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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-903

Filed: 16 June 2020

Randolph County, Nos. 13 CRS 056964, 18 CRS 001692

STATE OF NORTH CAROLINA

v.

JOSEPH LEVI GRANTHAM

Appeal by Defendant from Judgment entered 25 January 2019 by Judge Christopher W. Bragg in Randolph County Superior Court. Heard in the Court of Appeals 4 March 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Marc Bernstein, for the State.

Marilyn G. Ozer for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

Joseph Levi Grantham (Defendant) appeals from a Judgment entered 25 January 2019 on jury verdicts finding him guilty of First-Degree Murder and Possession of a Firearm by a Felon. The Record before us, including evidence presented at trial, tends to show the following:

STATE V. GRANTHAM

Opinion of the Court

Defendant and his wife, Connie, married in 1988. Connie had four children prior to her marriage to Defendant—Brent, Roxanne, Monica, and Samuel—who were older and one son—Cody—presumably from her marriage to Defendant. In 2007, Defendant suffered a workplace accident that left him with chronic pain and limited his ability to work. After the accident, Defendant began to manage his pain with prescription painkillers, although he testified he largely stopped by 2013. Defendant was awarded approximately \$1.5 million in a workers' compensation settlement stemming from his accident, from which he received around \$700,000.00. Defendant's family members described him as generous; however, testimony elicited at trial revealed that by the fall of 2013 Defendant started to encounter financial problems and still struggled with prescription drugs.

Connie's children visited Defendant and Connie and sometimes stayed with them for extended periods of time. Defendant expressed frustration with Connie's children living with them because he felt taken advantage of; however, he also recognized that if they left, Connie would feel like she failed them. Defendant expressed to several other family members he believed Connie was depressed. In November 2013, several of Connie's children and grandchildren were in town for the Thanksgiving holiday. After a late lunch, Defendant retired to his room to sleep while the rest of the family was over visiting. Defendant woke up and complained loudly about the noise. Agitated, Defendant exited his room. Defendant violently grabbed

Roxanne by the throat, “slammed her against one wall, slammed her against another wall, [and] threw her on the ground” Defendant then put on his shoes, headbutted the wall twice, and walked out of the house.

Connie’s son Brent testified that was “the first time [he] ever [saw Defendant] display any physical attack on any of [his] family members.” However, Brent testified his mother told him Defendant “had been physical in the past[,]” and Roxanne’s daughter testified it was “not the first time [Defendant] put hands on [Roxanne] or [Connie].” The family canceled the rest of their Thanksgiving plans. The next afternoon, Connie informed her granddaughter that she and Defendant decided to part ways.

About a week later, on 5 December 2013, Connie and Defendant were staying together at their house. Sometime that morning, after Defendant went to purchase cigarettes, he testified Connie told him “[t]his is the end” as they were standing in the kitchen. He then followed Connie into their bedroom where she lay in bed and proceeded to shoot her in the head twice. Sometime after, Defendant visited his nephew Nathaniel with whom he had a close relationship. Nathaniel testified Defendant was clearly upset and kept repeating he wanted to die. Nathaniel and Defendant sold Defendant’s truck for some money, had a couple of drinks, and went to play poker. Around 10 p.m. that evening, Defendant called his sister-in-law, Cynthia. Defendant confessed to Cynthia he shot Connie in the head in their home.

He told Cynthia he turned on all the gas and the place was “going to go up.” Cynthia and her husband immediately went to Randolph County Sheriff Maynard Reid (Sheriff Reid), who they knew personally, and informed him of Cynthia’s phone call with Defendant.

Sheriff Reid called Lieutenant Richard Stockner (Lieutenant Stockner) to conduct a welfare check at Defendant’s residence. Lieutenant Stockner contacted Deputy Joshua Parris (Deputy Parris) and Deputy Braxton Hiatt (Deputy Hiatt) for assistance. The deputies began their welfare check, and Deputy Parris noticed a gas burner on the stove was on. Deputy Parris cut the gas off from a large propane tank in the back of the house; however, when the deputies opened a door to the residence, they were met by a strong odor of gas. Lieutenant Stockner and Deputies Parris and Hiatt left the door open while they retreated to wait for backup. Corporal Ryan Scherer (Corporal Scherer) arrived and they again entered the residence. Corporal Scherer found Connie on the bed in the master bedroom with a large wound on the right side of her head. Detectives processed the scene that night, but afterwards the residence was left unsecured overnight.

The next morning, Sergeant Adam Hicks (Sergeant Hicks) was dispatched to the house at 8:22 a.m. after receiving a report the house was on fire. Sergeant Hicks arrived and confirmed there was a fire in the basement. He radioed for the fire

department and stayed on scene to secure the premises. An inspector with the fire department subsequently determined the fire was intentionally set.

A news crew at the scene observed a person in all black clothing run from the residence to the nearby wooded area and they informed the deputies. K9 Officer Jamieson Brown (Officer Brown) responded with his dog Rocky, a bloodhound certified in trailing. Officer Brown, Sergeant Tim Scott (Sergeant Scott), and Sergeant Kevin Walton (Sergeant Walton) began tracking Defendant. As Officer Brown and Sergeants Scott and Walton stopped to discuss the progress of the track, a large man in all-black clothing started running toward them. Officer Brown drew his pistol and ordered the man to get on the ground. The man complied, and Officer Brown handcuffed him. Officer Brown asked the man his name, and the man identified himself as Defendant. As Defendant was escorted to Sergeant Scott's patrol car, Defendant made a series of exclamatory statements to Sergeant Scott including admitting he shot Connie.

Sergeant Scott drove Defendant to the Sheriff's Office where Detective Tracy Turner interviewed Defendant before he was taken into custody. Defendant was arrested on charges of First-Degree Murder and Fraudulently Burning a Dwelling. On 6 January 2014, a grand jury indicted Defendant for First-Degree Murder and Fraudulently Burning a Dwelling.¹ On 5 November 2018, Defendant was indicted for

¹ At the close of all evidence, the trial court dismissed the charge of Fraudulently Burning a Dwelling.

Possession of a Firearm by a Felon. In a series of pretrial motions, Defendant filed notice of potential defenses pursuant to N.C. Gen. Stat. § 15A-905(c)(1), which included the defenses of involuntary intoxication, automatism, and insanity.

Defendant's case came on for trial on 14 January 2019. Medical Examiner Dr. Samuel Simmons (Dr. Simmons) testified Connie was shot three times—twice in the head and once in the chest. Dr. Simmons determined the cause of death was “multiple gunshot wounds to the head[,]” concluding there was “no way to differentiate which one was more impactful.” Defendant testified in his defense. Both defense counsel and the State questioned Defendant about the events leading up to Connie's death. On direct examination, Defendant described shooting Connie on 5 December 2013:

[Defendant]. I see myself, I'm like kind of -- I'm not in my -- I see my body over there beside hers and, and, and, and, and she looks at me and she smiles and said, I don't want to be here. And, . . . and then I shot her in the head. And after that I don't remember nothing. Period. I don't remember anything.

. . . .

[Defendant]. . . . I remember getting back to the house and, and, and, and, and, and grabbing the propane line and I pulled it up and I lit it. I thought it would blow, but it didn't. It just blew fire on the house and that's -- don't remember anything else. . . . I don't remember getting arrested. I don't remember talking to anybody . . .”

. . . .

[Defense Counsel]. My question was, Why did you kill Connie? Why did you shoot her? You did; right? You shot and killed her?

[Defendant]. Yes. Yes. I remember seeing that. But I don't remember seeing anything else.

When defense counsel asked Defendant if he remembered how many times he shot Connie, he testified: "I remember one time in the head. And that's it. When that happened, I don't remember anything else" Defendant reiterated: "I was watching -- I was watching myself, and then as soon as . . . she got shot right here, that was it. I don't remember anything else. Period." On cross-examination, Defendant again stated: "I remember shooting her one time. After that I don't remember anything else. . . . After I shot her the first time, I don't remember anything else."

Dr. George P. Corvin, MD (Dr. Corvin) testified on behalf of Defendant as an expert witness in the area of forensic psychiatry. Forensic Psychologist Dr. Claudia Coleman (Dr. Coleman) administered psychological evaluations, including a Wechsler Adult Intelligence Scale (WAIS) IQ test, to Defendant at Dr. Corvin's request. Dr. Corvin was provided with the results and testified:

[Dr. Corvin]. [T]hat was one of the questions that was asked of [Dr.] Coleman is to do an intellectual assessment. So she -- one of the tests that she performed was this thing called the [WAIS]. He obtained an IQ, a full scale IQ of 94, which is actually not really abnormal. That's sort of average. Right? That was a much higher score than I would have thought that he would have.

[Defense Counsel]. On the WAIS, the Wechsler Adult Intelligence Scale, 100 is?

[Dr. Corvin]. That's the average.

[Defense Counsel]. There's even like a 5 point margin of error. So 95 is within the average range?

[Dr. Corvin]. That is correct. So, yeah. It's measured by the standards off a hundred. So that's an unremarkable IQ. Okay. Right. Fine. So then we're left with this observation, a longstanding observation that he seems a little slow, but his innate intelligence is okay.

Dr. Corvin ultimately concluded: "[A]s described by the defendant and taking into account these sometime contradictory information contained in all of the discovery materials involved, it is my opinion with a reasonable degree of medical certainty that [Defendant's] ability to act with deliberative contemplation, to premeditate and deliberate . . . were all diminished[.]"

On cross-examination, the State revisited Dr. Corvin's testimony regarding Defendant's IQ.

[The State]. His IQ on all the tests that your psychiatrist (sic) give was normal, but I didn't hear that from you when you were on the stand earlier. Why didn't you mention any of those scores?

[Dr. Corvin]. I did, actually.

[The State]. You said it was normal?

[Dr. Corvin]. I said it was 94, and I said it was normal detailed. And, yeah, I did. But be that as it may, to answer your question I would say this, on assessment he is intellectually limited. I am specifically not saying he's intellectually disabled because he's not. But there are other causes for people to have limited intellectual capacity that aren't due to innate lack of intelligence.

Dr. Corvin also conceded, “[Defendant’s] recall of the description of event[s] is purposeful conduct. It wasn’t like the gun flew into his hand and accidentally discharged. So it was a purposeful conduct which implies some functioning on a level of sequencing his behaviors in a way that led to his wife being shot[.]”

Both parties made closing arguments to the jury. In relevant part, and with no objection by defense counsel, the State argued:

Do you think Dr. Corvin is objective? That’s your call. You have to think about this. That’s a big number. That’s something our laws say that you can consider in relying -- how much credence shall we put in this forensic psychiatrist, this paid forensic psychiatrist. How much are we going to put in that? When he said, hey, you know, two psychiatrists look to the same thing and come to two different conclusions. Well, maybe something [is] wrong in our system. I don’t know. But that’s bothersome. That’s bothersome.

It’s bothersome when you can’t get a straight answer out of him on cross-examination. You know? He didn’t -- he’s not the one volunteering this (indicating), I am. And then when I ask him, how -- What about all that? He says, Well, you know, actually, actually, that goes to my psychiatry firm. Well, you know, does it make sense to you that he would tell Indigent Defense Services where the check goes? I mean, he can make it out to the firm that he owns or not. So he’s not even willing to give you a straight answer on that. He said, Well, actually, that goes to my firm. It doesn’t actually go to me. He wouldn’t even give you a straight answer on that.

. . . .

So what are you basing your opinion on, Dr. Corvin? What are you basing it on? What about all -- are you basing it on all those objective tests that your expert -- and again, I don’t know. There were [a] bunch of tests she gave; bunch of them.

Dr. Corvin stood up here, sat down, got under oath and said, subnormal intelligence, below average. They had a psychiatrist [sic] test him, gave him all these battery of tests. Well, what did he score? We've been over it. You don't need for me to repeat it, but I will. Verbal comprehension, average; perceptual reasoning; average; working memory, average; processing speed; borderline, not below, average borderline; full scale, average; general ability, average; IQ 94, which is right in the average range. Subnormal. Below average.

Well, that goes into their theory about this is just some big, loveable lug who had his money stolen from him and he's such a nice, generous guy and he could never form the intent to murder, premeditate, because he's just dumb. You heard him describe him as dumb.

. . . .

Average, average, average, average, average, 94. Yet he puts his hand on the Bible and says, hey, he's subnormal. Well, he's not subnormal. What the dangerous is is [sic] that an expert psychiatrist -- and this is you all's decision. An expert witness goes from being impartial to slipping into being an advocate for one side or the other. That's a subversion of the legal system.

The jury returned verdicts finding Defendant guilty of First-Degree Murder and Possession of a Firearm by a Felon.² The trial court consolidated the charges into a single Judgment and sentenced Defendant to life imprisonment without parole. Defendant timely appealed to this Court.

Issue

² On appeal, Defendant does not challenge his conviction for Possession of a Firearm by a Felon.

The sole issue on appeal is whether the trial court erred when it failed to intervene *ex mero motu* during the State’s closing arguments characterizing Dr. Corvin’s testimony.

Analysis

Our Supreme Court

has elaborated on the statutory provisions governing closing arguments and emphasized that closing arguments 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 passions or prejudice; and (4) be constructed from fair inferences drawn only from evidence properly admitted at trial.

State v. Tart, 372 N.C. 73, 80, 824 S.E.2d 837, 842 (2019) (citation and quotation marks omitted). “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) (citation omitted). “[I]n order for an improper closing argument to constitute reversible error, the prosecutor’s remarks must be *both* improper and prejudicial.” *State v. Marino*, 229 N.C. App. 130, 134, 747 S.E.2d 633, 637 (2013) (emphasis added) (citations and quotation marks omitted).

“To establish such an abuse, defendant must show that the prosecutor’s comments so infected the trial with unfairness that they rendered the conviction

fundamentally unfair.” *State v. Davis*, 349 N.C. 1, 23, 506 S.E.2d 455, 467 (1998). “In assessing whether this level of prejudice has been shown, the challenged statements must be considered in context and in light of the overall factual circumstances to which they refer.” *Tart*, 372 N.C. at 82, 824 S.E.2d at 843 (citation and quotation marks omitted). “[T]his Court has consistently viewed the appealing party’s burden to show prejudice and reversible error as a heavy one.” *Id.* at 81, 824 S.E.2d at 842-43. However, in recognizing “the reluctance of counsel to interrupt his adversary and object during the course of closing argument for fear of incurring jury disfavor[.]” our Supreme Court has emphasized “it is incumbent on the trial court to monitor vigilantly the course of such arguments[and] to intervene as warranted[.]” *Jones*, 355 N.C. at 129, 558 S.E.2d at 105.

A. Impropriety

Defendant argues the State improperly argued “facts blatantly contradictory to the record” and “falsely accuse[d] an expert [witness] of lying under oath” during its closing argument. Defendant contends the State’s allegedly improper closing argument prejudiced Defendant because it discredited Dr. Corvin’s expert testimony, which was essential for Defendant’s defense that he was incapable of premeditation and deliberation at the time of the shooting.

Defendant was charged and convicted of First-Degree Murder under N.C. Gen. Stat. § 14-17(a), which requires the State to prove the Defendant acted with

deliberation and premeditation. N.C. Gen. Stat. § 14-17(a) (2019); *State v. Geddie*, 345 N.C. 73, 94, 478 S.E.2d 146, 156 (1996) (“First-degree murder is, *inter alia*, the unlawful killing of a human being committed with malice, premeditation, and deliberation.”). At trial, Defendant put forth the defense of automatism and argued he was not capable of premeditation and deliberation.³ Defendant testified before the jury and described feeling “outside [his] body” when he shot Connie. Essential to Defendant’s defense was the testimony of Dr. Corvin. Dr. Corvin testified it was his opinion, to a reasonable degree of medical certainty, Defendant “lacked the ability to premeditate and deliberate” because he was in a dissociative state at the time of the shooting. Dr. Corvin explained his opinion was based on the events “as described by [Defendant] and taking into account these sometime contradictory information contained in all of the discovery materials involved,” which included, but was not limited to, Defendant’s IQ test.

In closing, the State argued to the jury “Dr. Corvin stood up here, sat down, got under oath and said, subnormal intelligence, below average.” Defendant argues this statement improperly attacked Dr. Corvin’s credibility by implying Dr. Corvin was untruthful about Defendant’s IQ score being in the “average range.” Dr. Corvin

³ North Carolina courts have defined automatism as: “[T]he state of a person who, though capable of action, is not conscious of what he is doing. It is to be equated with unconsciousness, involuntary action [and] implies that there must be some attendant disturbance of conscious awareness.” *State v. Boggess*, 195 N.C. App. 770, 772, 673 S.E.2d 791, 793 (2009) (second alteration in original) (citation and quotation marks omitted).

testified at trial Defendant has “a full scale IQ of 94, which is actually not really abnormal.” On cross-examination, Dr. Corvin reiterated: “His full scale was 94, which is within that sort of standard deviation. It’s a normal IQ.” However, when the State inquired—“You found that, and you said it many times, that he was subnormal. He had a subnormal intellectual capacity. That he was clearly limited. And you said many times he had clear evidence of marginal intellectual capacity[,]”—Dr. Corvin conceded, “I did, although he’s not.”

Our Supreme Court has declined to hold closing arguments improper when the “prosecutor’s argument appropriately focused on reasons the jury should not believe [the witness].” *State v. Augustine*, 359 N.C. 709, 727, 616 S.E.2d 515, 528 (2005). In this portion of the State’s closing, the State appears to be challenging the credibility of Dr. Corvin by recounting portions of Dr. Corvin’s testimony. It is a close call as to whether the State’s characterization of Dr. Corvin’s testimony about Defendant’s IQ is “constructed from fair inferences drawn only from evidence properly admitted at trial.” *Tart*, 372 N.C. at 80, 824 S.E.2d at 842 (citation and quotation marks omitted). However, “the prosecutor recounted [Dr. Corvin’s] testimony . . . but stopped short of calling [him] a liar or otherwise injecting his personal opinion.” *Augustine*, 359 N.C. at 727, 616 S.E.2d at 528. Indeed, Dr. Corvin conceded he previously referred to Defendant as subnormal “although he[was] not.” Thus, we decline to hold this portion of the State’s closing is so grossly improper as to constitute error.

Defendant next challenges the prosecution's statement:

It's bothersome when you can't get a straight answer out of [Dr. Corvin] on cross-examination. You know? . . . And then when I ask him, how -- What about all that? He says, Well, you know, actually, actually, that goes to my psychiatry firm. Well, you know, does it make sense to you that he would tell Indigent Defense Services where the check goes? I mean, he can make it out to the firm that he owns or not. So he's not even willing to give you a straight answer on that. He said, Well, actually, that goes to my firm. It doesn't actually go to me. He wouldn't even give you a straight answer on that.

Defendant contends this statement related to Dr. Corvin's business accounting procedures was improper because it was "contrary to and not supported by the evidence." Yet, Dr. Corvin testified he is both "an employee of the practice[]" and an owner. Dr. Corvin admitted "I have an assistant . . . that does do those fee [applications]" and "I *think* the checks actually go to North Raleigh Psychiatry."⁴ Thus, the challenged portion of the State's closing argument was "constructed from fair inferences drawn only from evidence properly admitted at trial[.]" *Tart*, 372 N.C. at 80, 824 S.E.2d at 842 (citation and quotation marks omitted), and therefore did not constitute a grossly improper closing argument.

⁴ At Defendant's trial, Defense Counsel did not object on cross-examination to the questioning about Dr. Corvin's accounting practices. On appeal, Defendant has not argued the admission of the testimony amounted to plain error. *See State v. Coleman*, 254 N.C. App. 497, 501, 803 S.E.2d 820, 824 (2017) (stating the "standard of review for unpreserved evidentiary challenges" is plain error). Thus, our review of the closing arguments does not consider the question of the admissibility of the testimony regarding Dr. Corvin's accounting procedures.

Defendant further challenges the following as “an incorrect and grossly prejudicial mischaracterization of [Dr. Corvin’s] opinion” and asserts it misstated the Defendant’s theory of defense.

Well, that goes into their theory about this is just some big, loveable lug who had his money stolen from him and he’s such a nice, generous guy and he could never form the intent to murder, premeditate, because he’s just dumb. You heard him describe him as dumb.

At trial, Dr. Corvin and the prosecution had the following exchange:

[The State]. . . . [I]n your notations, you know, he starts talking about, hey, I was outside of my body. Surely you don’t think he’s too dumb to come up with that?

[Dr. Corvin]. Do I think he’s too dumb to know the implications of that and how to do it? Yes, I do. . . . Someone with his level of sophistication would be more likely to not . . . remember the offense. All right. As opposed to describing dissociation in a way that many laypeople really don’t know that’s how it can happen.

Thus, Dr. Corvin did, in fact, describe Defendant (or at the very least accepted the State’s description of Defendant) as “too dumb” to know the implications of feigning having an out-of-body experience or how to fabricate that experience.

Moreover, the State’s argument did not go so far as to claim Dr. Corvin actually testified Defendant was too dumb to premeditate.⁵ Nevertheless, significant portions of Dr. Corvin’s testimony were spent discussing Defendant’s intellectual capacity,

⁵ Indeed, on the cold Record, it is not expressly clear the prosecution was referring to Dr. Corvin at all in these remarks. However, that can be inferred from the context of the arguments and the course of trial, and for purposes of our analysis, we accept Defendant’s assertion the argument referred to Dr. Corvin’s testimony.

which Dr. Corvin ultimately described as “diminished.” This portion of the State’s closing, viewed in context, is not such an improper deduction made from testimony received at Defendant’s trial for us to conclude it rises to such gross impropriety requiring *ex mero motu* intervention by the trial court.

Ultimately, Defendant’s contention the State’s closing unfairly and improperly attempted to characterize Dr. Corvin’s testimony in an effort to discredit him is encapsulated in Defendant’s final contentions. Defendant argues the State should not have been permitted to argue: “You folks have got to use your common sense to answer, can you trust Dr. Corvin? Who the own tests that his experts [sic] that he works with all the time, Dr. Coleman, doesn’t support? Can you trust him? No. No, you can’t.” Defendant also challenges the State’s argument:

And you’ll notice that he starts talking, and in my mind it was like he was walking through the woods and all the birds were coming out of the trees and landing on his arms, because he can literally talk birds out of the trees. And when he’s done, you are thinking, what did he say? What did he say? He throws up these word clouds.

In both instances, Defendant contends the State improperly expressed a personal opinion about Dr. Corvin’s trustworthiness.

“During a closing argument to the jury an attorney may not . . . express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant” N.C. Gen. Stat. § 15A-1230(a) (2019). This prohibition notwithstanding, our courts have, however, distinguished between an attorney

offering his or her personal opinion as to the credibility of a witness and arguing to the jury that they should not believe a witness. *See Augustine*, 359 N.C. at 725, 616 S.E.2d at 528 (“[W]e have held that prosecutors are allowed to argue that the State’s witnesses are credible. . . . Similarly, a lawyer can argue to the jury that they should not believe a witness.” (citation and quotation marks omitted)); *cf. State v. Wilkerson*, 363 N.C. 382, 425-26, 683 S.E.2d 174, 201 (2009) (concluding “the prosecutor’s passing comment that he believed [the witness] was telling the truth *violated* section 15A-1230(a)” but holding “in context, we do not believe this argument about [the witness] was so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*.” (emphasis added)).

Here, the State’s argument leaves little doubt as to the prosecution’s personal views on Dr. Corvin’s testimony. However, in context and on balance, the State’s arguments tend to focus more on reasons why the jury should not accept Dr. Corvin’s expert testimony as credible. Thus, even if these arguments were improper, we do not conclude they were so grossly improper requiring the trial court to intervene in the absence of an objection. *See Wilkerson*, 363 N.C. at 425-26, 683 S.E.2d at 201.

B. Prejudice

Even assuming, however, the closing arguments challenged by Defendant were so grossly improper to warrant the trial court to intervene *ex mero motu*, Defendant must also demonstrate “the prosecutor’s comments so infected the trial with

unfairness that they rendered the conviction fundamentally unfair.” *Davis*, 349 N.C. at 23, 506 S.E.2d at 467. “Even when a reviewing court determines that a trial court erred in failing to intervene *ex mero motu*, a new trial will be granted only if ‘the remarks were of such a magnitude that their inclusion prejudiced defendant, and thus should have been excluded by the trial court.’” *Tart*, 372 N.C. at 82, 824 S.E.2d at 843 (citing *Jones*, 355 N.C. at 131, 558 S.E.2d at 106).

In this case, the evidence against Defendant was overwhelming and generally uncontested: Defendant followed the victim into their bedroom and shot her in the head twice as she lay in bed—killing her. Defendant’s defense to the charge of First-Degree Murder was that he was in a dissociative state at the time of the offense and therefore was unable to premeditate and deliberate. However, there was also evidence of a history of threats and violence by Defendant towards the victim and family members. In addition, Defendant fired multiple shots at a close range, was already armed in his bedroom, and allegedly only disassociated upon firing the first shot. Accordingly, the evidence against Defendant supports a jury’s determination of premeditation.

Moreover, although Dr. Corvin’s expert testimony was central to establishing Defendant’s defense, the jury was still permitted to consider his opinion Defendant’s “ability to act with deliberative contemplation, to premeditate and deliberate . . . were all *diminished*[.]” The challenged statements in closing that focus on the labeling of

Defendant's IQ as "subnormal" or "average" were not prejudicial because, as Dr. Corvin explained, his opinion was not based solely on the results of Defendant's IQ test. Dr. Corvin testified there was "purposeful conduct" on behalf of Defendant, "which implicate[d] some functioning on a level of sequencing his behaviors in a way that led to his wife being shot[.]" Furthermore, Defendant testified and described—multiple times—his recollection of shooting Connie in the head. Thus, Defendant has not demonstrated the prosecution's closing arguments, as challenged on appeal, were not only grossly improper but also rendered his conviction fundamentally unfair.

Conclusion

Accordingly, for the foregoing reasons, we conclude the trial court did not err in failing to intervene *ex mero motu* in the State's closing argument.

NO ERROR.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e).