IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-110

No. COA20-595

Filed 15 February 2022

Scotland County, No. 12CRS050677

STATE OF NORTH CAROLINA,

v.

STEVEN CRAIG ENGLISH, Defendant.

Appeal by Defendant from judgment entered 15 November 2018 by Judge William R. Bell in Scotland County Superior Court. Heard in the Court of Appeals 5 October 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kimberly N. Callahan, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for the Defendant.

JACKSON, Judge.

¶ 1 Steven Craig English ("Defendant") appeals from judgments entered after a jury found him guilty of two counts of first-degree murder and one count of robbery with a dangerous weapon. Defendant argues that (1) the trial court erred in failing to find a prima facie *Batson* violation; (2) seven jurors were influenced by a venireman

who opined that Defendant was guilty during voir dire; and (3) incorrect evidentiary rulings combined to prejudice Defendant. After careful review, we find no error.

I. Factual and Procedural Background

¶ 2 On 26 August 2013, Defendant was indicted by a Scotland County Grand Jury on two counts of first-degree murder for killing his wife, Tammy Wright, and her father, Arthur Wright, and one count of robbery with a dangerous weapon. The State gave notice of its intent to seek the death penalty. After a Rule 24 Conference, the case was declared capital. This matter was called for trial on 27 August 2018 in Scotland County Superior Court before the Honorable William R. Bell.

¶ 3 The State's evidence tended to show the following: Tammy and Defendant married in 1999 and lived primarily in Scotland County. In August of 2011, the Wright family opened JR's, a grill and convenience store. Tammy worked at the store along with her daughter, B. Liles, and her friend, M. Bullard. Arthur, who used a wheelchair due to physical disability, would hang out at the store throughout the day and talk to customers. A couple months after JR's opened, Tammy got a second job waitressing at a restaurant in Laurinburg. Thereafter, Ms. Bullard would close the store each night and put the day's cash into a bank bag which she gave to Arthur to put in a larger bag he carried for personal items.

¶ 4 On 13 March 2012, Defendant came by JR's around 4:30 p.m. when Tammy, Arthur, and Ms. Bullard were all at the store. Defendant asked Tammy for money

but she said no. Tammy then slipped Ms. Bullard a note that, according to Ms. Bullard, said to give Defendant seven dollars and then rip the note up so Arthur would not see it. Ms. Bullard gave Defendant seven dollars and then he left the store around 4:45 p.m., soon after Tammy left for her waitressing job. Around 9:00 p.m., Ms. Bullard closed JR's. She put the day's cash in the bank bag and gave the bank bag to Arthur to put it in his larger bag. She and Arthur then went to pick Tammy up in Laurinburg. After making a few stops, Tammy and Arthur dropped Ms. Bullard off at her home around 11:00 p.m.

¶ 5 The next day, 14 March 2012, Tammy and Arthur were supposed to come pick Ms. Bullard up around 5:00 a.m. to go open J.R.'s but they did not show up. Ms. Bullard went back to sleep but later tried calling Tammy's cell phone and the store phone. No one answered. Finally around 5:00 p.m. that day, Ms. Bullard called Tammy's daughter but Ms. Liles had not seen or talked to Tammy that day. After calling several places to try and locate Tammy, Ms. Liles drove to Tammy and Arthur's house. Upon arriving, Ms. Liles noticed the front porch light was on and the Buick that Arthur had recently purchased was gone. The doors to the house were locked and Ms. Liles could not find the spare key. She could see Arthur's wheelchair in the living room, which usually meant Arthur was at home and in bed. At that point, Ms. Liles knew something was wrong, so she ran to a neighbor's house for help.

¶ 6 Ms. Liles, along with the neighbors, P. and K. Bridgeman, walked back to the

house and continued to look for a way inside. Ms. Liles found Arthur's key in the ignition of his truck. Arthur's cell phone was also in the truck, which Ms. Liles testified was unusual as Arthur used his cell phone to ask Tammy for help inside the house. She then unlocked the back door and was hit by a foul odor after opening it. Mrs. Bridgeman went inside and called out for Tammy and Arthur but no one answered. She then realized she was standing in blood and saw a blood trail leading down the hall to Tammy's bedroom, so she turned around and went out the backdoor. Mr. Bridgeman had already called law enforcement to come do a wellness check so the group waited for law enforcement to arrive.

¶ 7 Lieutenant R. Ivey of the Scotland County Sheriff's Office arrived on scene and went inside the house. Lieutenant Ivey saw a large pool of blood in the kitchen and saw a blood trail leading from the pool of blood through the living room, down the front hallway, into a bathroom, and finally into a back bedroom. Lieutenant Ivey opened the back bedroom door and saw Tammy on the floor next to the bed. She appeared lifeless. Lieutenant Ivey backtracked to the kitchen and opened the other bedroom door located near the back door. There he saw Arthur, who also appeared lifeless, laying on the bed with stab marks on his body and blood around his neck. Lieutenant Ivey exited the home and waited for backup to arrive.

¶ 8 The medical examiner later determined Tammy's cause of death to be multiple stab wounds of the neck and torso. Tammy suffered 22 sharp force injuries—the most

significant injury being a stab wound to the right neck that resulted in a complete transection of the right common carotid artery and the right internal jugular vein. The medical examiner determined Arthur's cause of death to be stabs wounds of the chest. Arthur suffered stab wounds and blunt force injuries—the most significant injuries being a stab wound on the right side of the chest injuring the trachea and a stab wound on the right side of the chest injuring the right subclavian artery and entering the chest cavity.

¶ 9 The ensuing law enforcement investigation revealed the following: There were no signs of forced entry. There was a pair of broken eyeglasses on the floor of the kitchen consistent with a struggle. Several blue beads were found in the pool of blood. A partial shoeprint, the heel of which was consistent with a tennis shoe, was documented along the blood trail. Arthur's large bag was found between his bed and the wall where it was normally kept. A bank bag was found on a stool next to Arthur's bed unzipped with blood on the inside and containing only a roll of quarters. There was a block of knives in the kitchen that contained two black-handled knives that resembled the knife used in the murders. A knife blade was found in the bathroom next to Tammy's bedroom and pieces of a black knife handle were found on Arthur's bed. A bloody sock was found in the bathroom trashcan. Two black trash bags containing male clothing, socks, and pornographic magazines were found in Tammy's bedroom. Tammy's cellphone was not found at the house, but subpoenas were

obtained to receive her phone records from Verizon Wireless. Defendant's DNA was found on a piece of the black plastic knife handle. Defendant's DNA was found as the predominant contributor on the foot of the bloody sock.

¶ 10 Ms. Liles voluntarily identified Defendant as a suspect when interviewed by police. When law enforcement interviewed Ms. Bullard she informed them that Arthur had told her the evening of 13 March 2012 that he was going to call a family meeting that night because Defendant had not been contributing around the house and Arthur was going to ask Defendant to leave.

¶ 11 Law enforcement took out arrest warrants on Defendant, but despite a search by law enforcement in multiple counties, Defendant was not located until he turned himself in on 23 July 2012. However, the investigation revealed the following about Defendant's whereabouts from 13 March 2012 to the time of his arrest:

¶ 12 Around 11:30 p.m. on 13 March 2012, Defendant went by R. Goodwin's house asking for money. Defendant left Mr. Goodwin's house after about 15 or 20 minutes. Defendant then called R. Chamberlain, a friend with whom he would drink and do drugs, around midnight asking to party. Mr. Chamberlain declined.

¶ 13 Around 4:00 or 4:30 a.m. on 14 March 2012, Defendant drove to G. Chavis's house in a "grayish" Buick Century that was later identified as Arthur's recently purchased Buick. Defendant asked Mr. Chavis for gas and then stayed at Mr. Chavis's house until they drove to a nearby gas station around 7:00 a.m. Mr. Chavis

noticed a cut on Defendant's right hand and blood on Defendant's pant leg like he had wiped his hand on his pants. Defendant told Mr. Chavis he had gotten into a fight at a club earlier that morning.

¶ 14 Around 8:00 a.m., Defendant drove to C. Bryant's house in a blue car. Defendant and Ms. Bryant had previously had a sexual relationship, but she had not seen Defendant in about a year. Ms. Bryant thought Defendant looked fresh and good. Defendant was wearing a tan or gray coat and gray tennis shoes. Ms. Bryant and Defendant smoked a rock of crack cocaine and then had sex. Ms. Bryant did not see any cuts or scratches on Defendant, but she was not specifically looking for injuries. Defendant "said something to Ms. Bryant about the law hunting him" and asked for a knife "because if they come after me over this car they going to have to kill me." Ms. Bryant told Defendant to leave.

¶ 15 Around 9:00 or 10:00 a.m., Defendant sold a blue Buick to C. McLean for $300. Defendant did not have the title to the car so he signed a bill of sale. Defendant later returned to Ms. Bryant's house and stayed there on and off until about 5:00 p.m. Defendant no longer had the gray tennis shoes and asked Ms. Bryant for flip-flops.

¶ 16 Around 6:30 p.m., Defendant stopped by Mr. Chavis's house again asking to stay. Mr. Chavis told Defendant he could not stay but he gave Defendant some food and something to dry off with as it was raining. At that point, Mr. Chavis knew Tammy and Arthur had been murdered and told Defendant he had heard a rumor

about Tammy. Defendant told Mr. Chavis "[he] didn't do it" and that he had already told Mr. Chavis what happened.

¶ 17 In the second half of March 2012, Mr. Chamberlain saw Defendant twice. The first time, Defendant asked to party and Mr. Chamberlain said no. The second time, Defendant showed up looking "a little scruffy and disoriented" and asked to use a scooter and for some food and money. Mr. Chamberlain said no. Mr. Chamberlain also testified that Defendant told him "[he'd] done something bad" and that he had killed Tammy and Arthur. Mr. Chamberlain did not call law enforcement at that time because he did not want to get involved. At the end of March, Mr. Chamberlain turned himself in on outstanding warrants and voluntarily told detectives that Defendant had "a run-in with the law" but Defendant would not tell him what happened.

¶ 18 Tammy's phone records revealed that between midnight and 3:30 a.m. on 14 March 2012, a series of calls were exchanged with Mr. Chamberlain and Mr. Goodwin's phone numbers. There was also a call placed from Arthur's phone to Tammy's phone at 1:15 a.m. There were more calls placed to Defendant's acquaintances on 14 March. Between 2:30 p.m. and 4:39 p.m. on 14 March, a series of calls were exchanged with Defendant's brother and stepfather.

¶ 19 Witnesses for the State also testified to a history of abuse during Defendant and Tammy's twenty-year relationship. There were incidents of Defendant hitting

and shoving Tammy that resulted in bruises, cuts, a bloody nose, and busted lips. Often the assaults appeared to be motived by Defendant asking for money and Tammy refusing. Witnesses also testified to more violent incidents, including Defendant slamming Tammy into a refrigerator, Defendant grabbing Tammy by her hair and slamming her head into the floor, and Defendant pinning Tammy down by the throat and screaming expletives in her face. Additionally, six undated voicemails left on Tammy's phone by a man whom Ms. Liles identified as Defendant were introduced. On the voicemails, Defendant called Tammy vulgar names, accused her of cheating, and threatened to kill her. Lastly, D. Hardie, Ms. Liles's mother-in-law, testified that on 12 March 2012, Tammy told her she was afraid for her life and Defendant was going to kill her one day.

¶ 20 In Defendant's case-in-chief, a North Carolina State Bureau of Investigation forensic scientist and expert in latent fingerprint examination and footwear impression identification, testified that law enforcement could have tested for fingerprints on kitchen and bathroom counters, doorknobs, and faucets. Additional witnesses including Arthur's girlfriend testified that they had not seen incidents of domestic violence occur between Defendant and Tammy or had not seen bruises on Tammy in the past.

¶ 21 Dr. D. Maddox, a forensic psychiatrist, also testified for the defense. Dr. Maddox met with Defendant four times in jail and reviewed a variety of medical,

school, and prison records. Neuropsychological testing revealed that Defendant had an IQ of 73 and deficits in executive function, processing, attention, spatial skills, and verbal memory. Dr. Maddox testified that Defendant had a series of head injuries, grew up in an abusive household, started drinking as a teenager, and was drinking and smoking crack in 2012. Dr. Maddox diagnosed Defendant with a minor neurocognitive disorder due to multiple etiologies, with behavioral disturbance, unspecified trauma and other stressor-related disorder, and three substance abuse issues. Dr. Maddox determined Defendant was suffering from these disorders in 2012 and they affected his behavior towards Tammy and his response to Tammy and Arthur's murders.

¶ 22 The jury found Defendant guilty of two counts of first-degree murder and one count of robbery with a dangerous weapon on 8 November 2018. After the sentencing phase and deliberations, the jury recommended life imprisonment for each first-degree murder conviction. The trial court consolidated the robbery conviction for sentencing and imposed two consecutive sentences of life imprisonment without parole.

¶ 23 Defendant entered notice of appeal in open court.

II. Analysis

A. *Batson* Issue

¶ 24 Defendant first argues that the trial court erred by failing to find a prima facie

case of purposeful discrimination in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986). At the time of the *Batson* challenge by Defendant's trial counsel, the State had utilized three of its first four peremptory strikes against black jurors. Defendant contends this statistical evidence in combination with the absence of any immediately obvious justification for striking the challenged juror satisfied his burden of providing prima facie evidence of racial discrimination. We disagree.

¶ 25 In *Batson*, the United States Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment "forbids the prosecutor to challenge potential jurors solely on account of their race[.]" *Id.* at 89. The North Carolina Constitution also prohibits "exclu[sion] from jury service on account of sex, race, color, religion, or national origin." N.C. Const. art. I, § 26. The first step of a three-part inquiry under *Batson* requires the moving party to make a prima facie case of intentional racial discrimination in jury selection "by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." *Batson*, 476 U.S. at 94. "Our courts have adopted the *Batson* test for review of peremptory challenges under the North Carolina Constitution." *State v. Fair*, 354 N.C. 131, 140, 557 S.E.2d 500, 509 (2001).

¶ 26 "Step one of the *Batson* analysis . . . is not intended to be a high hurdle for defendants to cross. Rather, the showing need only to be sufficient to shift the burden to the State to articulate race-neutral reasons for its peremptory challenge." *State v.*

Hoffman, 348 N.C. 548, 553, 500 S.E.2d 718, 722 (1998). A defendant can point to and the trial court can consider a variety of factors in determining whether a defendant has made out a prima facie case, including:

> the defendant's race, the victim's race, the race of the key witnesses, questions and statements of the prosecutor which tend to support or refute an inference of discrimination, repeated use of peremptory challenges against [black jurors] such that it tends to establish a pattern of strikes against [black jurors] in the venire, the prosecution's use of a disproportionate number of peremptory challenges to strike black jurors in a single case, and the State's acceptance rate of potential black jurors.

State v. Hobbs, 374 N.C. 345, 350, 841 S.E.2d 492, 497-98 (2020) (quoting *State v. Quick*, 341 N.C. 141, 145, 462 S.E.2d 186, 189 (1995)). At this stage, a defendant only has the burden of producing enough evidence to support an inference of discrimination. *Id.* at 351, 841 S.E.2d at 498. "[T]he defendant is not required to persuade the court conclusively that discrimination has occurred." *Id.* "All in all, however, the defendant must make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." *State v. Bennett*, 374 N.C. 579, 598, 843 S.E.2d 222, 235 (2020) (internal marks and citation omitted).

¶ 27 In reviewing a trial court's ruling on the first step of a *Batson* challenge, we apply the following standard:

> A trial court's findings with respect to the issue of whether a defendant has made out a prima facie case of discrimination will be upheld on appeal unless they are clearly erroneous, with such a clear error being deemed to exist when on the entire evidence the Court is left with the definite and firm conviction that a mistake has been committed.

Id. at 592, 843 S.E.2d at 231 (cleaned up).

¶ 28 At the State's first opportunity to exercise its peremptory challenges on a full panel, the State used three peremptory challenges to excuse T. Patterson, a white woman, R. Rainer, a black woman, and M. McLean, a black woman. At the State's second opportunity to exercise peremptory challenges, the State excused C. Kirkley, a black woman. After this challenge, Defendant's counsel made a *Batson* challenge, arguing Ms. Kirkley "answered unequivocally questions as to capital punishment that she could fairly apply both punishments[,]" and noted that the State had used 75 percent of its peremptory strikes against black jurors. The State responded that it had kept two out of five black jurors, it was too early to use statistics to demonstrate discrimination, and it had a list of reasons for not wanting Ms. Kirkley to be a juror. The trial court stopped the State from continuing its response[1] and ruled that

[1] The trial court presumably interrupted the State before it specifically delineated its reasons for the peremptory challenge because

> [i]f the prosecutor volunteers his reasons for the peremptory challenges in question before the trial court rules whether the defendant has made a *prima facie* showing or if the trial court

Defendant had not made a prima facie case of discrimination.

¶ 29 While statistical evidence of strike rates can be used in determining whether a prima facie case of discrimination has been established, such numerical analysis is not dispositive. *State v. Barden*, 356 N.C. 316, 344, 572 S.E.2d 108, 127 (2002). Similarly, "acceptance rates [of black jurors by the State], standing alone, [do not] suffice to preclude a finding that the defendant has made out a prima facie case of purposeful discrimination[.]" *Bennett*, 374 N.C. at 602, 843 S.E.2d at 237.

¶ 30 The difference in strike rates and acceptance rates of black and white jurors in combination "with the absence of any immediately obvious justification for the peremptory challenges" may be sufficient to support an inference of purposeful discrimination. *Id.* at 599, 843 S.E.2d at 236. An expression of serious reservations, tremendous hesitancy, or ambivalence regarding imposition of the death penalty in a capital murder trial may constitute an immediately obvious justification for removal, *id.* at 601, 843 S.E.2d at 237, "even if insufficient to support a challenge for cause,"

> requires the prosecutor to give his reasons without ruling on the question of a *prima facie* showing, the question of whether the defendant had made a *prima facie* showing becomes moot, and it becomes the responsibility of the trial court to make appropriate findings on whether the stated reasons are a credible, nondiscriminatory basis for the challenges or simply pretext.

State v. Williams, 343 N.C. 345, 359, 471 S.E.2d 379, 386 (1996).

State v. Nicholson, 355 N.C. 1, 23, 558 S.E.2d 109, 126 (2002). If an immediately obvious justification is present in the responses of jurors to questions about the death penalty, those responses "are relevant to a determination of whether defendant has made a *prima facie* showing" and may support the trial court finding a defendant has not met the burden of production for step one of a *Batson* challenge. *Nicholson*, 355 N.C. at 23, 558 S.E.2d at 126.

¶ 31 Here, 75 percent of the State's first four peremptory strikes were used against black jurors. While this percentage warrants pause, "this standing alone is not sufficient to sustain a *Batson* challenge." *State v. Campbell*, 272 N.C. App. 554, 564, 846 S.E.2d 804, 811, *disc. rev. allowed* 376 N.C. 531, 851 S.E.2d 42 (2020) (listing numerical figures held insufficient to establish a prima facie *Batson* claim including peremptory strikes of five out of eight black prospective jurors and nine out of thirteen black prospective jurors). Because this statistical evidence alone is not dispositive, we examine the record to determine whether there was an absence of any immediately obvious justification, specifically an absence of hesitancy regarding the death penalty, to strike the three prospective black jurors, Ms. Rainer, Ms. McLean, and Ms. Kirkley.

¶ 32 Regarding Ms. McLean, after individual questioning on her views of the death penalty and domestic violence, the State raised the possibility of needing to requestion Ms. McLean on her opinion of the death penalty versus life sentences. Ms.

McLean had expressed the view that the death penalty was the "easy way out," "a person suffers more with a life sentence than the death penalty," and even suggested that pictures of the victims "should be placed in the cell with him, [so] he would have to look at it every day to think about what he did." Although Ms. McLean stated she could consider both the death penalty and a life sentence, the State appeared concerned about her responses. Specifically, the State remarked:

> I didn't want to interrupt [Defense Counsel], but during the course of [Defense Counsel]'s questioning, I mean, basically the juror said if he's convicted of the crimes that he's convicted of then she's going to give a life sentence. So, I mean, you know, I don't know whether it's appropriate for me to then go back and question her or not.

While the trial court decided not to reopen questioning, this comment strongly suggests that the State viewed Ms. McLean's opinion that a life sentence is a harsher punishment as an immediately obvious justification to strike Ms. McLean from the jury. Despite being insufficient to support a strike for cause, Ms. McLean's responses nevertheless qualify as an immediately obvious justification.

¶ 33 Regarding Ms. Kirkley, in response to a question by the State about her feelings on the death penalty she stated: "I'm unsure of my feelings. I think that definitely would have to be without a shadow of a doubt that that person would be guilty of the crime that could – case that could lead to somebody's death." Ms. Kirkley's response contains the kind of hesitation towards the death penalty that is

grounds for an immediately obvious justification to exercise a peremptory challenge even if the response is insufficient to excuse for cause.

¶ 34 Lastly, we note that Defendant has not pointed to "statements or questions by the prosecutor which give rise to an inference of racial discrimination." *State v. Quick*, 341 N.C. 141, 145-46, 462 S.E.2d 186, 189 (1995). These facts in combination with the presence of an immediately obvious justification in the responses of Ms. McLean and Ms. Kirkley weigh against inferring that purposeful discrimination had occurred. Further, because statistical evidence alone is not dispositive, we hold that the trial court's ruling that Defendant failed to make a prima facie showing of purposeful racial discrimination is not clearly erroneous.

B. Voir Dire Issue

¶ 35 Defendant second argues that Defendant's rights to an impartial jury and due process were violated and that the trial court failed to remedy this violation. Specifically, Defendant argues that a remark by a prospective juror in which he stated that he leaned towards Defendant being guilty made in front of a group of prospective jurors, seven of whom would be seated on the jury, prejudicially influenced the entire group of jurors and they should have been stricken. We disagree.

¶ 36 On the fourth day of Defendant's trial, the trial court called a large group of prospective jurors, gave preliminary instructions, and then took requests to defer

service due to hardship and other excuses. Prospective jurors asking to defer lined up to speak with the judge while the other prospective jurors waited inside the courtroom. During this period, a prospective juror named W. Wallace approached and the following exchange occurred:

> [MR. WALLACE]: Yeah. I feel like I need to be excused because when this took place I stayed three quarters of a mile or so down the road. I'm very familiar with this case, and I'm also the single provider for a family of four.
>
> THE COURT: Have you made up your mind about this case?
>
> [MR. WALLACE]: I did. Would take an awful lot to change it.
>
> THE COURT: That wasn't the question. Question was, have you made up your mind about this case?
>
> [MR. WALLACE]: Pretty much, yeah.
>
> THE COURT: So you lean one way or the other already?
>
> [MR. WALLACE]: Yes, sir, I lean towards him being guilty--
>
> THE COURT: Up, up, I just want to know--
>
> [MR. WALLACE]: Yes, sir.
>
> THE COURT: --your mind is made up? . . .

The trial court then excused Mr. Wallace.

¶ 37 After the remaining excuses were taken and all prospective jurors had left the courtroom, Defendant's counsel argued that Mr. Wallace's comment contaminated all

the jurors and that the entire group should be stricken to protect Defendant's fair trial rights. Defendant's counsel did not ask for a limiting or curative instruction. The trial court denied the motion.

¶ 38 In North Carolina, a criminal defendant has the right to a jury trial composed of jurors who can render a fair and impartial verdict. N.C. Const. art. 1 § 24; N.C. Gen. Stat. § 15A-1212(9) (2021). "The trial judge has broad discretion to see that a competent, fair and impartial jury is impaneled and rulings of the trial judge in this regard will not be reversed absent a showing of abuse of discretion." *State v. Phillips*, 300 N.C. 678, 682, 268 S.E.2d 452, 455 (1980) (internal quotation and citation omitted).

¶ 39 As a preliminary matter, the type of juror communication at issue here is not the kind that the United States Supreme Court labeled as presumptively prejudicial in *Remmer v. United States*, 347 U.S. 227 (1954), as Defendant contends. In *Remmer*, an unidentified person communicated with a juror "and remarked to him that he could profit by bringing in a verdict favorable to the petitioner." *Id.* at 228. The Supreme Court deemed this communication and

> any private communication, contact, or tampering, directly or indirectly, with a juror during trial about the matter pending before the jury . . . not made in pursuance of known rules of the court and the instructions and direction of the court made during the trial, with full knowledge of the parties[]

as presumptively prejudicial. *Id.* at 229. Therefore, the Supreme Court placed the burden on the Government to establish "that such contact with the juror was harmless to the defendant." *Id.* at 229.

¶ 40 In the case at bar, the communication at issue was a comment made by a prospective juror in a colloquy with the trial court about being excused from jury service rather than a private communication to an individual juror outside of the courtroom. Accordingly, Defendant has the burden to establish that Mr. Wallace's comment "caused the remaining prospective jurors to become unable to render a verdict based on the evidence presented in court." *State v. Corbett*, 309 N.C. 382, 386-87, 307 S.E.2d 139, 143 (1983).

¶ 41 In *State v. Corbett*, during the State's questioning of a prospective juror, the juror commented that he had been following the case closely in newspapers and decided the defendant was guilty. *Id.* at 385, 307 S.E.2d at 142. The defendant first moved for a mistrial, which was denied, and then moved to excuse the juror for cause, which was denied as well, although the juror was eventually excused on other grounds. *Id.* at 386, 307 S.E.2d at 142-43. The Court rejected the defendant's argument that the prospective juror's comment "so prejudiced his defense that it was impossible for [him] to receive a fair trial by the jury that was eventually impaneled." *Id.* at 386, 307 S.E.2d at 143. The Court explained that while "[g]enerally, a juror who has formed an opinion as to defendant's guilt or innocence is not impartial and

ought not to serve[,]" a defendant "must prove the existence of an opinion in the mind of a juror that will raise a presumption of partiality." *Id.*

¶ 42 Here, Defendant has not provided any evidence that the prospective jurors who were in the courtroom when Mr. Wallace made his comment were influenced to the extent that they were unable to render a verdict based on the evidence presented in court. Mr. Wallace was properly excused for having formed an opinion as to Defendant's guilt, but Defendant has not proven the existence of impartiality in the seven jurors who were in the courtroom when Mr. Wallace made his comment. Therefore, the trial court did not abuse its discretion in denying Defendant's motion to strike the entire group of prospective jurors.

¶ 43 Additionally, Defendant argues that the trial court erred by failing to inquire of the prospective jurors present for Mr. Wallace's comment to determine if they had been influenced or to give a cautionary instruction to the jurors. We disagree.

¶ 44 In *State v. Mobley*, 86 N.C. App. 528, 358 S.E.2d 689 (1987), this Court awarded a new trial when the trial court should have dismissed or at least made an inquiry of prospective jurors who heard a police officer-prospective juror state he knew the defendant from similar charges. *Id.* at 533-34, 358 S.E.2d at 692. The Court emphasized that this comment was obviously prejudicial and likely to have "a substantial effect on other jurors." *Id.* at 533, 358 S.E.2d at 692.

¶ 45 In *State v. Gibbs*, 335 N.C. 1, 436 S.E.2d 321 (1993), our Supreme Court

concluded a trial court did not err in failing to give a cautionary instruction to a group of prospective jurors after one juror commented in their presence that they believed the defendant was guilty after following the case on television. *Id.* at 28, 436 S.E.2d at 337. The Court noted that the defendant did not ask for a cautionary instruction and that the trial court excusing the juror after he opined the defendant was guilty "repelled any inference of [the trial court's] concurrence with [the juror's] opinion." *Id.*

¶ 46 Here, Mr. Wallace's comment is not obviously prejudicial in the same manner the comment at issue in *Mobley* was obviously prejudicial. While the prospective juror in *Mobley* was a police officer who stated he "had dealings with the defendant on similar charges[,]" Mr. Wallace only stated that he lived "three quarters of a mile or so down the road" from the Wrights when the murder happened. Mr. Wallace did not assert he personally knew Defendant or the victims. Additionally, Mr. Wallace as a layperson did not carry the same level of perceived credibility as the police officer-juror in *Mobley*. Accordingly, the trial court, in its discretion, did not err in not inquiring of the prospective jurors who may have heard Mr. Wallace's comment.

¶ 47 Similarly, the trial court did not err by not giving a cautionary instruction to prospective jurors about Mr. Wallace's comment. Defendant's counsel did not ask for such an instruction and like the trial court in *Gibbs*, the trial court excused Mr. Wallace immediately after he opined on Defendant's guilt, thus repelling any

inference of concurrence with his opinion. Furthermore, "[i]n capital cases, trial judges are vested with discretion to regulate and supervise jury selection[,]" *Gibbs*, 335 N.C. at 26, 436 S.E.2d at 335, because the trial judge has the opportunity to observe jurors' demeanors throughout, *State v. McDowell*, 329 N.C. 363, 379, 407 S.E.2d 200, 209 (1991). The trial court here had the opportunity to observe the group of prospective jurors during the colloquy with Mr. Wallace. We therefore defer to those observations and the trial court's discretion in choosing not to give a cautionary instruction about Mr. Wallace's comment to the other prospective jurors.

C. Evidentiary Rulings

¶ 48 Defendant third argues that the trial court erred in two separate evidentiary rulings and these erroneous rulings combined to prejudice Defendant. Specifically, Defendant argues (1) the trial court abused its discretion by allowing improper lay opinion testimony by an investigator for the district attorney's office, and (2) the trial court abused its discretion in redacting part of an expert psychologist's written report. We disagree.

1. Ruling One

¶ 49 Defendant first contends that the trial court erred and abused its discretion by allowing Investigator J. Joseph of the Scotland County District Attorney's Office to give improper lay opinion testimony. At the end of Investigator Joseph's testimony on direct examination, the following exchange occurred between the prosecutor and

Investigator Joseph:

> [PROSECUTOR:] Okay. During the course of your investigation – well, let me ask, how long have you been working on this case?
>
> [INVESTIGATOR JOSEPH:] Since March of 2012
>
> [PROSECUTOR:] Okay. And obviously you have gone behind law enforcement and checked out additional information that they did not uncover, or they did not find; is that right?
>
> [INVESTIGATOR JOSEPH:] Yes, sir, that's correct.
>
> [PROSECUTOR] Did you locate any other suspect other than the defendant?
>
> [INVESTIGATOR JOSEPH:] No, sir.
>
> DEFENSE: Object to that as irrelevant.
>
> THE COURT: Overruled.
>
> [PROSECUTOR] Sir?
>
> [INVESTIGATOR JOSEPH:] No, sir.
>
> [PROSECUTOR] Did you find anyone who had direct knowledge of Tammy Wright being involved in drug activity?
>
> [INVESTIGATOR JOSEPH:] No, sir.

Defendant argues that Investigator Joseph's answers were improper conclusory lay opinions and should have been deemed inadmissible.

¶ 50 Defendant only objected at trial to the relevancy of Investigator Joseph's testimony under North Carolina Rule of Evidence 401. Defendant did not object to

the testimony about whether Investigator Joseph had located another suspect on the basis it was improper lay opinion testimony under North Carolina Rule of Evidence 701. By failing to raise this theory before the trial court, Defendant cannot now argue the lay opinion theory of inadmissibility for the first time on appeal. *State v. Sharpe*, 344 N.C. 190, 194-95, 473 S.E.2d 3, 5 (1996). Therefore, we will only review the trial court's ruling as it relates to the relevancy of Investigator Joseph's testimony.

¶ 51 "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. Gen. Stat. § 8C-1, Rule 401 (2021). Our Supreme Court has "interpreted Rule 401 broadly and [has] explained on a number of occasions that in a criminal case every circumstance calculated to throw any light upon the supposed crime is admissible and permissible." *State v. Collins*, 335 N.C. 729, 735, 440 S.E.2d 559, 562 (1994). "A trial court's rulings on relevancy are technically not discretionary, though we accord them great deference on appeal." *State v. Lane*, 365 N.C. 7, 27, 707 S.E.2d 210, 223 (2011).

¶ 52 The trial court properly overruled Defendant's objection that Investigator Joseph's testimony was irrelevant. Although Investigator Joseph's testimony was primarily about plotting cell phone location data, at the end of his direct examination, the prosecutor asked Investigator Joseph several general questions about his knowledge of Defendant and the victims as well as his work on the case. In this

context, the specific question and answer to which Defendant's counsel objected throws light on and makes it more probable that Defendant, and not someone, else murdered the victims. According great deference to the trial court's initial ruling, we find no error.

2. Ruling Two

¶ 53 Defendant second contends that the trial court erred and abused its discretion by excluding a portion of an expert witness's written report. The State moved to exclude the following portion of Dr. Maddox's report as self-serving statements not for medical diagnosis:

> [Defendant] reported on the day of the offense he did cocaine all day. He stated he got $100 from his wife earlier in the day. He stated he came home and found his wife and father-in-law dead.

Defendant argued at trial that Dr. Maddox would expand on this portion to explain "why [Defendant] fled the scene and did not turn himself in for some four months[]" and that the statements were used as part of Dr. Maddox's diagnosis of Defendant having a substance abuse disorder.

¶ 54 The trial court granted the State's motion, stating:

> The Court finds that the defendant's statements in question were not made with the intention of obtaining a medical diagnosis or treatment, and two, were not reasonably pertinent to a medical diagnosis or treatment.
>
> The Court further finds that the statements in question are self-serving, exculpatory, and do not contain the indicia of

> reliability based on the self-interest inherent in obtaining medical treatment, rather, the defendant's statements were made for the purpose of preparing and presenting a defense or mitigation to the crimes for which he is charged.

Defendant argues on appeal that these statements were offered under North Carolina Rule of Evidence 703 and they should have been admitted as the basis of Dr. Maddox's opinion because they are the type of statements reasonably relied on by experts in the same field.

> In reviewing trial court decisions relating to the admissibility of expert testimony evidence, our Supreme Court has long applied the deferential standard of abuse of discretion. Trial courts enjoy wide latitude and discretion when making a determination about the admissibility of expert testimony. The trial court's decision will not be disturbed on appeal unless 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. Mendoza, 250 N.C. App. 731, 738-39, 794 S.E.2d 828, 834 (2016) (internal marks and citations omitted).

¶ 55 Contrary to Defendant's assertion, the trial court considered the portion of Dr. Maddox's report as part of the basis for her opinion. During counsels' argument of the motion to exclude, the trial court agreed with Defendant's counsel that "there's no *per se* rule that keeps this stuff out." In its ruling, the trial court summarized the arguments given by the State and Defendant to exclude the portion as: "The state seeks to have these statements excluded from the jury as self-serving exculpatory

statements. The defendant asserts the statements were the facts or data underlying Dr. Maddox's expert opinion testimony and were therefore admissible under the Rule 705 and 803(2)."[2] Accordingly, we review the trial court's ruling to determine whether the trial court abused its discretion by excluding the portion of Dr. Maddox's report on the basis the statements were self-serving and not made with the intention of obtaining a medical diagnosis or treatment.

¶ 56 "Under N.C.R. of Evid. 705, an expert may testify regarding his opinion and the reasons therefor. However, this 'does not . . . make the bases for an expert's opinion automatically admissible.'" *State v. Ballard*, 127 N.C. App. 316, 320, 489 S.E.2d 454, 457 (1997), *rev'd on other grounds*, 349 N.C. 286, 507 S.E.2d 38 (1998) (quoting *State v. Baldwin*, 330 N.C. 446, 456, 412 S.E.2d 31, 37 (1992)). "[A]n expert witness [can] rely on an out-of-court communication as a basis for an opinion and [can] relate the content of that communication to the jury." *State v. Jones*, 322 N.C. 406, 410, 368 S.E.2d 844, 846 (1988). "The trial court, in its discretion, must determine whether the statements in issue are reliable, especially if the statements are self-serving and the defendant is not available for cross-examination." *State v. Prevatte*, 356 N.C. 178, 233, 570 S.E.2d 440, 470 (2002).

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[2] Presumably, the trial court meant Defendant offered the statements under 803(4), the hearsay exception for statements for purposes of medical diagnosis or treatment, and not Rule 803(2), the hearsay exception for excited utterance.

¶ 57 North Carolina Rule of Evidence 803(4) provides that the following statements are not excluded by the hearsay rule:

> Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

N.C. Gen. Stat. § 8C-1, Rule 803(4) (2021). This exception is premised on the notion "that a statement made for the purpose of medical diagnosis or treatment is inherently trustworthy. We have recognized, however, that statements made to a psychiatrist for the purpose of preparing for trial lack the trustworthiness generally attributed to statements made for medical diagnosis or treatment." *State v. Harris*, 338 N.C. 211, 221, 449 S.E.2d 462, 467 (1994). Such statements therefore may be ruled inadmissible under Rule 803(4). *Id.* at 222, 449 S.E.2d at 467.

¶ 58 In its ruling, the trial court stated that Dr. Maddox evaluated the defendant "as a forensic psychiatrist and not as a clinical psychiatrist . . . and not for the primary purpose of diagnosis and treatment[,]" that Dr. Maddox "informed the defendant that a report would be issued and possibly used at his upcoming trial[,]" and that her report "makes no diagnosis and recommends no treatment." Given these findings, the self-serving nature of Defendant's statement that he came home and found Tammy and Arthur dead, and the fact Defendant was unavailable for cross-examination, we hold that the trial court did not abuse its discretion in excluding the

portion of Dr. Maddox's report at issue.

III. Conclusion

¶ 59 For the foregoing reasons, we conclude that the trial court did not err in finding Defendant failed to make out a prima facie showing of intentional discrimination as step one of his *Batson* challenge; that the trial court did not abuse its discretion by denying Defendant's motion to strike the prospective jurors and not giving a cautionary instruction; and that the trial court did not err in overruling Defendant's relevancy objection to Investigator Joseph's testimony or in excluding a portion of Dr. Maddox's written report.

NO ERROR.

Judges DILLON and MURPHY concur.

Report per Rule 30(e).