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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-294

Filed: 19 June 2018

Lenoir County, No. 11CRS051547

STATE OF NORTH CAROLINA

v.

KION TYEARL DAIL, Defendant.

Appeal by defendant from judgment entered 3 June 2016 by Judge Paul L. Jones in Superior Court, Lenoir County. Heard in the Court of Appeals 1 November 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General Jeremy D. Lindsley, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Paul M. Green, for defendant-appellant.

STROUD, Judge.

Defendant appeals his conviction for first degree murder. We conclude there was no error.

I. Background

The State's evidence showed that on the night of 2 June 2011, Mr. Jones was sitting on his front porch when he saw four or five boys wearing dark clothes go into Tony's Friendly Mart.[1] Shortly thereafter, the group left the store, walking on Mitchell Street before turning left onto Lenoir Avenue. "Several seconds later," Mr. Jones "heard a loud pop[.]" A couple of minutes later, law enforcement arrived at the intersection of Lenoir and Mitchell and found Mr. Thomas Hinton dead from a gunshot wound. Law enforcement officers showed Mr. Jones a surveillance video from Friendly Mart, and he identified an individual from the video as Lamont Byrd.

Later that evening, Ms. Smith, an acquaintance of the boys -- defendant, Byrd, and Bryant -- told the police she got a phone call from the boys because they were hiding from the police.[2] The boys told Ms. Smith they had knocked Mr. Hinton over on his bike, and defendant had shot him because he was "[t]he next person come through the path." "It was just going to be the next person who came down the path[.]"

Defendant was indicted for the murder of Mr. Hinton. Byrd eventually pled guilty to first-degree murder. At defendant's trial Bryant was a hostile witness for the State and during his testimony he read from a letter he had written to Mr. Hinton's mother in which he admitted they had killed Mr. Hinton. The jury found

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[1] Mr. Jones is a pseudonym to protect the identity and privacy of the witness. The boys Mr. Jones saw ranged in age between 14 and 19 years old. Defendant was 16 years old at the time of the murder.

[2] Ms. Smith is also a pseudonym.

defendant guilty of first degree murder, specifically "[o]n the basis of malice, premeditation, and deliberation[.]" The trial court sentenced defendant to life imprisonment with the possibility of parole. Defendant appeals.

II. Jury Instructions

Defendant raises two issues regarding the jury instructions.

A. Second-Degree Murder Instruction

Defendant first contends "the trial court erred by refusing to instruct on second-degree murder[.]" (Original in all caps.) "Requested instructions need only be given in substance if correct in law and supported by the evidence. The trial court's failure to give a requested instruction is reviewed *de novo*." *State v. Frazier*, ___ N.C. App. ___, ___, 790 S.E.2d 312, 321 (citations, quotation marks, and brackets omitted), *disc. review denied*, 369 N.C. 188, 794 S.E.2d 330 (2016).

> N.C.G.S. § 14-17 defines murder in the first and second degree. N.C.G.S. § 14-17 provides in pertinent part:
>
> > A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of specified felonies shall be deemed to be murder in the first degree[.] All other kinds of murder shall be deemed murder in the second degree[.]
>
> . . . .
>
> In *State v. Strickland*, 307 N.C. 274, 290-91, 298 S.E.2d 645, 656 (1983), we disavowed the rule that the trial court is required to instruct on second degree murder in all

> first degree murder cases in which the State relies on the elements of premeditation and deliberation. In determining whether the trial court should instruct on lesser included offenses, the test is whether the State's evidence is positive as to each and every element of the crime charged and there is no conflicting evidence relating to any element of the crime charged. The trial court is required to charge on a lesser offense only when there is evidence to support a verdict finding the defendant guilty of such lesser offense. However, when all the evidence tends to show that defendant committed the crime charged and did not commit a lesser included offense, the court is correct in refusing to charge on the lesser included offense.

State v. Hickey, 317 N.C. 457, 469–70, 346 S.E.2d 646, 654–55 (1986) (citations, quotation marks, ellipses, and brackets omitted).

Defendant's brief discusses the law related to murder and the felony murder rule, but defendant was not found guilty under a theory of felony murder. Defendant was convicted under a theory of "malice, premeditation and deliberation[.]" On the theory under which defendant was convicted, his brief concedes malice but challenges premeditation and deliberation.

> Premeditation and deliberation generally must be established by circumstantial evidence, because they ordinarily are not susceptible to proof by direct evidence. "Premeditation" means that the defendant formed the specific intent to kill the victim some period of time, however short, before the actual killing. "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.
> Circumstances that may tend to prove premeditation and deliberation include:
> (1) want of provocation on the part of the deceased; (2) the conduct and statements of the defendant before and after the killing; (3) threats and declarations of the defendant before and during the occurrence giving rise to the death of the deceased; (4) ill-will or previous difficulties between the parties; (5) the dealing of lethal blows after the deceased has been felled and rendered helpless; and (6) evidence that the killing was done in a brutal manner.

State v. Bedford, 208 N.C. App. 414, 417-18, 702 S.E.2d 522, 527 (2010) (citations omitted).

The evidence showed defendant and his cohorts brought a gun with them intending to kill the next person they saw. The next person they saw was Mr. Hinton. Mr. Hinton was riding his bicycle home from his job at the House of Wang Chinese Restaurant. There was no evidence of provocation or ill-will, but defendant carried out the plan to shoot the next person they saw, and Mr. Hinton was unfortunately that person; this was evidence that defendant "formed the specific intent to kill the victim some period of time . . . before the actual killing" and had "an intent to kill executed . . . in a cool state of blood[.]" *Id.* at 417, 702 S.E.2d at 527. As there was evidence of premeditation and deliberation, the trial court did not err in denying

defendant's request for an instruction on second degree murder. This argument is overruled.

B. Interruption during Jury Deliberations

Defendant next contends "the trial court erred by interrupting the jury's deliberations to make remarks that expressed prejudicial opinions on pending factual issues and on guilt[.]" (Original in all caps.) Jury deliberations began at 4:26 p.m. on Friday, June 3rd. At 5:17 p.m., the trial court answered a question from the jury regarding acting in concert and whether a robbery had taken place. Late on Friday afternoon, at 5:56 p.m., the judge recalled the jurors to check on their progress. The jury was divided and defendant's brief quotes this portion of the trial court's instructions to them:

> Well, Ladies and Gentlemen, I gave you the jury instructions for the sole purpose that you don't have to make up stuff. This is not a TV program where you give things their TV meaning, but the real meaning. I mean, this is —— you can't get any more serious than this, here. And you have a duty to talk to other jurors and see what everybody has to say. Nobody can be adamant about their positions because some people think that they're smarter than everybody else and their decision is the controlling decision.
>
> I've had a whole lot of murder cases. This is my 216th murder case, so I've done a lot of them. And a lot of times, people think, from television, that, you know, terms like "premeditation" —— I told you what "premeditation" means. You can form the intent of premeditation in a second. It doesn't take an hour. It doesn't take five minutes. I mean, so you can't make up terms. What I gave you is what the law is, and you can't make it up.

> So, Ladies and Gentlemen, I'm going to ask you to go back and deliberate for a few -- for a little while longer.

Defendant fails to mention the rest of the instructions,

> It's your duty to consult with one another and deliberate with a view toward reaching an agreement, if that can be done without violence to your individual judgment.
>
> Second, each of you must decide this case for yourselves, but only after an impartial consideration of the evidence with your fellow jurors.
>
> In the course of your deliberations, you should not hesitate to reexamine your own views and change your opinion if it becomes -- if you become convinced that it is erroneous. On the other hand, you should not hesitate to hold your own views and opinions if you remain convinced you're not correct.
>
> Fourth, none of you should render an honest conviction as to the weight of -- or effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict. Please be mindful that I'm in no way trying to force or coerce you to reach a verdict. I recognize the fact there are sometimes reasons why jurors cannot agree.
>
> Through these additional instructions I've just given you, I merely want to emphasize it is your duty to do whatever you can to reason the matter over together as a reasonable person and to reconcile your differences, if such is possible, without the surrender of conscientious convictions and to reach a verdict.
>
> So do you think y'all can go back and talk about it some more? Or is everybody's mind made up for good?

The jury then resumed deliberations.

Defendant argues that under North Carolina General Statute § 15A-1234(a), the trial court was not authorized to give additional instructions and even if it was, the trial court should have had prior consultation with counsel. Defendant further

argues judges are statutorily prohibited from expressing an opinion. Defendant argues that the trial court's statements were prejudicial by suggesting the case was clear-cut, singling out the element of premeditation, implicitly suggesting that a failure to agree with other jurors was because of TV and a belief a juror was smarter than everyone else and was refusing to follow the law, and focusing on how short premeditation can be rather than how long it can take. Defendant summarizes his argument:

> After being divided nine to three for 90 minutes, the jury returned a first-degree murder verdict 17 minutes after the trial judgment's improper remarks on the most subjective and doubtful element of the charged offense.. The comments were highly prejudicial. Because they went to the "heart of the case," a new trial is required.

Defendant requests *de novo* review for the alleged statutory violations and that we review for plain error because he failed to object to the instructions at trial. Defendant's arguments for *de novo* review are regarding his contention that the trial court impermissibly expressed an opinion to the jury in violation of its statutory authority and did not allow him an opportunity to be heard on the matter before instructing the jury. To show plain error, defendant must demonstrate that the jury probably would have reached a different result but for the error in the jury instructions:

> Because defendant did not object to this aspect of the jury instructions at trial, the challenged instructions are reviewable only for plain error. The plain error rule is

> always to be applied cautiously and only in the exceptional case. Under this standard, defendant has the burden of showing (i) that a different result probably would have been reached but for the error or (ii) that the error was so fundamental as to result in a miscarriage of justice or denial of a fair trial. In deciding whether a defect in the jury instructions constitutes plain error, we must examine the entire record and determine if the instructional error had a probable impact on the jury's finding of guilt

State v. Charles, 194 N.C. App. 500, 504–05, 669 S.E.2d 859, 862 (2008) (citations and quotation marks omitted). In addition, we review comments by the trial judge in context and even improper comments do not require reversal if they probably had no prejudicial effect:

> Not every ill-advised expression by the trial judge is of such harmful effect as to require a reversal. The objectionable language must be viewed in light of all the facts and circumstances, and unless it is apparent that such infraction of the rules might reasonably have had a prejudicial effect on the result of the trial, the error will be considered harmless.

State v. Wise, 178 N.C. App. 154, 161, 630 S.E.2d 732, 736 (2006).

On whether the trial court could provide additional instructions, our Court has interpreted North Carolina General Statute § 15A-1234 regarding when additional instructions are appropriate to be within the trial court's discretion:

> Whether or not to give additional instructions rests within the sound discretion of the trial court and will not be overturned absent abuse of that discretion. The trial court is in the best position to determine whether further additional instruction will aid or confuse the jury in its deliberations, or if further instruction will prevent or cause

> in itself an undue emphasis being placed on a particular portion of the court's instructions.

State v. Mackey, 241 N.C. App. 586, 600, 774 S.E.2d 382, 391–92 (2015) (citations, quotation marks, and brackets omitted). Defendant has not specifically argued the trial court abused its discretion, and we see no abuse of discretion. And on defendant's suggested *de novo* review of any opinion expressed by the trial court, there is no expression of opinion to review. The trial court stated no opinion or comment on either specific evidence or defendant's guilt or innocence. For example, although defendant argues the trial court formed an opinion on premeditation, the judge did not say "defendant had enough time to form premeditation" as defendant implies, but instead explained the law and encouraged the jury to apply the law to the evidence. Furthermore, even defendant concedes the trial court's deadlock instructions under North Carolina General Statute § 15A-1235(b) were correct. While defendant may have preferred that the trial court not make the statements he notes as error, they were not erroneous and defendant has demonstrated no prejudice based upon the trial court's failure to consult with the parties prior to providing the additional instructions. In summary, while defendant has suggested more than one standard of review for this issue and portions of his argument rely upon a standard of review which does not apply, under any type of review mentioned – *de novo*, abuse of discretion, plain error, prejudicial error – and on each portion of his argument regarding providing additional instructions, the substance of the

additional instructions, lack of prior consultation, and expression of opinions -- this argument is without merit.

III. Interference with a Witness

Defendant's last two arguments focus on the interaction between the trial court and a key witness, Mr. Bryant. Mr. Bryant was one of the boys with defendant on the night of the murder, and he testified regarding the plan to kill the next person they saw; the jury was instructed both as to defendant acting alone or with others. Mr. Bryant initially told the jury he did not remember who shot Mr. Hinton. The trial court then excused the jury then had a dialogue with a spectator about whether she could stay in the courtroom. The trial court then ordered Mr. Bryant to testify and questioned him outside the presence of the jury regarding his plea agreement, truthfulness, and intellect. The trial court stated,

> THE COURT: Mr. Bryant, your lawyer tells us that you said you don't know whether or not you can do it?
>
> A. Yes, sir.
>
> THE COURT: The Court is ordering you to testify. Didn't you have an agreement with the State to testify?
>
> A. Yes, sir.
>
> THE COURT: And as a result of that, weren't you given a plea that was less than the original charge?
>
> A. Yes, sir.

THE COURT: And weren't you originally charged with murder also?

A. Yes, sir.

THE COURT: Two counts?[3]

A. Yes, sir.

THE COURT: Aren't you charged with robbery also?

A. Yes, sir.

THE COURT: So why are you trying to protect Mr. Kion Dail?

A. I ain't trying to protect him?

THE COURT: Well, why don't you just tell the truth of what happened? I mean, you don't have to be a genius to figure out you're covering up something or trying to cover up something.

A. (No response.)

THE COURT: Have you been threatened?

A. No, sir.

THE COURT: Have you ever received any threats since you've been in jail?

A. No, sir.

THE COURT: So why has your memory all of a sudden gone blank?

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[3] While not part of the substantive evidence against defendant, defendant's attorney and the trial court discussed the fact "that a law enforcement officer was shot and killed during the attempted arrest of the defendant[.]"

A. Can't remember what happened.

THE COURT: Is your intelligence -- is it at least average?

A. Yes, sir.

THE COURT: Well, why --what you mean you can't remember what happened?

A. It's been five years.

THE COURT: Well -- and how old are you?

A. I'm 19.

THE COURT: Well, a person at Caswell could remember what happened five years ago. I mean, you don't have to be smart to remember what happened. So everybody knows this is a blatant attempt on your part not to testify. It doesn't have anything to do with memory. So are you saying you want to go back and face two life sentences for first-degree murder yourself, just to protect Kion Dail?[4]

A. (No response.)

THE COURT: Sir, I asked you a question.

A. Yes, sir.

THE COURT: And the Court is ordering you to testify. Do you understand that directive?

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[4] "Caswell" is likely a reference to Caswell Developmental Center, a state-operated residential facility in Kinston which "provides services and support to individuals with intellectual and developmental disabilities (IDD), complex behavioral challenges and or medical conditions whose clinical treatment needs exceed the level of care available in the community." https://www.ncdhhs.gov/divisions/dsohf/caswell-developmental-center (as of 4 June 2018).

A. Yes, sir.

THE COURT: Now, we're not going to keep going through this drill about: I don't remember. Have you ever been diagnosed with an intellectual disability --

A. No, sir.

THE COURT: -- also called retardation?

A. No, sir.

THE COURT: So your intelligence is at least average?

A. Yes, sir.

THE COURT: Are you going to testify?

A. No, sir.

THE COURT: What says the State?

MR. NEWBY: Your Honor, at this time, I'd ask to continue with direct examination and would ask the Court's permission to treat the witness as hostile.

THE COURT: Okay. What says the defense?

MR. SPENCE: Your Honor, I object to that. It's the State's witness.

THE COURT: Well, he refused to testify. He's definitely hostile.

Bring the jury back in.

Mr. Dail, Kion Dail, stop smirking. Don't say a word, but stop smirking, because I'm sure you want to be present during your own trial.

You'd better warn him, Mr. Spence, if he continues, I'll have him put out, too.

The jury returned to the courtroom. Mr. Bryant read from a letter he had written to Mr. Hinton's mother apologizing for the murder. The State then presented Mr. Bryant with a statement he had provided to a detective, but Mr. Bryant testified he could not read it. The State then asked Mr. Bryant if watching the video recording of his interview would help refresh his memory and Mr. Bryant said it would not. The jury was excused again and then the trial court stated,

> THE COURT: They're getting ready to show you a video of you talking with Detective Lewis to refresh your memory. You think that'll help you?
>
> A. No, sir.
>
> THE COURT: Why wouldn't it? Do you realize how ridiculous you sound? You're saying if they show you something on video including -- show you yourself and you say you wouldn't remember?
>
> A. (No response.)
>
> THE COURT: Do you intend to play the video to refresh his memory?
>
> MR. NEWBY: Yes, sir, Your Honor.
>
> THE COURT: Okay. Mr. Spence?
>
> MR. SPENCE: Your Honor, I object to the whole procedure. I definitely object to him playing the video, but I strongly object to him playing the video in front of the jury.
>
> THE COURT: Why?

> MR. SPENCE: He's already said that he doesn't remember what happened. The -- the testimony --
>
> THE COURT: Well, that should refresh his memory. He's obviously lying. I mean, this is a farce. Any fool knows that he's lying. I mean, he's just making a mockery of himself because, I mean, he can't get no more ridiculous than that to say he doesn't remember. He said even if he saw himself talking he wouldn't remember. Now, how stupid is that?
>
> Mr. Bryant, I told you this is not going to have a good income -- good outcome if you continue to defy the Court and not testify.
>
> A. Can I speak with my lawyer?
>
> THE COURT: Yeah, you need to.

The video was played for the jury. Later, the trial court placed two spectators of the trial in custody and during the discussion with the two spectators stated, "You two have been validated gang members. We have a witness testifying here who's not cooperative. You're in protective custody. Have a seat." Direct examination resumed and when Mr. Bryant testified he could not remember certain statements made during the video the trial court asked in front of the jury,

> THE COURT: Mr. Bryant, you said you don't remember that. It just was on a few minutes ago. Is your memory that short?
>
> A. I don't remember saying that.
>
> THE COURT: Well, didn't you just hear a video of yourself?
>
> A. I saw it, but I don't remember saying that.

THE COURT: Are you denying that you said it --

A. Yeah.

THE COURT: -- on that video?

A. Yeah.

THE COURT: You admit that was you on the video, correct?

A. Yes, sir.

THE COURT: Answer the question, sir.

A. I said, Yes, sir.

THE COURT: All right. Go ahead on, Mr. Newby.

Later, the jury was again excused and the trial court stated,

> THE COURT: Mr. Bryant -- the record should reflect that the jury's outside the presence of the Court.
>
> Mr. Bryant, you are committing obstruction of justice, and you're committing perjury, because you're intentionally lying. You just saw yourself on the video, and you say you don't remember. I mean, do you understand how preposterous and ridiculous that sounds, saying you didn't remember and you just got through showing the video of yourself? And do you realize you can be prosecuted for that?
>
> A. Yes, sir.
>
> THE COURT: And you understand the consequences of your perjury and also the consequences of your obstruction of justice because you were ordered by myself to testify in court and you give us a response that I don't remember? Is it worth going to jail for Kion Dail, that

you don't remember?

A. (No response.)

THE COURT: Sir?

A. Yes, sir.

THE COURT: So you don't mind going to jail?

A. No, sir.

Based upon the trial court's interactions with Mr. Bryant and the video presented to the jury, defendant raises two arguments on appeal.

A. Effect on Mr. Bryant's Testimony

Defendant contends that "the trial court's comments and questions during the testimony of Raekwon Bryant precluded him from testifying freely, expressed opinions on facts and credibility, and exposed the jury to inadmissible evidence." (Original in all caps.) Defendant again argues for *de novo* review because the trial court expressed opinions in violation of its statutory authority. But as we noted above,

> not every ill-advised expression by the trial judge is of such harmful effect as to require a reversal. The objectionable language must be viewed in light of all the facts and circumstances, and unless it is apparent that such infraction of the rules might reasonably have had a prejudicial effect on the result of the trial, the error will be considered harmless.

Wise, 178 N.C. App. at 161, 630 S.E.2d at 736.

Defendant primarily relies on *State v. Rhodes*, wherein "the single question [was] whether the trial judge committed reversible error when, after excusing the jury during defendant's cross-examination of Mrs. Rhodes, [defendant's wife,] he extensively warned her that he was 'not impressed with her truthfulness' and that he was 'just not going to tolerate any perjury in this case.'"[5] *State v. Rhodes*, 290 N.C. 16, 23, 224 S.E.2d 631, 635 (1976). Because of the trial court's extensive conversation with Mrs. Rhodes, quoted in the opinion, defense counsel chose to not have her testify further and the Court reasoned,

> Since Mrs. Rhodes did not give the jury her version of the events of the nights of January 19, 20, and 21, 1974, State's Exhibit No. 1 was not competent evidence. However, in the presence of the jury she identified her signature on the four handwritten pages dated January 22, 1974 State's Exhibit No. 1. Further, Sheriff Arrington and Deputy Sheriffs Messer and Young testified in the presence of the jury that Mrs. Rhodes was present when Rose made the statement charging defendant with incest on the nights in question. The unmistakable inference was that she had made and signed a statement corroborating Rose's testimony. Thereafter she only testified generally as to her mental illness and her treatments for it. The jury were left to speculate why Mrs. Rhodes did not testify further and why the statement, about which there was so much talk, was not offered in evidence.

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[5] Defendant also relies on *State v. Locklear*, 309 N.C. 428, 306 S.E.2d 774 (1983) and *Webb v. Texas*, 409 U.S. 95, 352, 34 L. Ed. 2d 330 (1972). But *Locklear* bases its analysis on the "hazard" analysis in *Rhodes*, 309 N.C. at 435-37, 306 S.E.2d at 778-79, and *Rhodes* itself cites *Webb* and explains our Supreme Court's interpretation of that case as applied to *Rhodes*; thus, we focus our analysis *Rhodes* itself. *See generally Rhodes*, 290 N.C. 16, 224 S.E.2d 631.

290 N.C. at 29, 224 S.E.2d at 639 (quotation marks and ellipses omitted).

Rhodes warns of four "hazards" due to improper statements to witnesses by a judge. *See id.* at 24-27, 224 S.E.2d at 636-38. The first hazard "is that the judge will invade the province of the jury, which is to assess the credibility of the witnesses and determine the facts from the evidence adduced." *Id.* at 24, 224 S.E.2d at 636. Most of the statements made to or about Mr. Bryant that defendant challenges were made outside of the presence of the jury. The jury did hear there were two gang members who were spectators in the trial and that Mr. Bryant was a non-cooperative witness; the trial court also questioned Mr. Bryant regarding his lack of recall regarding the video he had just seen of himself. We see nothing in the trial court's statements that would interfere with "the province of the jury[.]" *Id.* The jury already knew of Mr. Bryant's general testimony that he did not recall key details of the incident, despite his own letter and videotaped interview. Perhaps the jury could conclude from the challenged exchange that Mr. Bryant was non-cooperative because of threats from gang members, but no matter the reason for Mr. Bryant's evasive testimony, the jury undoubtedly was already aware Mr. Bryant was refusing to cooperate with the State and denied remembering events he had just witnessed on video. The trial court's comments did not interfere with "the province of the jury[.]" *Id.*

The "second hazard is that the judge's righteous indignation engendered by his 'finding of fact' that the witness has testified untruthfully may cause the judge,

expressly or impliedly, to threaten the witness with prosecution for perjury, thereby causing him to change his testimony to fit the judge's interpretation of the facts or to refuse to testify at all." *Id.* Here, the trial court's statements had little or no effect on Mr. Bryant's testimony because Mr. Bryant continued to testify that he did not remember the event throughout the duration of his time on the stand. Mr. Bryant's testimony did not change; he continued to claim he could not recall the event. Mr. Bryant did not "change his testimony to fit the judge's interpretation of the facts[.]" *Id.*

"A third hazard is that the judge's admonition to the witness with reference to perjury may intimidate or discourage the defendant's attorney from eliciting essential testimony from the witness." *Id.* at 26, 224 S.E.2d at 637. But even if the trial court had made none of the challenged statements to Mr. Bryant, it would have been difficult or impossible for defendant's attorney to elicit anything from Mr. Bryant since he insisted he had no memory of the incident. Defendant's attorney actually did little substantive cross-examination of Mr. Bryant due to Mr. Bryant's lack of substantive testimony, so the record does not show that defendant's attorney was "intimate[d] or discourage[d] . . . from eliciting essential testimony[.]" *Id.*

Last, "[a] fourth and final interest of a criminal defendant that may be affected by a trial judge's manner of warning a witness is the defendant's due process right to trial before an impartial tribunal." *Id.* at 27, 224 S.E.2d at 638. The focus of this

inquiry in *Rhodes* was the defendant's ability to present his own version of the facts and the effects the judge's statements would have on his presentation. *See id.* at 27-28, 224 S.E.2d at 638. But here, Mr. Bryant was a State's witness. The judge's statements to Mr. Bryant did not affect defendant's ability to call his own witnesses and present his own version of the facts or to question Mr. Bryant on anything of substance he did say.

Here, while the trial court may have made some remarks similar to those in *Rhodes*, *see generally id.*, 290 N.C. 16, 224 S.E.2d 631, the effect was simply not the same. Mr. Bryant was of little help to the State as he persistently responded that he did not remember the events or his statement to law enforcement; Mr. Bryant stuck with his claims of lack of recall even after watching a video of himself providing a statement to a detective. Unlike in *Rhodes*, the jury here was not "left to speculate why [a witness] did not testify further and why the statement, about which there was so much talk, was not offered in evidence." *Id.* at 29, 224 S.E.2d at 639. Even if we were to broadly interpret defendant's argument as he contends -- as an issue of statutory authority requiring *de novo* review -- we conclude there was no error in the trial court's statements to the spectators or to Mr. Bryant and there was certainly no prejudicial error.

B. Video Interview

Last, defendant contends the trial court erred in allowing the State to show Mr. Bryant's video recorded interview.

> The standard of review for admission of evidence over objection is whether it was admissible as a matter of law, and if so, whether the trial court abused its discretion in admitting the evidence. Abuse of discretion results where the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision. But, even if the admission of evidence was error, in order to reverse the trial court, the appellant must establish the error was prejudicial. If the other evidence presented was sufficient to convict the defendant, then no prejudicial error occurred.

State v. James, 224 N.C. App. 164, 166, 735 S.E.2d 627, 629 (2012) (citation, quotation marks, and brackets omitted).

Here, the jury also heard Mr. Bryant read from the letter he wrote Mr. Hinton's mother apologizing for the murder of her son. The detective who took Mr. Bryant's statement also testified to the pertinent statements from his interview with Mr. Bryant. The jury also had ample other evidence, including the testimony of Ms. Smith regarding the boys plan to murder someone. Even if the trial court erred in admitting the video recording, this did not rise to the level of prejudicial error. *See id.*

IV. Conclusion

We conclude there was no error.

NO ERROR.

Judges HUNTER and TYSON concur.

Report per Rule 30(e).