An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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-511

No. COA21-779

Filed 19 July 2022

Mecklenburg County, Nos. 17 CRS 221931, 17 CRS 221812

STATE OF NORTH CAROLINA

v.

TAMARA GISELL JUAREZ, Defendant.

Appeal by Defendant from judgment entered 8 July 2021 by Judge Casey M. Viser in Mecklenburg County Superior Court. Heard in the Court of Appeals 24 May 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Christopher W. Brooks, for the State.

Drew Nelson for Defendant.

GRIFFIN, Judge.

¶ 1 Defendant Tamara Gisell Juarez appeals from a judgment entered after a jury found her guilty of one count of felony death by vehicle and one count of misdemeanor hit and run. Defendant argues that the trial court erred by (1) failing to intervene during the State's closing argument; and (2) instructing the jury concerning Defendant's flight from the scene of the accident. Both parties agree that there is a clerical error in the written judgment. Upon review, we conclude that Defendant

received a trial free from error. This matter should be remanded to the trial court solely to correct the clerical error.

I. Factual and Procedural Background

¶ 2 The State presented evidence at trial that tended to show the following:

¶ 3 On 9 June 2017, in the early morning hours, Gregory Mobley was struck by Defendant's vehicle when he was riding his bicycle on Matheson Avenue in Charlotte. Mobley was found 171.6 feet from the area of impact and pronounced dead at the scene.

¶ 4 A witness to the crash, Adam Bost, drove past Mobley on Matheson Avenue when he heard a loud bang. Defendant's vehicle had collided with Mobley. After striking Mobley and sustaining substantial damage to her vehicle, Defendant drove into a parking lot of a closed or abandoned store approximately two miles away from the crash scene. Bost followed Defendant's vehicle, dialed 911, and provided the dispatcher with Defendant's vehicle information and location.

¶ 5 Shortly after, an officer with the Charlotte Mecklenburg Police Department was dispatched to Defendant's location. When the officer arrived, he observed Defendant exit the driver-side of the damaged vehicle, move to the passenger side, and proceed to pour liquid from a bottle onto the ground. In addition, the officer observed another person inside the passenger seat of the vehicle, who he confirmed to be Defendant's sister. The officer noticed a liquor bottle and other alcohol

paraphernalia inside the vehicle. The vehicle was nearly totaled. The windshield was smashed, the "front side" tire was gone, and Mobley's bicycle tire was wedged underneath the vehicle.

¶ 6 Initially, Defendant admitted to driving the vehicle. Specifically, Defendant claimed to have "ran over something" and that she "ran over a stop sign." However, after more officers arrived on the scene, Defendant's sister said she was driving. After performing standardized field sobriety tests on Defendant's sister, an officer placed Defendant's sister into custody and informed Defendant of her sister's arrest. Upon learning that her sister was in custody, Defendant told the officer that her sister was not being truthful and that she was in fact the driver. The officer testified that "[Defendant] told me that she did not have an active driver's license and that she had initially agreed to say her sister was driving because of that fact."

¶ 7 Following this admission, Defendant's sister was "unarrested" and the officer, suspecting Defendant was also under the influence, then performed standardized field sobriety tests on Defendant. During the tests, Defendant once again admitted, on the officer's body-worn camera, that she was in fact the driver. The officer testified that Defendant admitted to driving "more than half a dozen times" during this interaction. Based upon these repeated admissions and the results of the field sobriety tests, Defendant was arrested and taken to Mercy Hospital for a blood test. The test revealed she had a blood alcohol concentration of 0.14.

¶ 8 Ultimately, Defendant was charged with one count of felony death by vehicle and one count of misdemeanor hit and run. Defendant's trial was conducted in Mecklenburg County Superior Court from 28 June 2021 through 2 July 2021 and 6-8 July 2021. Before closing arguments, the trial court held a charge conference concerning the jury instructions. Defendant objected to the State's proposed flight instruction on the basis that there was insufficient evidence that Defendant fled the scene. The trial court overruled Defendant's objection and included the flight instruction when instructing the jury. Defendant made no objection when the trial court instructed the jury or provided written instructions to the jury.

¶ 9 A central theme of the State's closing argument was that Defendant was playing a "game" by lying to and hiding from police after striking and killing Mobley. In closing arguments, the State argued that "This has been nothing more than a game that has played out since 2017" and that "It's been a game. But the game stops now." Further, the State argued that "common sense tells you she knew what she did. Her actions tell you she knew what she did. And her attempt to evade, it ends today." Defendant did not object at any time during the State's closing argument.

¶ 10 The jury returned a verdict finding Defendant guilty of felony death by vehicle and misdemeanor hit and run. The trial court consolidated the convictions into a single judgment and issued a sentence of fifty-two to seventy-five months. However, the written judgment in this matter indicates that judgment was entered for felony

death by vehicle and failure to give aid. Defendant gave timely oral notice of appeal in open court.

II. Analysis

¶ 11 Defendant argues that the trial court erred by (1) failing to intervene during the State's closing argument; and (2) instructing the jury concerning Defendant's flight from the scene of the accident. Defendant argues and the State concedes that there is a clerical error in the written judgment.

A. The State's Closing Argument

¶ 12 Defendant argues "[t]he [S]tate's closing argument was improper and the trial court abused its discretion by failing to intervene *ex mero motu* during the improper argument."

¶ 13 Defendant challenges the following statements made by the State. The State told the jury that Defendant had decided to play "I wasn't driving" and that, when the "I wasn't driving" argument "didn't work," the defense "jumped to the next thing." Defendant argues the State's theme of the case–that Defendant was playing a "game"–was improper "[b]ecause it minimalized her decision to plead not guilty, referred to her exercise of her right to a trial in a condescending manner, and insulted [] [D]efendant."

¶ 14 Defendant concedes that she did not object at trial to any of the remarks that she now challenges on appeal. When the defense does not object to the State's

improper argument(s), the standard of review "is whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*." *State v. Jones*, 355 N.C. 117, 133, 558 S.E.2d 97, 107 (2002) (citation omitted). Under this standard, "[o]nly an extreme impropriety on the part of the prosecutor will compel this Court to hold that the trial judge abused his discretion in not recognizing and correcting ex mero motu an argument that defense counsel apparently did not believe was prejudicial when originally spoken." *State v. Huey,* 370 N.C. 174, 180, 804 S.E.2d 464, 470 (2017) (internal quotations and citations omitted). "For an appellate court to order a new trial, the 'relevant question is whether the prosecutors' comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *Id.* (quoting *Darden v. Wainwright*, 477 U.S. 168, 181 (1986) (internal quotation marks omitted)).

¶ 15 Still, Defendant argues that the State's remarks were so improper that the trial court erred by failing to intervene ex mero motu. We disagree.

¶ 16 N.C. Gen. Stat. § 15A-1230(a) outlines the boundaries of closing arguments:

> During a closing argument to the jury an attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record except for matters concerning which the court may take judicial notice. An attorney may, however, on the basis of his analysis of the evidence, argue any position or conclusion with respect to a matter in issue.

N.C. Gen. Stat. § 15A-1230(a) (2021).

¶ 17 Parties are given "wide latitude" during closing arguments and may argue "the law, the facts in evidence, and all reasonable inferences drawn therefrom." *Huey*, 370 N.C. at 180, 804 S.E.2d at 468 (citations and quotation marks omitted); *State v. McNeill*, 371 N.C. 198, 249, 813 S.E.2d 797, 829 (2018); *State v. Alston*, 341 N.C. 198, 239, 461 S.E.2d 687, 709 (1995).

¶ 18 We conclude that the State's closing argument was not so grossly improper that the trial court erred by failing to intervene ex mero motu. The State did not "become abusive, inject [itd] personal experiences, [or] express [its] personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of [D]efendant." N.C. Gen. Stat. § 15A-1230(a). The State's evidence tended to show that Defendant not only left the scene of the crash, but also took steps to avoid apprehension by providing false information to a law enforcement officer as to who was driving, thereby playing a "game." In particular, the record provides clear evidence of Defendant's "game," such as body cam footage that captures (1) Defendant's admission of her and her sister's plan to lie to officers about who was driving and (2) Defendant's subsequent confession that she was in fact driving. Thus, the State's argument and theory that Defendant was playing a "game" relied upon "reasonable inferences" from the law and the facts in evidence. Accordingly, Defendant's

argument that the trial court erred by failing to intervene ex mero motu during the State's closing argument is without merit.

¶ 19 Even if we were to hold that the State's closing argument was improper, the State's remarks during closing arguments were not so prejudicial as to have infected the trial with a level of unfairness sufficient to warrant a new trial.

¶ 20 Even when improper statements are made by the State in closing arguments, they may not, in every case, amount to prejudice and reversible error when there is overwhelming evidence against a defendant. *State v. Sexton*, 336 N.C. 321, 363–64, 444 S.E.2d 879, 903 (1994) (concluding the trial court was not required to intervene ex mero motu when the State directly called the defendant a liar). To demonstrate prejudice, a defendant has the burden to show 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) (2021).

¶ 21 In this case, as noted above, there is overwhelming evidence against Defendant. The State's evidence tended to show that Defendant was under the influence of alcohol when she struck Mobley. Despite having Mobley's bicycle tire stuck under her car, a broken windshield, and a missing tire, Defendant drove approximately two miles away from the crash scene and parked behind a closed or abandoned store. The State produced further evidence showing Defendant exited the driver-side door of the nearly totaled vehicle, initially lied to officers about who was

driving and what was hit, and later repeatedly confessed that she was in fact the driver. We are not convinced that the State's arguments and theory, which were based on reasonable inferences from the laws and the facts, amount to error, much less prejudicial error.

B. Flight Instruction

¶ 22 Defendant urges this court to "[h]old that the inclusion of a flight instruction is per se prejudicial error in any case in which the identity of the fleeing person is in question." We disagree.

¶ 23 "As a question of law, this Court reviews the sufficiency of jury instructions de novo." *State v. Boyd*, 214 N.C. App. 294, 299, 714 S.E.2d 466, 471 (2011) (citation omitted). "A trial court may properly instruct on flight where there is some evidence in the record reasonably supporting the theory that the defendant fled after the commission of the crime charged." *State v. Lloyd*, 354 N.C. 76, 119, 552 S.E.2d 596, 625 (2001). "However, mere evidence that [the] defendant left the scene of the crime is not enough to support an instruction on flight. There must also be some evidence that [the] defendant took steps to avoid apprehension." *Id.* Thus, the "relevant inquiry is whether the evidence shows that [the] defendant left the scene of the crime and took steps to avoid apprehension." *State v. Grooms*, 353 N.C. 50, 80, 540 S.E.2d 713, 732 (2000).

¶ 24 The State's evidence tended to show that after striking and killing a bicyclist, Defendant fled the scene and drove roughly two miles with a smashed windshield, a missing tire, and a bicycle tire wedged under her vehicle. Instead of pulling over and calling any emergency services, Defendant made a choice to drive an extended distance with a damaged vehicle to a closed or abandoned store, park in the back, and formulate a deceptive plan with her sister in order to avoid charges. Such evidence supports the theory that Defendant not only left the scene of the crash, but also took steps to avoid apprehension.

¶ 25 Defendant does not challenge the language provided in the flight instruction. Rather, Defendant contends that flight instructions should not be offered in cases in which the identity of a defendant is in question. We find this argument unpersuasive. Defendant cites to no case law or other authority supporting a per se rule against flight instructions where the identity of the defendant is in question. We conclude that the trial court did not err in instructing the jury on flight.

C. Clerical Error

¶ 26 The State concedes that "[D]efendant correctly points to a clerical error on the written judgment." When "a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth." *State v. Peele*, 246 N.C. App. 159, 167, 783 S.E.2d 28, 34 (2016); *State v. Gillespie*, 240 N.C. App. 238, 245, 771 S.E.2d

785, 790 (2015). In this case, Defendant was found guilty of felony death by vehicle and misdemeanor hit and run. However, the written judgment in this matter indicates that judgment was entered for felony death by vehicle and failure to give aid. This is a clerical error and this matter should be remanded to the trial court solely to correct the clerical error.

III. Conclusion

¶ 27 For the foregoing reasons, we conclude that Defendant received a trial free from error. We remand to the trial court for the sole purpose of correcting the clerical error in the written judgment.

NO ERROR; REMANDED.

Chief Judge STROUD and Judge DILLON concur.

Report per Rule 30(e).