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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-861

Filed: 5 June 2018

Cleveland County, Nos. 13 CRS 54581–82

STATE OF NORTH CAROLINA

v.

JESSE DEAN HOPPES

Appeal by defendant from judgments entered 16 December 2016 by Judge Robert C. Ervin in Cleveland County Superior Court. Heard in the Court of Appeals 22 March 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General I. Faison Hicks, for the State.

David Weiss for defendant.

DIETZ, Judge.

Defendant Jesse Dean Hoppes appeals his conviction for first degree murder. He contends that the trial court erred by failing to intervene on its own initiative to address allegedly improper remarks by the prosecutor at closing argument—remarks to which his counsel chose not to object.

On appeal, we review this argument to determine whether the prosecutor's remarks during closing argument were so grossly improper that the trial court's failure to intervene rendered the trial fundamentally unfair. *State v. Bohannon*, __ N.C. App. __, __, 786 S.E.2d 781, 787–88 (2016). As explained below, even assuming these remarks were objectionable, they were not so grossly improper that they deprived Hoppes of his right to a fair trial. Accordingly, we find no error in the trial court's judgments.

Facts and Procedural History

On 5 September 2013, law enforcement arrived at the home of Defendant Jesse Dean Hoppes to serve an arrest warrant. From a distance, they saw what appeared to be a dead body with two people standing over it inside the garage. As they approached, the officers saw bloody water running out from the garage. After waiting for backup, officers entered the home and found Hoppes's girlfriend. They later found Hoppes hiding in bushes outside the home.

Law enforcement identified the victim as Earl Guy Hall, a friend of Hoppes. Hall had been shot and stabbed multiple times. Officers appeared to have interrupted Hoppes in the act of cleaning the crime scene and preparing to dispose of the body. After concluding its investigation, the State indicted Hoppes for first degree murder and possession of a firearm by a felon. The case went to trial.

The State presented evidence supporting the charge of first degree murder based on premeditation and deliberation, and Hoppes presented evidence supporting his claim of self-defense and the lesser offense of second degree murder based on voluntary intoxication. Hoppes's girlfriend testified at the trial and explained that Hoppes physically abused her.

The jury found Hoppes guilty of first degree murder and possession of a firearm by a felon. The trial court sentenced Hoppes to life in prison without the possibility of parole. Hoppes timely appealed.

Analysis

Hoppes argues that he is entitled to a new trial because the trial court failed to intervene *ex mero motu* to address allegedly improper statements during the State's closing argument that suggested Hoppes's physical abuse of his girlfriend supported the premeditation and deliberation elements of the first degree murder charge. As explained below, we find no error under the applicable standard of review.

A closing argument "must: (1) be devoid of counsel's personal opinion; (2) avoid name-calling and/or references to matters beyond the record; (3) be premised on logical deductions, not on appeals to passion or prejudice; and (4) be constructed from fair inferences drawn only from evidence properly admitted at trial." *State v. Jones*, 355 N.C. 117, 135, 558 S.E.2d 97, 108 (2002). "Trial counsel are allowed wide latitude in jury arguments and are permitted to argue the facts based on evidence which has

been presented as well as reasonable inferences which can be drawn therefrom." *State v. Fisher*, 336 N.C. 684, 699, 445 S.E.2d 866, 874 (1994).

If a defendant's counsel timely objects, the standard of review for improper closing arguments "is whether the trial court abused its discretion by failing to sustain the objection." *Jones*, 355 N.C. at 131, 558 S.E.2d at 106. Where no objection is made, the standard of review is whether the prosecutor's arguments "were so grossly improper that the trial court erred in failing to intervene *ex mero motu*." *State v. Murrell*, 362 N.C. 375, 391, 665 S.E.2d 61, 73 (2008). A trial court is required to intervene on its own initiative only if "the argument strays so far from the bounds of propriety as to impede defendant's right to a fair trial." *State v. Atkins*, 349 N.C. 62, 84, 505 S.E.2d 97, 111 (1998).

On appeal, Hoppes challenges the following portion of the prosecutor's closing arguments, to which he did not object at trial:

> Again, same kind of things you're going to think about with excessive force: . . . the reputation, if any, of the victim for danger and violence. And we've heard nothing of that. We've got plenty of evidence [Hoppes] is violent, but we have had no evidence that [Hall] was violent.
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> . . .
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> If you kill somebody in self-defense, aren't you a little bit sorry that you took another life? . . . No remorse about severely, severely beating his girlfriend. . . . She doesn't even look human. . . . For him to say that he beat her and stood up there and looked at these pictures and showed absolutely no remorse of what he did to her, who – who does

> that?
>
> . . .
>
> [T]he evidence also tells you that this was not self-defense. And this goes to the premeditation and deliberation as well. Remember, I told you the judge is going to tell you to consider what he did before, during, and after the killing. Well, before the killing he beat the brakes off his girlfriend and shot out the door.
>
> . . .
>
> I want to end by asking this question. When you go back there I want you to ask yourself: Who is Jesse Hoppes? Is he a man who was in a great relationship with somebody trying to make a home with them when in comes [Hall] on meth and gets in a fight with him, tries to stab him with something, and he just truly acted in self-defense? It's an unfortunate killing, but it's something he had to do? Is that who he is? Or is he a cold blooded killer, someone who violently beats his girlfriend with no remorse . . . . That's who Jesse Hoppes is.

Hoppes concedes that he did not object to these statements. We therefore review on appeal whether the statements were so grossly improper that the trial court's failure to intervene on its own initiative deprived Hoppes of his right to a fair trial. *Atkins*, 349 N.C. at 84, 505 S.E.2d at 111.

We find no error under this standard of review. Even assuming these portions of the closing argument were objectionable, they did not infect the trial with fundamental unfairness. Hoppes's trial counsel ably presented Hoppes's alternate theory of the case, which was based on his voluntary intoxication and the need for

self-defense. Moreover, the trial court correctly instructed the jury on the law concerning premeditation and deliberation, what the jury must find in order to convict Hoppes of first degree murder, and how Hoppes's arguments would impact the jury's assessment of the crimes of which he was found guilty.

As this Court has recognized, when the trial court intervenes on its own initiative during closing argument, it does so despite recognizing "an argument which defense counsel apparently did not believe was prejudicial when he heard it." *State v. Martinez*, __ N.C. App. __, __, 795 S.E.2d 386, 391 (2016). Because this sort of *sua sponte* intervention by the court could inadvertently highlight arguments by the prosecutor that the defense, for strategic reasons, would prefer not to be highlighted in the jury's mind, we will not find error unless the challenged comments render the trial fundamentally unfair. As explained above, that did not occur here, and thus we find no error.

Conclusion

For the reasons discussed above, we hold that the trial court did not err in failing to intervene *ex mero motu* during closing argument.

NO ERROR.

Judges HUNTER, JR. and ZACHARY concur.

Report per Rule 30(e).