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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1105

Filed: 20 June 2017

Pitt County, No. 14 CRS 053439

STATE OF NORTH CAROLINA

v.

QUENTIN DEMOND TAYLOR, Defendant.

Appeal by defendant from judgment entered 23 March 2016 by Judge Marvin K. Blount III in Pitt County Superior Court. Heard in the Court of Appeals 30 May 2017.

Attorney General Joshua H. Stein, by Associate Attorney General Rory Agan, for the State.

The Epstein Law Firm PLLC, by Drew Nelson, for defendant-appellant.

ELMORE, Judge.

Defendant Quentin Demond Taylor appeals from the trial court's judgment entered upon jury verdicts finding him guilty of felony possession of cocaine and misdemeanor possession of marijuana. Defendant asserts that the trial court erred by failing to intervene *ex mero motu* when the State referenced inadmissible evidence in its closing argument. For the following reasons, we find no error.

On 9 November 2015, a grand jury indicted defendant on charges of possession with intent to sell and deliver cocaine, simple possession of a Schedule II controlled substance, and misdemeanor possession of marijuana up to one-half ounce. The matter came on for trial on 21 March 2016.

The State's evidence tended to show that on 1 May 2014, around 1:30 a.m., Lieutenant Vance Head of the Pitt County Sheriff's Office responded to a call concerning a suspicious vehicle in the area of a burglary. Lieutenant Head spotted a vehicle matching the description in a Sheetz gas station parking lot and saw two men inside the car. Lieutenant Head pulled into the gas station and observed the driver, later identified as defendant, exit the vehicle and enter the Sheetz store.

Lieutenant Head approached defendant inside the store, identified himself, and informed defendant that he was investigating a suspicious vehicle that matched defendant's vehicle. Defendant told Lieutenant Head his name was Travis Gunter and that he was coming from his aunt's house. To keep the conversation casual, Lieutenant Head told defendant he would finish talking to him outside after defendant received his food order.

Deputy Kacey Wilson also responded to the Sheetz parking lot to assist with the investigation. While Lieutenant Head spoke with defendant inside the store, Deputy Wilson approached the vehicle to speak with the passenger. Deputy Wilson immediately noticed that the passenger "appeared very nervous. He wouldn't look at

me when he was talking to me. He turned away, [I] saw a vein bulging in his neck and I could smell a very strong odor of marijuana coming from inside the vehicle.” Deputy Wilson also observed “little pieces of what appeared to be marijuana” in the passenger’s lap.

Deputy Wilson asked the passenger to step out of the vehicle and waved Lieutenant Head, who had just exited the store, over to the vehicle. After detaining the passenger in a patrol car, the officers searched the vehicle. They found eight baggies of crack cocaine located in the wrapper of a cigarette box in the passenger-side floorboard, two plastic baggies of marijuana in the driver-side floorboard, and three Hydrocodone tablets in the driver-side door armrest. At that point, Lieutenant Head went back inside to look for defendant but could not find him in the store. Lieutenant Head noticed an unopened bag of food near the back exit of the store but did not see anyone in the area.

The officers ran the license plate of the vehicle and discovered it was registered to Lillian Blount, defendant’s mother. After obtaining a photograph of defendant, Lieutenant Head identified him as the driver he had spoken to at Sheetz. During his testimony, Lieutenant Head began to describe how he used the Pitt County Sheriff’s Office’s Record Management System (RMS) in his investigation:

[Lieutenant Head]. . . . It’s just a record management system that we utilize to do our reports, log in our evidence entries and document our cases. To be a little more specific, it also contains data for anyone that’s entered into

that system by an investigating officer. It also has jail photos, if you're booked into our detention facility for any reason. If you are a victim of a crime, I got [sic] to your house, you have a break-in, I obtain your information, it goes into that system. So it's a database.

. . . .

[Prosecutor]. At any point did you search [defendant] in the RMS?

[Lieutenant Head]. I did.

[Defendant's Counsel]. Objection.

At a subsequent bench conference held outside the presence of the jury, defendant explained the basis of his objection to Lieutenant Head's testimony that he saw a picture of defendant in the RMS database. Defendant argued that he did not object to Lieutenant Head testifying that he obtained defendant's picture, "but to say that it came from this system I think is inappropriate because it's lead to [sic] the inference that he had been arrested before and I think it's hearsay." The trial court sustained the objection as to the reference to RMS and, when prompted for clarification, defendant confirmed that he had withdrawn his objection "as to the general identification." Lieutenant Head went on to testify that he "was able to obtain a photograph of the suspect, and once [he] observed the photograph" he was able to identify defendant as the man he spoke to at Sheetz and who was the driver of the vehicle.

Defendant offered no evidence at trial. The jury found defendant guilty of all three charges. Upon defendant's motion, the trial court set aside the verdict for simple possession of a Schedule II controlled substance. The court consolidated the two remaining convictions into one judgment and sentenced defendant to a term of eight to nineteen months of imprisonment. Defendant entered timely notice of appeal.

Defendant's sole argument on appeal is that the trial court erred by failing to intervene *ex mero motu* during the State's closing argument. "The standard of review for assessing alleged improper closing arguments that fail to provoke timely objection from opposing counsel is whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*." *State v. Jones*, 355 N.C. 117, 133, 558 S.E.2d 97, 107 (2002) (citing *State v. Trull*, 349 N.C. 428, 451, 509 S.E.2d 178, 193 (1998), *cert. denied*, 528 U.S. 835, 145 L. Ed. 2d 80 (1999)). In our review, we

must determine whether the argument in question strayed far enough from the parameters of propriety that the trial court, in order to protect the rights of the parties and the sanctity of the proceedings, should have intervened on its own accord and: (1) precluded other similar remarks from the offending attorney; and/or (2) instructed the jury to disregard the improper comments already made.

Id.

Counsel is allowed wide latitude in closing arguments. *State v. Huffstetler*, 312 N.C. 92, 112, 322 S.E.2d 110, 123 (1984) (citing *State v. McKenna*, 289 N.C. 668, 224 S.E.2d 537, *death sentence vacated on other grounds*, 429 U.S. 912, 50 L. Ed. 2d 278 (1976)), *cert. denied*, 471 U.S. 1009, 85 L. Ed. 2d 169 (1985). Whether counsel has abused the privilege is a decision that “must be left largely to the sound discretion of the trial court.” *Id.* “[I]t is the duty of the judge to interfere when the remarks of counsel are not warranted by the evidence, and are calculated to mislead or prejudice the jury.” *State v. Miller*, 271 N.C. 646, 659, 157 S.E.2d 335, 346 (1967) (citations omitted). Nonetheless, “only an extreme impropriety on the part of the prosecutor will compel this Court to hold that the trial judge abused his discretion in not recognizing and correcting *ex mero motu* an argument that defense counsel apparently did not believe was prejudicial when originally spoken.” *State v. Richardson*, 342 N.C. 772, 786, 467 S.E.2d 685, 693 (citing *State v. Johnson*, 298 N.C. 355, 368–69, 259 S.E.2d 752, 761 (1979)), *cert. denied*, 519 U.S. 890, 136 L. Ed. 2d 160 (1996). When determining “whether the prosecutor’s remarks are grossly improper, the remarks must be viewed in context and in light of the overall factual circumstances to which they refer.” *State v. Alston*, 341 N.C. 198, 239, 461 S.E.2d 687, 709 (1995) (citation omitted), *cert. denied*, 516 U.S. 1148, 134 L. Ed. 2d 100 (1996). In order to constitute reversible error, the “defendant must show the prosecutor’s comments so infected the trial with unfairness that it rendered the

conviction fundamentally unfair.” *State v. Robinson*, 346 N.C. 586, 607, 488 S.E.2d 174, 187 (1997) (citing *State v. Rose*, 339 N.C. 172, 202, 451 S.E.2d 211, 229 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995)).

During closing argument, the prosecutor made the following statement:

The evidence is there. The Defendant fled. He was ID'd. Lieutenant Head, twenty-plus years of law enforcement experience, saw a picture of the Defendant, that was him. . . . At that time, they thought the Defendant was Travis Gunter, wherever Travis Gunter was. They were able to make contact with Lillian Blount and they were able to confirm that Lillian Blount's son, Quentin Taylor, *pulled the image*, and Lieutenant Head proved that, that was the person driving the car—or confirmed that, that was the person driving the car.

(Emphasis added.) Defendant argues the State's closing argument was improper because it referred to inadmissible evidence when the prosecutor stated that law enforcement “pulled the image” of defendant. Defendant contends this comment directly linked Lieutenant Head's earlier testimony concerning the RMS database with the identification of defendant, and that the only reasonable conclusion a juror could have made was that Lieutenant Head “pulled the image” from the RMS system. Defendant argues he was prejudiced by the State's comment because the presence of his photograph in the RMS system “would be suggestive of his guilt” and therefore the trial court should have intervened *ex mero motu*. We disagree.

The prosecutor's statement during his closing argument that Lieutenant Head “pulled the image” is founded upon admissible evidence presented at trial and

accurately reflects Lieutenant Head's testimony. During trial, Lieutenant Head testified that he "was able to obtain a photograph of [defendant]" and determined that defendant was the driver of the vehicle. Defendant did not object to this testimony, but only objected to testimony that the photograph of defendant was obtained from the RMS database. The prosecutor never referenced the RMS in the closing argument or suggested that the photograph was "pulled" from the RMS database.

Moreover, in his brief, defendant admits that he does not believe the prosecutor's statement was "malicious or that he intentionally disregarded the ruling of the trial court," but argues instead that the comment appears to have been a mistake. However, a judge only has a duty to intervene *ex mero motu* "when the remarks of counsel are not warranted by the evidence, and are calculated to mislead or prejudice the jury." *Miller*, 271 N.C. at 659, 157 S.E.2d at 346. By acknowledging that the remark appears to be a mistake by the prosecutor, defendant admits the comment was not calculated to mislead or prejudice the jury.

Even assuming *arguendo* that the prosecutor purposefully used the word "pulled," defendant has not shown that this remark so infected the trial with unfairness that it rendered the conviction fundamentally unfair. Given the in-court identification of defendant as the driver of the vehicle by Lieutenant Head and the evidence presented at the trial, defendant has not shown that there is a reasonable probability that, had the court taken corrective action, a different result would have

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been reached at trial. Therefore, we hold the trial court did not abuse its discretion in failing to intervene *ex mero motu*.

NO ERROR.

Judges DIETZ and BERGER concur.

Report per Rule 30(e).