An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-400

No. COA 21-209

Filed 7 June 2022

Durham County, Nos. 15 CRS 2882-84, 57421-22

STATE OF NORTH CAROLINA

v.

QUASHAUN NIAJEL SLADE, Defendant.

Appeal by Defendant from judgment entered 12 February 2020 by Judge John M. Dunlow in Durham County Superior Court. Heard in the Court of Appeals 22 February 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Benjamin O. Zellinger, for the State.

Kimberly P. Hoppin for Defendant-Appellant.

INMAN, Judge.

¶ 1 Defendant-Appellant Quashaun Niajel Slade ("Defendant") appeals from a judgment entered upon a jury verdict finding him guilty of murder, attempted first-degree murder, two counts of first-degree kidnapping, conspiracy to commit first-degree kidnapping, two counts of robbery with a dangerous weapon, assault with a deadly weapon with intent to kill inflicting serious injury, and possession of a firearm by a felon. On appeal, Defendant argues the trial court erred: (1) in admitting written

and verbal communications between Defendant and a female accomplice while both were in custody; and (2) in failing to intervene *ex mero motu* during the prosecutor's closing argument. After careful review, we hold Defendant has failed to demonstrate error.

I. FACTUAL AND PROCEDURAL HISTORY

¶ 2 Evidence presented in the trial court tended to show the following:

¶ 3 On 24 August 2015, Defendant and five accomplices participated in the kidnapping and shooting of 17-year-old Alexus Patterson ("Ms. Patterson") and the kidnapping and murder of 18-year-old Dymond Fowler ("Ms. Fowler") in retaliation over stolen marijuana.

¶ 4 Defendant customarily had packages of marijuana delivered to a friend, Jazmine Medley ("Ms. Medley"), at her residence, and Ms. Medley would accept payments for them. Ms. Medley was best friends and roommates with Defendant's romantic partner, Brittany Lassiter ("Ms. Lassiter").

¶ 5 On or around 22 August 2015, Defendant and Ms. Lassiter were together when he recalled he had a package of marijuana delivered to Ms. Medley's residence which he had not yet picked up. Defendant and Ms. Lassiter went to Ms. Medley's residence, and Defendant searched the residence and Ms. Medley's car for the marijuana. He could not find the marijuana and became upset.

¶ 6 Around 5:00 p.m. on 24 August 2015, Ms. Lassiter contacted Dominique

Faulkner ("Ms. Faulkner"), a close friend of Defendant's, to tell her she thought Ms. Medley or her sister, Ms. Patterson, had Defendant's marijuana. To determine who stole Defendant's marijuana, Ms. Faulkner organized a drug transaction around 7:00 p.m. with Ms. Patterson and Ms. Patterson's friend, Ms. Fowler, at Northgate Mall in Durham. After obtaining marijuana from Ms. Patterson and Ms. Fowler, Ms. Faulkner gave it to Defendant, and he confirmed it was his marijuana.

¶ 7 Defendant and his accomplices drove to the Red Roof Inn where Ms. Patterson and Ms. Fowler were staying and forced the two teenagers into Defendant's vehicle. Ms. Patterson tried to run, but Defendant put his arm around her and put his gun to the back of her head. Donovan Bright ("Mr. Bright"), one of Defendant's accomplices, did the same to Ms. Fowler. Defendant and his male accomplices drove Ms. Patterson and Ms. Fowler to another location and the female accomplices left in another vehicle.

¶ 8 Defendant threw Ms. Patterson's cell phone out of his car window as they drove, and he instructed her to use another cell phone to call people to recover his money or his stolen marijuana. Following his demands, Ms. Patterson called Ms. Medley and her brother multiple times. Defendant also called Ms. Medley and threatened her if she did not get him his money or marijuana, Ms. Patterson would die. Ms. Medley called the people she thought had stolen Defendant's marijuana and then called the police.

¶ 9 Defendant and his male accomplices eventually stopped the vehicle on the side

of a poorly lit road. After exiting the vehicle, Mr. Bright shot and killed Ms. Fowler at Defendant's direction. Defendant then shot Ms. Patterson in the jaw and arm as she tried to run away. Ms. Patterson "played dead" as the men fled the scene. She then sought help from nearby homes.

¶ 10 Law enforcement officers responded to one of the residences where Ms. Patterson sought help after being shot. They found Ms. Fowler on the side of the road nearby; she was pronounced dead at the scene.

¶ 11 Defendant turned himself in to police the next day. He was indicted on 8 September 2015 for two counts of first-degree kidnapping, assault with a deadly weapon with intent to kill inflicting serious injury, attempted first-degree murder, murder, possession of a firearm by a felon, conspiracy to commit first-degree kidnapping, and two counts of robbery with a dangerous weapon. His case came on for trial on 27 January 2020 and the jury convicted Defendant on all charges on 12 February 2020. Defendant gave timely notice of appeal.

II. ANALYSIS

A. Admissibility of Communications between Defendant and a Female Accomplice

¶ 12 Defendant argues the trial court erred in admitting evidence of irrelevant and unduly prejudicial communications between Defendant and Ms. Lassiter while they were both in custody. Defendant's arguments are without merit.

1. Letter Purportedly Written by Defendant to Ms. Lassiter

¶ 13 At trial, the State moved to introduce a letter written by Defendant to Ms. Lassiter, which a corrections officer delivered to Ms. Lassiter while they were both in custody. During *voir dire* on the letter, defense counsel objected to its admissibility under North Carolina Rules of Evidence 401 and 403, arguing it was "highly prejudicial" and "it is mostly irrelevant. . . . I just don't see most of its relevance. . . . I think we have to redact so much in order to . . . keep it relevant that I don't think that the letter should be admitted." When the State moved to admit this exhibit at trial, defense counsel objected in the presence of the jury "to the sequencing and . . . as previously argued [in *voir dire*]."

a. Letter Relevant under Rule 401

¶ 14 Defendant argues the letter he purportedly sent Ms. Lassiter while the two were in custody is not relevant under Rule 401 because the letter only included pleas from the writer to his lover to write him more and because the letter does not further elucidate the events of 24 August 2015 or any admissions by accomplices.

¶ 15 We give great deference to rulings on relevancy on appeal because the "trial court is better situated to evaluate whether a particular piece of evidence tends to make the existence of a fact of consequence more or less probable." *State v. Holmes*, 263 N.C. App. 289, 302, 822 S.E.2d 708, 720 (2018) (quotation marks and citation omitted). Relevant evidence has a "logical tendency to prove any fact that is of

consequence." *State v. Griffin*, 136 N.C. App. 531, 550, 525 S.E.2d 793, 806 (2000) (citation omitted); *see also* N.C. Gen. Stat. § 8C-1, Rule 401 (2021). Evidence is relevant no matter how slight the evidence's tendency is in making a fact more or less probable. *Holmes*, 263 N.C. App. at 303, 822 S.E.2d at 720.

¶ 16 The letter at issue read, in relevant part:

> I mad you in here any ways these aint no place for you. I'm sorry bout that. . . . Guess every one mad at me. [B]ut stop sayin I don't love you. . . . [B]ut you got to understand I never meant to take you away from ur kids . . . . I be thinkin bout our time we had together but the best is still to come! . . . Know what I was thinking you should have fuck Jaz. [T]hen she would't have done that bullshit. Some bff she was. That bitch was hating on you every since we started back talking. I could see it in her face. [E]very time I went over there. . . . We could have all been out there chilling. I could have been smoking a big ass blunt. . . . She the reason all us in here on diz bullshit. She gone get hers believe dat. . . .

The trial court determined the letter was relevant to establish Ms. Lassiter's credibility and to illustrate the relationship between her and Defendant, as well as Defendant's relationship with Ms. Medley. Although the letter is otherwise mostly sexual in nature, it also concerns the interpersonal relationships at issue in this case, including Defendant's opinion of one of his female accomplices. Therefore, we defer to the trial court's ruling on the letter's relevance. *See Holmes*, 263 N.C. App. at 302, 822 S.E.2d at 720.

b. Letter Not Unfairly Prejudicial under Rule 403

¶ 17 Even if the letter is relevant, Defendant further argues its probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, or misleading the jury under Rule 403. Specifically, Defendant contends that testimony indicating this communication occurred while he was incarcerated undermined his presumption of innocence and that the letter did not contribute to the veracity of Ms. Lassiter's testimony.

¶ 18 We review a trial court's decision about the admissibility of evidence under Rule 403 for abuse of discretion. *State v. Garcell*, 363 N.C. 10, 32, 678 S.E.2d 618, 633 (2009). A trial court abuses its discretion when the trial 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. Castaneda*, 215 N.C. App. 144, 152, 715 S.E.2d 290, 296 (2011) (quotation marks and citation omitted). Relevant evidence may be excluded if "the danger of unfair prejudice, confusion of the issues, or misleading the jury" substantially outweighs its probative value. § 8C-1, Rule 403.

¶ 19 The trial court determined Defendant would not be unfairly prejudiced because the jury had already heard Defendant was in custody; Ms. Lassiter testified she was arrested and incarcerated and the jury knew that Defendant had been arrested on charges including "first degree murder and various other serious felonies." We hold the trial court did not abuse its discretion in concluding the probative value of the letter was not substantially outweighed by any danger of unfair prejudice. *See*

Garcell, 363 N.C. at 32, 678 S.E.2d at 633; *State v. Carpenter*, 232 N.C. App. 637, 643, 754 S.E.2d 478, 483 (2014) (holding admission of photographs of a defendant while in custody did not amount to error because jurors would "hardly be shocked to learn a murder suspect was taken into custody for some period of time . . . .") (citation omitted)).

c. No Improper Reference to Gang Affiliation

¶ 20 Defendant asserts the reference to "black and gold" in the letter is highly prejudicial and would tend to encourage the jury to improperly infer that these colors relate to gang colors and gang affiliations. We disagree.

¶ 21 While evidence of gang affiliation is generally inadmissible, it is admissible if it is relevant to a defendant's guilt. *State v. Privette*, 218 N.C. App. 459, 480, 721 S.E.2d 299, 314 (2012).

¶ 22 The contents of the letter at issue here read:

> I be thinkin bout our time we had together but the best is still to come! [A]nd hell yea you had me mad when you broke the black and gold one. [B]ig mad but the all gold one I won't to mad cuz I was tearing that ass up. Lol you ain't know what to do.

Defendant concedes that throughout the trial, the State went to great lengths to avoid any reference to gang affiliation. At no point during her testimony did Ms. Lassiter reference gang activity or a "black and gold" object outside of reading the letter at the prosecutor's request. The trial court determined "the defendant's request to redact

portions [of the letter] relating to black and gold [would] require a great deal of mental gymnastics to associate black and gold with gang affiliations . . . ." We are not persuaded the trial court erred in admitting this portion of the letter.[1] *Cf. Privette*, 218 N.C. App. at 481, 721 S.E.2d at 315 (holding "the trial court erred by admitting testimony concerning the history of the Bloods and the activities in which various Bloods subsets tended to engage" because the evidence was not relevant and had no bearing on the defendant's guilt of the crimes with which he had been charged).

d. Letter's Authentication

¶ 23 Finally, Defendant argues that the State failed to properly authenticate the letter under North Carolina Rule of Evidence 901. N.C. Gen. Stat. § 8C-1, Rule 901 (2021). Defendant waived this issue at trial.

¶ 24 Defense counsel did not object to the letter on authentication grounds at trial or during *voir dire*. During *voir dire*, he objected to the letter's relevance under Rule 401, stating "I think it is mostly irrelevant. . . . I think we have to redact so much in order to . . . keep it relevant . . . . This is, of course, assuming the foundation that has not been laid, but I know that the State hasn't been asked to lay the foundation yet."

---

[1] Defendant has not asserted that the admission of this portion of the letter amounts to plain error, a probable impact on the jury's finding that the defendant was guilty, so we may not review it under the plain error standard. *State v. Lawrence*, 365 N.C. 506, 516, 723 S.E.2d 326, 333 (2012) ("To have an alleged error reviewed under the plain error standard, the defendant must 'specifically and distinctly' contend that the alleged error constitutes plain error." (citing N.C. R. App. P. 10(a)(4)).

Then, at trial, defense counsel only objected "to the sequencing and object[ed] as previously argued [in *voir dire*]" when the State moved to admit the letter.

¶ 25 Defendant cannot "swap horses" on appeal. *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934). Because Defendant did not challenge the authentication of the letter below, he cannot do so now. *State v. Sharpe*, 344 N.C. 190, 195, 473 S.E.2d 3, 6 (1996) ("[I]t is well settled in this jurisdiction that [a] defendant cannot argue for the first time on appeal [a] new ground for admissibility that he did not present to the trial court.").

2. Threat Communicated from Defendant to Ms. Lassiter by Way of Third-Party

¶ 26 Defendant argues an alleged threat he communicated to Ms. Lassiter through a third party is inadmissible because it consists of double hearsay not subject to any hearsay exceptions. Defendant has also waived our review of this issue.

¶ 27 Ms. Lassiter testified about the purported threat at trial:

> Q. Has this defendant ever threatened you in any way?
> A. Other than the time he was saying he was going to make sure me and my kids got a slow death.
> Q. When was that?
> A. That was when I was about to get out.
>
> . . . .
>
> Q. And how did you hear that?
> A. Through somebody that was incarcerated. He sent a message through somebody.

During *voir dire*, Ms. Lassiter indicated this threat was transmitted through another inmate named Desiree. The State argued this evidence was relevant to demonstrate Defendant pressured Ms. Lassiter to prevent her from testifying. Defense counsel objected to Ms. Lassiter's testimony during *voir dire* and in front of the jury for its "prejudicial effect" under Rule 403. On appeal, though, Defendant argues this threat is inadmissible because it consists of double hearsay not subject to any hearsay exceptions. We cannot review Defendant's challenge on these grounds.[2] *See State v. Howell*, 169 N.C. App. 741, 747, 611 S.E.2d 200, 204 (2005) ("Where [a] defendant relies upon one theory at trial as the ground to exclude evidence, [he] cannot argue a different theory for its exclusion on appeal.").

B. Prosecutor's Comments during Closing Argument

¶ 28 Defendant argues the trial court should have intervened during the prosecutor's closing argument because the prosecutor injected personal experiences, appealed to juror sympathy, and mischaracterized evidence during his closing argument. The trial court was not so compelled.

¶ 29 When defense counsel fails to object to a prosecutor's improper argument and the trial court does not intervene *ex mero motu*, we consider whether the argument

[2] Defendant has also not asserted that the admission of this threat constitutes plain error, so we may not review it under the plain error standard. *Lawrence*, 365 N.C. at 516, 723 S.E.2d at 333.

was so grossly improper that it impeded the defendant's right to a fair trial. *State v. Huey*, 370 N.C. 174, 179, 804 S.E.2d 464, 469 (2017). A new trial is only appropriate when the prosecutor's statements "infected the trial with unfairness as to make the resulting conviction a denial of due process." *Id.* at 180, 804 S.E.2d at 470 (quotation marks and citation omitted). Improper arguments consist of statements which "include personal opinion, personal conclusions, name-calling, and references to events and circumstances outside the evidence, such as the infamous acts of others." *State v. Jones*, 355 N.C. 117, 131, 558 S.E.2d 97, 106 (2002). We consider the statements "in context and in light of the overall factual circumstances to which they refer." *State v. Alston*, 341 N.C. 198, 239, 461 S.E.2d 687, 709 (1995) (citation omitted). Prosecutors are afforded wide deference in presenting closing arguments. *State v. Alford*, 339 N.C. 562, 572, 453 S.E.2d 512, 517 (1995) (citation omitted).

1. Personal Opinions and Experiences

¶ 30 Defendant first contends the prosecutor injected personal opinion into his closing argument when he said, "I could tell she was scared. . . . I could feel it." Defendant plucks these words from the prosecutor's argument, but we must consider them in context. *Alston*, 341 N.C. at 239, 461 S.E.2d at 709. The prosecutor argued:

> Think about what [Ms. Faulkner] said this morning. Could you--I could tell she was scared. How could you--I could feel it. That's . . . a level--think about what [Ms.] Lassiter and Alzeai Clay said, how they could see on [Ms. Fowler]'s face her fear. And these are specific details about what

> happened.

The prosecutor was referencing Ms. Faulkner's earlier testimony. At trial, the prosecutor specifically questioned Ms. Faulkner about what Ms. Patterson's demeanor was when she asked Defendant where he was taking her. Ms. Faulkner responded, "I could tell she was scared." The prosecutor asked how Ms. Faulkner could tell that, to which Ms. Faulkner replied, "I felt it." The prosecutor's reference to a witness's testimony, when taken in context, *see id.* at 239, 461 S.E.2d at 709, did not inject personal opinion into argument, *see Jones*, 355 N.C. at 131, 558 S.E.2d at 106.

2. Appeals to Juror Sympathies and Prejudices

¶ 31 Defendant further contends the prosecutor improperly appealed to juror sympathies during his closing argument. In particular, Defendant asserts the prosecutor implored the jury to think of the victims as their own children when the prosecutor argued:

> They call her a drug dealer, say that she was out to get a gun. They flash a picture of her trying to look cool on Facebook in front of you all to stoke your emotion that these aren't your kids, these are somebody else's kids, this is somebody that you don't need to worry about.

Defendant also challenges the prosecutor's following statements: (1) "Today is the right of the community to be heard to what happened [to] two of its teenagers" and (2) "this victim was alleged to be a liar, but she stood up to this defendant and today

is the day for the community to do so, as well." Our Supreme Court has "consistently held that a prosecutor may argue that a jury is the voice and conscience of the community." *State v. Barden*, 356 N.C. 316, 367, 572 S.E.2d 108, 140 (2002) (quotation marks and citation omitted). Following this precedent, we cannot conclude the prosecutor's comments were improper. *See id.* at 358, 572 S.E.2d at 135.

3. Mischaracterization of the Evidence or Facts Outside the Record

¶ 32 Defendant asserts the prosecutor also argued his personal experience and referred to facts outside of the record when he recounted Ms. Medley's hesitancy to call the police:

> And I don't want to presuppose your backgrounds, but what you heard from these folks is that they don't trust the police. And it might be different than--you know when--if I grow up in a certain part of Durham County or a certain part of North Carolina, I might get busted for getting caught with a beer when I'm 17 or 18. These kids might get busted for being found with a gun. And you know, there's this allegation that oh, well, they're all drug dealers. And you know, there's kids selling marijuana at Duke, and there's kids selling marijuana at Rochelle Street, but only one set of those kids is being called a drug dealer.
>
> And so at--at this point [Ms. Medley] doesn't call the police. She doesn't trust the police. This is all about her marijuana that [Ms. Medley]'s stolen from Niajel Slade, which is going to get her in trouble.

In light of the facts of this case and the context in which this statement was made, *Alston*, 341 N.C. at 239, 461 S.E.2d at 709, the prosecutor's comments attempt to

relieve Ms. Medley of any blame by explaining why she may not have immediately called the police to report Defendant's conduct. In fact, Defendant concedes that the prosecutor elicited information from witnesses that Ms. Medley's sister was selling marijuana. Though perhaps unnecessary, there is no indication here that evidence was mischaracterized or that it was offered as an improper appeal to juror sympathy. *See Alford*, 339 N.C. at 572, 453 S.E.2d at 517 (holding the trial court did not err by failing to intervene in the prosecutor's statement about the victim because, in light of the facts, the "comments did not improperly emphasize sympathy or pity for the victim's family" and did not "attempt to make sympathy for the victim or his family the focus of the jury's deliberation").

¶ 33 Lastly, Defendant argues the prosecutor mischaracterized evidence when he questioned the accuracy of the time stamp on the gas station video of Defendant and his accomplices played during closing arguments. During their respective closing arguments, defense counsel and the prosecutor both addressed the accuracy of the time stamp on the gas station video. The prosecutor only mentioned the time stamp in closing to rebut defense counsel's argument, explaining the time stamp was an hour different from the alleged timeline of the crimes because of Daylight Savings. The prosecutor's comments about the time stamp on the video were not "so grossly improper as to impede the defendant's right to a fair trial." *State v. Goins*, 377 N.C. 475, 478, 858 S.E.2d 590, 593 (2021) (citation omitted).

¶ 34 Because Defendant has failed to demonstrate "the prosecutor's comments so infected the trial with unfairness that they rendered the conviction fundamentally unfair," *State v. Anthony*, 354 N.C. 372, 427-28, 555 S.E.2d 557, 592 (2001) (quotation marks and citation omitted), we hold the trial court did not err by failing to intervene *ex mero motu* during the prosecutor's closing argument.

III. CONCLUSION

¶ 35 Based on the reasons set forth above, we hold Defendant's trial was free from error.

NO ERROR.

Judges ZACHARY and GORE concur.

Report per Rule 30(e).