the basis of an issue presented on appeal unless the party objects thereto before the jury retires to consider its verdict, stating distinctly that to which objection is made and the grounds of the objection; provided that opportunity was given to the party to make the objection out of the hearing of the jury, and, on request of any party, out of the presence of the jury.

N.C. R. App. P. 10(a)(2) (emphasis added).

Defense counsel failed to properly preserve this issue for appeal. "If an instructional error is not preserved below, it nevertheless may be reviewed for plain error 'when the judicial action questioned is specifically and distinctly contended to amount to plain error.'" *State v. Cagle*, 266 N.C. App. 193, 196, 830 S.E.2d 893, 897 (2019) (quoting N.C. R. App. P. 10(a)(4)). "To establish plain error, [a] defendant must show that the erroneous jury instruction was a fundamental error—that the error had a probable impact on the jury verdict." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012). "[B]ecause plain error is to be 'applied cautiously and only in the exceptional case,' the error will often be one that 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" *Id.* (citation and quotation omitted). In the present case, Defendant has failed to demonstrate that the jury

would likely have reached another verdict. The evidence indicated that Defendant methodically drew his weapon and fired at the victim who was in a defenseless position. Defendant's own words and actions demonstrate an intent to kill with malice, premeditation, and deliberation. Accordingly, we hold the trial court did not commit plain error when it declined to instruct the jury on second-degree murder.

III. Conclusion

For the aforementioned reasons, we hold that the trial court did not commit error.

NO ERROR.

Judges COLLINS and THOMPSON concur.

Report per Rule 30(e).