IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-24

No. COA19-838

Filed 16 February 2021

Cleveland County, Nos. 16 CRS 50361, 199-201

STATE OF NORTH CAROLINA

v.

ROBERT CHAD BRIDGES

Appeal by defendant from judgments entered 9 November 2018 by Judge Robert C. Ervin in Cleveland County Superior Court. Heard in the Court of Appeals 20 October 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Alvin W. Keller, Jr., for the State.

Glover & Petersen, P.A., by Ann B. Petersen, for defendant-appellant.

ZACHARY, Judge.

¶ 1 Defendant Robert Chad Bridges appeals from judgments entered on a jury's verdicts finding him guilty of second-degree murder, attempted first-degree murder, assault with a deadly weapon with the intent to kill inflicting serious injury, and discharging a firearm into occupied property. On appeal, Defendant argues that the trial court erred by (1) allowing the State to play a video recording for the jury

containing inadmissible hearsay; and (2) failing to intervene *ex mero motu* during the State's closing argument when the prosecutor read misleading quotes from an appellate opinion regarding the law of self-defense. After careful review, we conclude that Defendant received a fair trial, free from prejudicial error.

I. Background

¶ 2 This case arises from an unrelenting feud between Jeff and Myla Oaks, and their next-door neighbors, Defendant and his fiancée, Leslie England. In the fall of 2014, Jeff and Myla moved into their home on Mann Court, a one-lane dirt road, and relations between the neighbors quickly soured.

¶ 3 According to Defendant, Jeff and Myla were threatening and confrontational: Jeff and Myla fired guns at "all times of the night and morning"; Myla intentionally played loud music to aggravate Defendant and Leslie; Jeff and Myla would shine lights on Defendant's house with their vehicle, "ring[ ] donuts," and "holler[ ] out the window" at "all hours"; and Jeff and Myla repeatedly threatened Defendant and Leslie. In addition, Jeff routinely had a gun holstered on his hip.

¶ 4 Another neighbor testified that he viewed Jeff and Myla as threatening, unruly, and vulgar to others on Mann Court as well as to Defendant and Leslie, and that Jeff and Myla continually caused problems in the neighborhood. Other witnesses testified to Jeff's and Myla's various hostile and threatening acts toward Defendant and Leslie.

¶ 5 The problems continued to escalate. In particular, on 4 September 2015, Defendant and Jeff got into a fist fight at the car dealership where Jeff worked, resulting in Jeff bleeding from a cut under his eye. Myla then threatened Defendant's and Leslie's lives. Jeff, Myla, Defendant, and Leslie frequently called 911 with complaints.

¶ 6 Defendant contacted an attorney about the issues with Jeff and Myla, and on numerous occasions he reported their threats, as well as other serious grievances, to his attorney's paralegal. At the time of the events in question, the parties were engaged in legal proceedings stemming from the hostilities. The attorney's paralegal testified that when she advised Defendant to call the police about Myla threatening him and shooting in the neighborhood the day before the events in question, Defendant told her that the police "don't come anymore. They won't help us."

A. The Shootings

¶ 7 On the morning of 27 January 2016, Jeff was driving his son, Michael,[1] to the intersection of Barrett Road and Mann Court so that Michael could catch the school bus. Defendant pulled up behind them in his truck on his way to work. According to Defendant, Jeff started "easing up the road pretty slow." Michael testified that Defendant attempted to pass, but Jeff maneuvered his car all over the one-lane road

[1] We employ a pseudonym to protect the identity of the minor child.

"in a zigzag pattern" to prevent Defendant from doing so. Defendant hit Jeff's car, with the truck's left front fender hitting the right rear quarter of Jeff's car and causing the car to spin out. Jeff's car was then perpendicular to Defendant's truck.

¶ 8 When both vehicles came to rest, Defendant and Jeff exited their vehicles, and Michael moved from the front passenger seat to the back seat of the car. The men began arguing. Jeff used his cell phone to call Myla, who arrived shortly thereafter and joined in the argument. After the three of them argued for about five minutes, Defendant got his gun from his truck and shot both Myla and Jeff. One of the bullets penetrated the window of Jeff's car, in which Michael was waiting.

¶ 9 Michael stayed inside the car until things quieted, then unsuccessfully attempted to use Myla's cell phone to call 911. When the school bus arrived, Michael ran to the bus driver for help, and she called 911 to report the shooting.

¶ 10 Defendant surrendered peacefully to the law enforcement officers who responded to the call. He told the officers that "Jeff was blocking the road so [Defendant] bumped his car with his truck"; that Jeff pointed a gun at Defendant; and that Defendant responded by getting out of his truck and shooting Jeff. Defendant also told a deputy that he placed his gun in a neighbor's yard, and officers found it there after they handcuffed and secured Defendant. Thereafter, officers discovered a gun underneath the driver's seat of Jeff's car.

¶ 11 Defendant shot Myla in the head, and EMS responders pronounced her dead at the scene. An autopsy indicated that the gun "was more than likely several feet away" from Myla's head when it was fired, and that the gunshot wound was the cause of death. Defendant shot Jeff in the head as well, but Jeff survived. In March, after being discharged from Carolina's Medical Center in Charlotte, he moved into a nursing facility for approximately six months. Jeff currently resides in a nursing home, where he is bedridden, is unable to feed or bathe himself, and cannot speak in sentences.

¶ 12 On 8 February 2016, a grand jury issued true bills of indictment against Defendant for the first-degree murder of Myla; the attempted murder of Jeff; assault with a deadly weapon with intent to kill inflicting serious injury; and discharging a firearm into an occupied vehicle.

B. Trial

¶ 13 On 29 October 2018, Defendant's case came on for jury trial in Cleveland County, the Honorable Robert C. Ervin presiding.

¶ 14 The State called several witnesses, including members of the Cleveland County Sheriff's Office and medical professionals. Micah Sturgis, the crime scene investigator, testified that three cell phones were collected over the course of the investigation: one from Myla, one from Jeff, and one from Defendant. He attempted to extract information from the phones, but was only successful with Myla's phone.

The extraction from Myla's phone revealed a video recording, which Sturgis copied and saved on a DVD.

¶ 15 The prosecutor sought to introduce the video recording as evidence of Myla's then-existing mental or emotional state. Although the exact date on which the video was recorded was undetermined, the prosecutor argued that it was "clearly during the timeframe that there were cross-warrants being taken out between [Defendant] and his fiancé[e] and Ms. Oaks and Mr. Oaks." Because the relationship between Jeff, Myla, and Defendant was an essential component of the State's theory of malice, the prosecutor insisted that "the only way that [Myla] can describe how she felt about the relationship, her point of view from the feud, is through the hearsay exception of a statement of a then existing mental, emotional or physical state." Defense counsel argued that the video was "a staged episode where [Myla had] the kid in the car" and was instructing Michael to "tell[ ] her how bad he fe[lt] about everything," and maintained that the recording lacked trustworthiness and was unduly prejudicial pursuant to Evidentiary Rule 403.

¶ 16 The trial court ruled that the recording would be admitted with a limiting instruction:

> Ladies and gentlemen, in just a second we are going to play a brief videotape for you. The [c]ourt is admitting this videotape not as evidence of the truth of the statements but instead for you to consider the statements made by Myla Oaks in helping you to understand and determine her state

> of mind. And you may use that information concerning her state of mind to assist you in understanding the nature of the relationship between the Oaks and the defendant prior to the time of this event.

¶ 17 After all of the evidence was presented, the parties gave their closing arguments. During the State's closing argument, the prosecutor spoke at length about the law of self-defense in North Carolina. In an effort to explain the concept of self-defense, the prosecutor read without objection from three appellate opinions.

¶ 18 The jury returned verdicts finding Defendant guilty of second-degree murder; attempted first-degree murder; assault with a deadly weapon with intent to kill inflicting serious injury; and discharging a weapon into occupied property. The trial court sentenced Defendant to 276–344 months' imprisonment for the second-degree murder conviction; 180–228 months for the attempted first-degree murder conviction, to run consecutively to the sentence for second-degree murder; 83–112 months for the assault with a deadly weapon with intent to kill inflicting serious injury conviction, to run consecutively to the sentence for second-degree murder; and 73–100 months for the discharging a weapon into occupied property conviction, to run consecutively to the sentence for second-degree murder. Defendant gave notice of appeal in open court.

¶ 19 On appeal, Defendant challenges the trial court's decision to admit into evidence the video recording that Sturgis extracted from Myla's phone, as well as the

trial court's failure to intervene *ex mero motu* when the prosecutor read misleading quotes from an appellate opinion regarding the law of self-defense during closing argument. We address each issue in turn.

II. Hearsay

¶ 20 Defendant argues that "[i]t was error to admit the video containing Myla's statements" pursuant to Evidentiary Rule 803(3) in that "[s]he expressed no statements of mind about" Defendant, and that "[t]o the extent that [Myla's] statements were indicative of the relationship with [him], they had no probative value unless the jury considered them for the truth of what was said." Furthermore, Defendant contends that the trial court's failure to exclude this evidence was prejudicial and warrants reversal of his convictions. We disagree.

A. Standard of Review

¶ 21 This Court reviews de novo "a trial court's ruling on the admission of evidence over a party's hearsay objection[.]" *State v. Cook*, 246 N.C. App. 266, 279, 782 S.E.2d 569, 578 (citation omitted), *disc. review denied*, 369 N.C. 34, 792 S.E.2d 778 (2016). Under this standard of review, "the [C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Hicks*, 243 N.C. App. 628, 639, 777 S.E.2d 341, 348 (2015) (citation omitted), *disc. review denied*, 368 N.C. 686, 781 S.E.2d 606 (2016). "The failure of a trial court to admit or exclude this evidence will not result in the granting of a new trial absent a showing by the

defendant that a reasonable possibility exists that a different result would have been reached absent the error." *State v. Burke*, 343 N.C. 129, 142–43, 469 S.E.2d 901, 907, *cert. denied*, 519 U.S. 1013, 136 L. Ed. 2d 409 (1996).

B. Evidentiary Rule 803(3)

¶ 22 "Hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801(c) (2019). "A 'statement' is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him as an assertion." *Id.* § 8C-1, Rule 801(a).

¶ 23 Although hearsay is ordinarily inadmissible at trial, *id.* § 8C-1, Rule 802, there are exceptions to the rule. Rule 803(3) provides that "[a] statement of the declarant's then existing state of mind" is admissible as an exception to the hearsay rule. *Id.* § 8C-1, Rule 803(3). The exception allows for the admission of evidence tending to show "the victim's mental condition by showing the victim's fears, feelings, impressions or experiences." *State v. Walker*, 332 N.C. 520, 535, 422 S.E.2d 716, 725 (1992), *cert. denied*, 508 U.S. 919, 124 L. Ed. 2d 271 (1993).

¶ 24 "It is well established in North Carolina that a murder victim's statements falling within the state of mind exception to the hearsay rule are highly relevant to show the status of the victim's relationship to the defendant." *State v. Alston*, 341 N.C. 198, 230, 461 S.E.2d 687, 704 (1995), *cert. denied*, 516 U.S. 1148, 134 L. Ed. 2d

100 (1996); *cf. State v. Hernandez*, 202 N.C. App. 359, 362, 688 S.E.2d 522, 524 (2010) ("The statements at issue here concern [the] defendant's previous violence toward the victim and were not offered to prove the facts asserted but only to show that Reese was afraid of [the] defendant and what he might do if she tried to leave him."); *Cook*, 246 N.C. App. at 280, 782 S.E.2d at 579 ("The victim's statement that she 'was scared of' [the] defendant unequivocally demonstrates her state of mind and [was] 'highly relevant to show the status' of her relationship with [the] defendant on the night before she was killed."). "Where a state of mind, such as fear or alienation, is declared, the courts have consistently admitted statements made by the victim, usually reasoning that such a state of mind shows the relationship between the victim and the accused and is therefore relevant to the accused's possible motive." *State v. Dawkins*, 162 N.C. App. 231, 235, 590 S.E.2d 324, 328, *disc. review denied*, 358 N.C. 237, 595 S.E.2d 439 (2004) (citation omitted).

¶ 25 It is manifest that the admissibility of evidence pursuant to Rule 803(3) is predicated upon its relevance. *See State v. Jones*, 137 N.C. App. 221, 227, 527 S.E.2d 700, 704 ("Such a statement must also be relevant to a fact at issue in the case (Rule 402) and its probative value must not be substantially outweighed by its prejudicial impact (Rule 403)."), *disc. review denied*, 352 N.C. 153, 544 S.E.2d 235 (2000). "A victim's state of mind . . . is relevant if it relates directly to circumstances giving rise to a potential confrontation with the defendant." *State v. Lathan*, 138 N.C. App. 234,

237, 530 S.E.2d 615, 618–19 (citation and internal quotation marks omitted), *disc. review denied*, 352 N.C. 680, 545 S.E.2d 723 (2000).

¶ 26 Here, Defendant challenges as hearsay the admission of out-of-court statements in a video recording extracted from Myla's cell phone by an expert for the State. The video recording begins with Myla instructing Michael "to explain to [her], again, why [he's] upset and crying." Michael, who is barely audible, begins to explain why he is upset with the people in the neighborhood, and states that "the neighborhood feud" frightens him. Myla says that she does not want anything bad to happen to Defendant, but that "after what he did to your daddy, we're gonna let the law handle it." Myla reassures Michael that she wants everyone to get along, and reminds him, "We're Christians, and we love everybody." On two occasions, Myla references Defendant shooting guns. The video concludes with Myla telling Michael that she will go to the sheriff's office that day to resolve the family's issues with Defendant.

¶ 27 Defendant contends that the admission of the video recording extracted from Myla's cell phone is analogous to the improper admission of a homicide victim's diary entry addressed by our Supreme Court in *State v. Hardy*, 339 N.C. 207, 451 S.E.2d 600 (1994). The diary entry described an incident between the victim and the defendant:

> [The defendant] went off this morning. He wanted to take his break and I said, "Please, let's catch up the dishes first," and he got mad. When we finished the dishes, he wouldn't leave. I said, "Act immature, why don't you? Why don't you try acting like an adult male?" He hit me in the side of the head and slapped me across the face, then took off. He came back a little later, didn't apologize, wanted to use the vacuum. David changed the lock on my break. Late that night, he went off berserk, threw water, dishes, ashtrays, paper at me. Screamed he was going to kill me. Alan came to help mop and tried to hold him back. He jumped up in the car and broke the steering wheel adjuster. We filed a harassment charge. Waiting twenty-four hours.

Hardy, 339 N.C. at 227, 451 S.E.2d at 611.

¶ 28 In *Hardy*, the State argued that this diary entry was admissible pursuant to Rule 803(3) "to show inferentially [the victim's] state of mind and her relationship with [the] defendant." *Id.* at 228, 451 S.E.2d at 612. Our Supreme Court disagreed: "The statements in the diary are not statements of [the victim's] state of mind but are merely a recitation of facts which describe various events." *Id.* The Court reasoned that such an outcome would undermine the spirit of our rules against hearsay; the contents of the diary, "which portray attacks upon her and a threat against her, were admissible through the testimony of other persons who witnessed these events." *Id.* at 229, 451 S.E.2d at 612.

¶ 29 In the instant case, the State distinguishes the facts from those in *Hardy,* and argues that Myla's statements in the video recording, although hearsay, were properly admissible because they "bore directly on Myla Oaks' relationship with

Defendant near the time Myla Oaks was killed, related directly to circumstances giving rise to a potential confrontation with Defendant, and revealed emotion[.]"

¶ 30 "Rule 803(3) allows the admission of a hearsay statement of a then-existing intent to engage in a future act." *State v. McElrath*, 322 N.C. 1, 17–18, 366 S.E.2d 442, 451 (1988); *see also id.* at 19, 366 S.E.2d at 452 ("Admitting a statement of intent to prove subsequent conduct in accordance with the expressed intent is squarely within the Rule, provided the time lapse is not so great as to make the statement too remote to be acceptably relevant." (citation omitted)). For example, the Court has concluded that a murder victim's statements that she intended to go to court the next day to get a domestic violence protective order and restraining order were admissible under Rule 803(3), even though the victim did not expressly state that she was afraid of the defendant. *State v. Anthony*, 354 N.C. 372, 405, 555 S.E.2d 557, 580 (2001), *cert. denied*, 536 U.S. 930, 153 L. Ed. 2d 791 (2002). The Court in *Anthony* explained that the statements reflected the victim's "feared confrontation with [the] defendant on the day she was murdered," and that they showed "her then-existing intent and plan to engage in a future act." *Id.*; *see also State v. Braxton*, 352 N.C. 158, 190–91, 531 S.E.2d 428, 447 (2000) ("Moore's statement to McCombs that he was going to approach [the] defendant about straightening out the victim's debt was admissible as evidence of Moore's then-existing intent to engage in a future act."), *cert. denied*, 531 U.S. 1130, 148 L. Ed. 2d 797 (2001); *Dawkins*, 162 N.C. App. at 235, 590 S.E.2d at

328 (explaining that "[w]hile the statement itself contain[ed] no express declaration of fear," the statements made by the victim, "accompanied by pictures showing her with a black eye, reflect the victim's fear of her uncertain future and her then-existing intent to plan for that future should 'something happen' ").

¶ 31 Myla's statements that she was going to get this taken care of and that she intended to go to the sheriff's office later that day speak to her "then-existing intent and plan to engage in a future act," *Anthony*, 354 N.C. at 405, 555 S.E.2d at 580, and therefore were admissible under Rule 803(3). Many other statements in the recording, such as references to Defendant shooting guns, provide context for her future act, and were admissible as well. *See State v. Smith*, 357 N.C. 604, 609–10, 588 S.E.2d 453, 457–58 (2003), *cert. denied*, 542 U.S. 941, 159 L. Ed. 2d 819 (2004)); *State v. Earwood*, 155 N.C. App. 698, 706, 574 S.E.2d 707, 712–13 (2003).

¶ 32 To the extent that certain statements in the recording did not provide context and should not have been admitted—i.e., Myla's statement that "We're Christians, and we love everybody"—we are satisfied that the limiting instruction given by the trial court effectively kept the jury from improperly receiving this evidence. "The law presumes the jury followed the judge's instructions." *State v. Bryant*, 282 N.C. 92, 98, 191 S.E.2d 745, 750 (1972); *see also State v. Golphin*, 352 N.C. 364, 448, 533 S.E.2d 168, 223 (2000) ("[N]ot every admission of inadmissible hearsay or other evidence can be considered to be reversible error unavoidable through limiting instructions. It is

not unreasonable to conclude that in many such cases the jury can and will follow the trial judge's instructions to disregard such information." (citation omitted)), *cert. denied*, 532 U.S. 951, 149 L. Ed. 2d 305 (2001); *State v. Alston*, 307 N.C. 321, 329, 298 S.E.2d 631, 638 (1983) ("This limiting instruction was essential, as the use of hearsay testimony concerning a statement by a victim prior to his murder is not unlimited."). The limiting instruction therefore served to protect Defendant against any undue prejudice. *See Burke*, 343 N.C. at 147–48, 469 S.E.2d at 909–10.

¶ 33 In addition to the limiting instruction, the jury was presented with plenary competent evidence of Defendant's guilt. *See State v. Welch*, 316 N.C. 578, 583, 342 S.E.2d 789, 792 (1986) ("Overwhelming evidence of guilt will render even a constitutional error harmless."). Michael testified that Defendant's truck came from behind and hit Jeff's car, which an accident reconstruction expert for the State confirmed. Michael further testified that he saw his parents attempt to run away from Defendant before the shooting commenced, and described seeing them on the ground after Defendant shot them. According to Michael, Defendant waited about five seconds after retrieving his gun from his truck before he began shooting. Numerous officers testified to the investigation, and one testified that Defendant admitted at the scene that he shot Jeff.

¶ 34 Moreover, there was plentiful evidence that, prior to the date of the shooting, Defendant and the Oaks conducted a vendetta reminiscent of the Hatfields and

McCoys: Defendant punched Jeff on one occasion; Jeff and Myla were disruptive and threatened Defendant and Leslie; Defendant had a home-surveillance camera that he used to record Jeff's and Myla's activities, and he labeled the downloaded files with titles such as "Bitch Stalking Me While I Build Dog House" and "Bitch Stops in Front of the House"; Defendant, Jeff, and Myla fired guns in a manner that engendered concern and fear in others; and, according to 911 records, from 1 January 2015 through 27 January 2016, Jeff or Myla called 911 a total of 21 times and Defendant called 911 a total of 13 times.

¶ 35 We further disagree with Defendant's position that, to the extent that the video recording reflects on Myla and Defendant's relationship, the probative value of this evidence was "substantially outweighed by the prejudice that the jury would consider [it] as proof of the facts stated." This contention is not particularly fleshed out in Defendant's brief, and it is not clear whether he is asserting this position under Evidentiary Rule 403 or N.C. Gen. Stat. § 15A-1443(a). The argument is meritless either way. "A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial[.]" N.C. Gen. Stat. § 15A-1443(a). Given the ample evidence supporting Defendant's guilt, together with the trial court's limiting instruction, we cannot conclude that there is a reasonable possibility that the exclusion of certain

inadmissible statements in the video recording would have yielded a different verdict. *See Cook*, 246 N.C. App. at 280, 782 S.E.2d at 579. Thus, Defendant's argument is overruled.

III. Closing Arguments

¶ 36 Defendant next argues that it was improper for the prosecutor, during closing arguments, to quote from one of this Court's published opinions to explain the law of self-defense, because "[t]he language quoted was grossly misleading with respect to the law about what a jury had to decide with respect to self-defense and how they were required to make those determinations." Defendant contends that therefore the trial court should have intervened *ex mero motu*. We disagree.

A. Standard of Review

¶ 37 An appellate court "will not find error in a trial court's failure to intervene in closing arguments *ex mero motu* unless the remarks were so grossly improper they rendered the trial and conviction fundamentally unfair." *State v. Allen*, 360 N.C. 297, 306–07, 626 S.E.2d 271, 280, *cert. denied*, 549 U.S. 867, 166 L. Ed. 2d 116 (2006).

> [T]he reviewing court 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.

State v. Jones, 355 N.C. 117, 133, 558 S.E.2d 97, 107 (2002). "To merit a new trial, 'the prosecutor's remarks must have perverted or contaminated the trial such that they rendered the proceedings fundamentally unfair.' " *State v. Goins*, ___ N.C. App. ___, ___, 839 S.E.2d 858, 859 (quoting *State v. Phillips*, 365 N.C. 103, 136, 711 S.E.2d 122, 146 (2011)), *stay granted*, 374 N.C. 264, 838 S.E.2d 462 (2020).

B. Improper Prosecutorial Remarks

¶ 38 A prosecutor "may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones." *Jones*, 355 N.C. at 130–31, 558 S.E.2d 106 (quoting *Berger v. United States*, 295 U.S. 78, 88, 79 L. Ed. 1314, 1321 (1935)). In that attorneys may be reluctant "to interrupt [their] adversary and object during the course of closing argument for fear of incurring jury disfavor," our Supreme Court has stated that it is the responsibility of the trial courts "to monitor vigilantly the course of such arguments, to intervene as warranted, to entertain objections, and to impose any remedies pertaining to those objections." *Id.* at 129, 558 S.E.2d at 105.

¶ 39 Our General Statutes provide that "[i]n jury trials the whole case as well of law as of fact may be argued to the jury." N.C. Gen. Stat. § 7A-97. As a general matter, "prosecutors are given wide latitude in the scope of their argument." *Alston,* 341 N.C. at 239, 461 S.E.2d at 709. "However, 'wide latitude' has its limits." *Jones*, 355 N.C. at 129, 558 S.E.2d at 105. Although "[c]ounsel may argue to the jury the law, the facts

in evidence, and all reasonable inferences drawn therefrom," *Alston*, 341 N.C. at 239, 461 S.E.2d at 709, prosecutors may not purposefully "lead the jury astray" with "references to matters outside the record and statements of personal opinion," *Jones*, 355 N.C. at 133, 558 S.E.2d at 108. "Improper remarks may be prejudicial either because of their individual stigma or because of the general tenor of the argument as a whole." *Id*.

¶ 40 Allegedly improper remarks made in closing argument absent objection must be "viewed in context and constitute reversible error only when they have made the proceedings fundamentally unfair." *State v. Phillips*, 365 N.C. 103, 143, 711 S.E.2d 122, 150 (2011), *cert. denied*, 565 U.S. 1204, 182 L. Ed. 2d 176 (2012); *State v. Grooms*, 353 N.C. 50, 81–82, 540 S.E.2d 713, 732–33 (2000), *cert. denied*, 534 U.S. 838, 151 L. Ed. 2d 54 (2001). The brevity of the prosecutor's statement being challenged on appeal is an important consideration. *See State v. Barden*, 356 N.C. 316, 346, 572 S.E.2d 108, 129 (2002) (noting that the prosecutor's statement regarding the victim's ethnic background "was but a passing reference . . . in a substantial opening argument"), *cert. denied*, 538 U.S. 1040, 155 L. Ed. 2d 1074 (2003); *accord State v. Fletcher*, 354 N.C. 455, 484–85, 555 S.E.2d 534, 552 (2001), *cert. denied*, 537 U.S. 846, 154 L. Ed. 2d 73 (2002). Similarly, repetition of improper remarks increases the likelihood of prejudice. *See Jones*, 355 N.C. at 134, 558 S.E.2d 108 ("[R]epeated degradations of [the] defendant: (1) shifted the focus from the jury's opinion of [the] defendant's

character and acts to the prosecutor's opinion, offered as fact in the form of conclusory name-calling, of [the] defendant's character and acts; and (2) were purposely intended to deflect the jury away from its proper role as a fact-finder by appealing to its members' passions and/or prejudices.").

¶ 41 Moreover, our Supreme Court has made plain that "simply because a statement is made in a reported decision does not always give counsel the right to read it to the jury in his closing argument[.]" *State v. Gardner*, 316 N.C. 605, 611, 342 S.E.2d 872, 876 (1986). "[B]ecause reading of material, such as decisions of this Court, may tend to prejudice a party upon the facts, this Court has placed limitations upon the reading of reported decisions and other books and printed matter to the jury in closing argument." *State v. Austin*, 320 N.C. 276, 292, 357 S.E.2d 641, 651, *cert. denied*, 484 U.S. 916, 98 L. Ed. 2d 224 (1987). For example,

> counsel may not read matters which are not law but rather constitute mere dictum and therefore are not within the scope of N.C.G.S. § 84-14, nor may counsel read to the jury decisions discussing principles of law which are irrelevant to the case and have no application to the facts in evidence.

Id. at 293, 357 S.E.2d at 652 (citations and internal quotation marks omitted);[2] *see also Anthony*, 354 N.C. at 430, 555 S.E.2d at 593–94 (providing examples of improper ways in which an attorney may argue the law to the jury). To that end, "[i]t is not

[2] N.C. Gen. Stat. § 84-14 has since been recodified as N.C. Gen. Stat. § 7A-97. *See* 1995 N.C. Sess. Laws 1162, § 7.

permissible argument for counsel to read, or otherwise state, the facts of another case, together with the decision therein, as premises leading to the conclusion that the jury should return a verdict favorable to his side in the case on trial." *Goins*, ___ N.C. App. at ___, 839 S.E.2d at 860 (quoting *State v. Simmons*, 205 N.C. App. 509, 514, 698 S.E.2d 95, 100 (2010)).

¶ 42 The facts of the present case are analogous to those found in *State v. Raines*, 362 N.C. 1, 653 S.E.2d 126 (2007), *cert. denied*, 557 U.S. 934, 174 L. Ed. 2d 601 (2009). In *Raines*, the defendant contended that the trial court erred when it failed to intervene when the prosecutor "encourag[ed] jury nullification of North Carolina law on provocation" during closing arguments. *Id.* at 14, 653 S.E.2d at 135. Our Supreme Court disagreed with the defendant's characterization of the remarks, concluding that "the prosecution was attempting to apply the law to this case, rather than making an improper statement of the law[.]" *Id.* Moreover, the Court observed that "the trial court instructed the jury that it was necessary to '*understand and apply the law as I give it to you*,' after which the trial court properly instructed the jury on the elements of first-degree and second-degree murder." *Id.* (emphasis added). The Court then determined that the defendant failed to establish that the prosecutor's statement was "so grossly improper as to render the trial and conviction fundamentally unfair," and overruled the defendant's argument. *Id.* (citation omitted).

¶ 43 In the instant case, the prosecutor spent approximately two minutes quoting from *State v. Ramseur*, 226 N.C. App. 363, 739 S.E.2d 599, *appeal dismissed, and disc. review and cert. denied*, 366 N.C. 599, 743 S.E.2d 219 (2013), regarding the law of self-defense:

> This is a quote from *State v. Ramseur*. And, again, here comes the eloquence of people who are a lot better at putting words together than I am. "The killing of another human being is the most extreme recourse to our inherent right of self-preservation and can be justified in the law only by the utmost real or apparent necessity brought about by the decedent." It is serious and it should be a last resort to kill somebody. It shouldn't be your first resort.
>
> "Only if defendants are required to show that they killed due to a reasonable belief that death or great bodily harm was imminent can the justification for homicide remain clearly and firmly rooted in necessity." It must be necessary to be justified. It must be necessary under the circumstances as y'all find them from the credible evidence in order to find him not guilty.
>
> "The imminent -- imminence requirement insures [sic] that deadly force is used only where it is necessary as a last resort." Last resort, not first resort.
>
> "It insures [sic] that before a homicide is justified -- therefore, not a legal wrong -- it will be reliably determined that the defendant reasonably believed that without the use of deadly force, not only would an unlawful attack have occurred, but that attack would have caused death or great bodily harm. The law does not sanction the use of deadly force to repel a simple assault." Remember, he talked about they came at him. You don't get to shoot people because they start walking towards you.

¶ 44 The issue presented in *Ramseur*, as Defendant correctly points out, was whether "the trial court erred in failing to instruct the jury on self-defense, defense of others, or voluntary manslaughter based upon imperfect self-defense or defense of others." *Id.* at 373, 739 S.E.2d at 606. Defendant maintains that the prosecutor's reading of a portion of the *Ramseur* opinion was grossly misleading in that it (1) "related to the law for the trial judge and appellate courts to apply when addressing the question of whether sufficient evidence had been presented to require a jury instruction on self-defense"; and (2) suggested to the jury that Defendant bore the burden of proving that he did not have a reasonable belief that deadly force was necessary.

¶ 45 We are not persuaded that the prosecutor's quotation from *Ramseur* in closing argument was "so grossly improper [it] render[ed] the trial and conviction fundamentally unfair," *Raines*, 362 N.C. at 14, 653 S.E.2d at 135 (citation omitted), and that therefore the trial court erred by failing to intervene *ex mero motu*. To begin, the challenged excerpt from the closing argument was a very small part of a substantial closing argument—altogether less than two minutes of a closing argument that lasted approximately one hour and thirty-seven minutes. *See Fletcher*, 354 N.C. at 484, 555 S.E.2d at 552 ("While the prosecutor's statement that the jury should send a message with its verdict to [the] defendant 'and any who would follow in his footsteps' is arguably a reference to general deterrence, we decline to hold that

this one brief comment out of thirty-two transcript pages of closing argument was so grossly improper as to warrant intervention *ex mero motu*."); *State v. Taylor*, 362 N.C. 514, 537, 669 S.E.2d 239, 259–60 (2008) ("Although the prosecutor should not have indicated his personal disbelief of [the] defendant's statement, *given the overall context and the brevity of the remark*, it was not 'so grossly improper' as to render the proceeding 'fundamentally unfair.' " (emphasis added) (citation omitted)), *cert. denied*, 558 U.S. 851, 175 L. Ed. 2d 84 (2009).

¶ 46 Furthermore, to the extent that the prosecutor's quotation from *Ramseur* may have been improper, it is unlikely that the jury misunderstood the correct burden of proof. First, while explaining the concept of self-defense, the prosecutor stated three times that the State bore the burden of proving that Defendant did not act in self-defense.

¶ 47 More significantly, the trial court's jury charge effectively cured any impropriety. First, the trial court began its jury charge by twice noting that the trial court was the source of the law to be used in the jurors' deliberations:

> Members of the jury, all the evidence has been presented. It's now your duty to decide from this evidence what the facts are. *You must then apply the law that I'm about to give to you to those facts. It's absolutely necessary that you understand and apply the law as I give it to you* and not as you think it is or as you might like it to be. This is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied to them.

(Emphasis added). *See Raines*, 362 N.C. at 14, 653 S.E.2d at 135 (explaining that "the trial court instructed the jury that it was necessary to 'understand and apply the law as I give it to you,' after which the trial court properly instructed the jury," thereby negating the prejudice of the prosecutor's improper remarks).

¶ 48 The trial court then repeatedly instructed the jury that the State bore the burden of proving beyond a reasonable doubt that Defendant did not act in self-defense as to the offenses of first-degree murder, second-degree murder, voluntary manslaughter, assault with a deadly weapon with intent to kill inflicting serious injury, assault with a deadly weapon inflicting serious injury, and discharging a firearm into an occupied vehicle. *Cf. State v. Warren*, 348 N.C. 80, 105, 499 S.E.2d 431, 445 (noting that, even if the trial court erred by intervening *ex mero motu* to the defendant's closing argument when his counsel referenced " 'moral certainty' as regards proof of reasonable doubt," the trial court "correctly instructed the jury after closing arguments as to reasonable doubt"), *cert. denied*, 525 U.S. 915, 142 L. Ed. 2d 216 (1998). Indeed, during its deliberation, the jury asked the trial court to clarify whether self-defense was applicable to assault with a deadly weapon with intent to kill inflicting serious injury, and the trial court repeated the entire charge for that offense, again including the proper burden of proof.

¶ 49 In sum, the prosecutor's remarks in closing argument were not so grossly improper that they rendered Defendant's trial and convictions fundamentally unfair. Moreover, the trial court's instructions to the jury on the law of self-defense—appropriately placing the burden of proof on the State—negated any prejudice from the prosecutor's reading from a limited portion of our opinion in *State v. Ramseur* during closing argument. Therefore, Defendant's argument is without merit.

IV. Conclusion

¶ 50 For the reasons stated herein, we conclude that certain of Myla's out-of-court statements in the video recording extracted from her cell phone were admissible pursuant to Rule 803(3). To the extent that other statements in the video recording did not fall within this hearsay exception, we conclude that the overwhelming evidence supporting Defendant's guilt—in tandem with the trial court's limiting instruction to the jury—makes clear that he did not suffer prejudice warranting reversal.

¶ 51 We further conclude that Defendant has failed to demonstrate that he was prejudiced by the trial court's failure to intervene *ex mero motu* when the prosecutor read, without objection, from a limited portion of this Court's opinion in *State v. Ramseur* during closing argument.

¶ 52 Accordingly, we leave undisturbed the judgments entered against Defendant.

NO PREJUDICIAL ERROR.

Judge COLLINS concurs.

Judge MURPHY concurs in part and concurs in result only in part by separate opinion.

Report per Rule 30(e).

MURPHY, Judge, concurring in part and concurring in result only in part.

¶ 53 If we were interpreting Myla's statement in the recording merely under Rules of Evidence 803(3), 401, and 403 and our general jurisprudence as to relevancy, I would hold the admission of the recording was erroneous because her then-existing state of mind, proffered by the State and adopted by the Majority at ¶ 31, was irrelevant. However, our consideration is not in a vacuum and I must reluctantly concur that Myla's then-existing state of mind regarding going to the Sheriff was admissible under Anthony's interpretation of Stager and Meekins.[3]

¶ 54 Further, although I concur the statement is admissible under Rules 803(3) and 401, I would not conclude the probative value outweighs the potential for prejudice under Rule 403. Upon review of the video evidence, the monologue by Myla is arguably not an expression of her then-existing state of mind, but, instead, is an

---

[3] "Evidence tending to show the victim's state of mind is admissible so long as the victim's state of mind is relevant to the case at hand." *State v. Stager*, 329 N.C. 278, 314, 406 S.E.2d 876, 897 (1991). "Any evidence offered to shed light upon the crime charged should be admitted by the trial court." *Id.* (quoting *State v. Meekins*, 326 N.C. 689, 695–96, 392 S.E.2d 346, 349 (1990)). Statements by a victim of her then-existing intent and plan to engage in a future act are admissible. *See State v. Taylor*, 332 N.C. 372, 386, 420 S.E.2d 414, 422 (1992). In *State v. Anthony*, our Supreme Court held, "[the deceased's] statements made on the day of her murder reflected her state of mind and were relevant because they related directly to circumstances giving rise to a feared confrontation with [the] defendant on the day she was murdered." *State v. Anthony*, 354 N.C. 372, 405, 555 S.E.2d 557, 580 (2001). Additionally, "[the deceased's] statements that she intended to go to court the next day in relation to the domestic violence protective order and restraining order are admissible as her then-existing intent and plan to engage in a future act." *Id.* The deceased's statements were also "relevant 'to show a relationship between [the] defendant and the victim which was more favorable to the State and contrary to [the] defendant's version of this relationship, which was more favorable to [the] defendant.'" *Id.* (quoting *Meekins*, 326 N.C. at 696, 392 S.E.2d at 350).

attempt by a potential litigant to create evidence for a future hearing. This, coupled with her intention to go to the Sheriff indicates a testimonial nature to Myla's statements and attempts to involve her son in what is at best his reluctant response. Further, the video has a strong potential to improperly tug at the heartstrings of jurors as it captures one of the final communications between a mother and her son. Even after a decade in a criminal defense practice and another four years reviewing cases, the video plays on my emotions and ability to separate the same from a neutral consideration of the evidence at hand. We must remain mindful that a juror is even more susceptible to improperly relying on his or her emotions than those of us with daily exposure to the justice system. *Compare* N.C.G.S. § 8C–1, Rule 403 advisory committee's note (2019) ("[C]ertain circumstances call for the exclusion of evidence . . . . These circumstances entail risks which range all the way from inducing decision on a purely emotional basis, at one extreme . . . . 'Unfair prejudice' within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one."), *with Watts-Robinson v. Shelton*, 251 N.C. App. 507, 513, 796 S.E.2d 51, 56 (2016) ("However, excluding evidence under Rule 403's weighing of probative value against prejudice has no logical application to bench trials, such as this dismissal hearing, since we presume trial judges can consider relevant evidence, weigh its probative value, and reject improper inferences in reaching a decision."). For these reasons, I would determine the potential for

prejudice and improper consideration by the jury outweighs the limited probative value of Myla's then-existing intention to go to the Sheriff.

¶ 55 However, "[w]e review a trial court's decision to exclude evidence under Rule 403 for abuse of discretion. An abuse of discretion results when '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.'" *State v. Triplett*, 368 N.C. 172, 178, 775 S.E.2d 805, 809 (2015) (quoting *State v. Whaley*, 362 N.C. 156, 160, 655 S.E.2d 388, 390 (2008)). I cannot hold the trial court's ruling in admitting Myla's statement was manifestly unsupported by reason or the result of an unreasoned decision. Therefore, I concur in the result reached by the Majority in finding no prejudicial error.