An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1097

Filed: 15 May 2018

Davidson County, Nos. 14CRS053960, 14CRS002181-82

STATE OF NORTH CAROLINA

v.

KASEY DASHAWN GARLAND, Defendant.

Appeal by Defendant from judgment entered 6 March 2017 by Judge Mark E. Klass in Davidson County Superior Court. Heard in the Court of Appeals 2 May 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General William P. Hart, Jr., for the State.

Leslie Rawls for the Defendant.

DILLON, Judge.

Kasey Dashawn Garland ("Defendant") appeals from judgment entered upon jury verdicts finding him guilty of possession of a firearm by a convicted felon, attempted robbery with a dangerous weapon, conspiracy to commit robbery with a dangerous weapon, and first-degree murder.[1] The trial court consolidated

[1] The trial court arrested judgment on Defendant's conviction for attempted robbery with a dangerous weapon because it served as the underlying felony for his first-degree murder conviction based on the felony murder rule.

Defendant's convictions and sentenced him to life imprisonment without parole. Defendant gave oral notice of appeal in open court.

I. Background

Defendant did not present any evidence at trial. The State's evidence tended to show as follows:

In July 2014, Defendant rode from High Point to Thomasville with his girlfriend ("Ms. Johnson"), his male friend, and his friend's brother ("Mr. Mebane"). Ms. Johnson was the driver and owner of the vehicle. The purpose of the trip was to rob a drug dealer (the "victim"). Ms. Johnson testified that when they arrived in Thomasville, she parked her vehicle at a car wash approximately one-thousand (1,000) feet from the victim's home. The group agreed that one of Defendant's co-conspirators, Mr. Mebane, would remain with the vehicle at the car wash because he was a "known hit man." The other three co-conspirators, including Defendant and Ms. Johnson, returned to the victim's home to commit the robbery.

During the course of the robbery, Defendant shot the victim through a locked bedroom door. The victim ultimately died from the gunshot wound. After the shooting, Defendant, Ms. Johnson, and the other co-conspirator fled from the victim's home to the car wash. Two eyewitnesses testified at trial that they observed a woman and two men fleeing from the victim's home toward the car wash. Ms. Johnson testified that after they returned to the vehicle, Defendant told her "I shot that

[expletive]," explaining that he did so because it was "either [Defendant] or [the victim] first getting shot at."

II. Analysis

In his primary argument on appeal, Defendant contends the trial court improperly admitted evidence of his co-conspirator's location during the attempted robbery and murder of the victim. We disagree.

On the day of the victim's death, Mr. Mebane was on pretrial release for a separate offense and was wearing an ankle monitor which tracked his location and sent the data to the Greensboro police department. At trial, an officer from the Greensboro police department testified that during the relevant time period, the tracking data from Mr. Mebane's GPS ankle monitor showed that he traveled from High Point to Thomasville, down the victim's street, and to a nearby carwash. The data then showed Mr. Mebane stationary at the car wash for a period of time, followed by travel back to High Point. This evidence was admitted over Defendant's objection. Specifically, Defendant argued that it was irrelevant and that its admission would violate Rules 401 and 403 of the North Carolina Rules of Evidence.

While technically not a discretionary ruling, and therefore not reviewed under the abuse of discretion standard, a trial court's ruling on relevance under *Rule 401* is accorded "great deference on appeal." *State v. Lane*, 365 N.C. 7, 27, 707 S.E.2d 210, 223 (2011). A trial court's ruling on the admissibility of evidence under *Rule 403* is

reviewed for abuse of discretion. *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012).

Here, the trial court properly concluded that the GPS evidence, which tended to show the location of Defendant's co-conspirator during the commission of the crimes charged, was relevant to Defendant's trial for those same crimes. "Evidence is relevant if it has any logical tendency, however slight, to prove a fact in issue in the case." *State v. Sloan*, 316 N.C. 714, 724, 343 S.E.2d 527, 533 (1986). "[E]very circumstance that is calculated to throw any light upon the supposed crime is admissible. The weight of such evidence is for the jury." *State v. Whiteside*, 325 N.C. 389, 397, 383 S.E.2d 911, 915 (1989).

Defendant contends that the sole purpose of the officer's testimony regarding the GPS data was to "vouch" for the credibility of Ms. Johnson's testimony. *See State v. Giddens*, 199 N.C. App. 115, 681 S.E.2d 504 (2009). However, in addition to being consistent with Ms. Johnson's testimony, the GPS evidence also tended to prove the series of events leading up to the robbery, that Mr. Mebane remained at the car wash during the robbery, and that Mr. Mebane was part of the conspiracy which also included Defendant. It also tended to show that Mr. Mebane was not one of the two male individuals that witnesses observed at the victim's home, which, in turn, made it more likely that Defendant *was* one of the two individuals observed at the victim's home.

We further conclude that the admission of this relevant evidence was not "unfairly prejudicial" under Rule 403. *See* N.C. R. Evid. 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]"). We note that "[n]ecessarily, evidence which is probative in the State's case will have a prejudicial effect on the defendant." *State v. Mercer*, 317 N.C. 87, 93-94, 343 S.E.2d 885, 889 (1986). The question is one of degree–whether the evidence is *unfairly* prejudicial. *Id.*

Here, the GPS evidence simply tended to establish the State's version of the facts of the case. The transcript shows that the trial court heard argument from both sides regarding the potential unfair prejudice that could arise from the introduction of the GPS evidence before allowing the State to present the evidence. The trial court did not abuse its discretion by refusing to exclude the officer's testimony regarding the movements and location of Defendant's co-conspirator during the time of the commission of the relevant offenses.

Because we have concluded that it was not error for the trial court to admit the GPS evidence, Defendant's trial counsel's failure to request a limiting instruction regarding this evidence cannot be the basis for a meritorious claim for ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 688 (1984) (stating that in order to prevail on an ineffective assistance of counsel claim, a "defendant must first show that counsel's performance was [] deficient"). Defendant's trial

counsel's failure to request a limiting instruction for relevant and admissible evidence does not fall outside the exercise of reasonable professional judgment. *See State v. Oxendine*, 112 N.C. App. 731, 735, 436 S.E.2d 906, 909 (1993). Accordingly, we conclude that Defendant received a fair trial, free from error.

NO ERROR.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).