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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-817

No. COA22-333

Filed 6 December 2022

Wilson County, Nos. 19CRS53392, 20CRS93

STATE OF NORTH CAROLINA

v.

MIQUAIL CRUMBLEY, Defendant.

Appeal by defendant from judgment entered 22 June 2021 by Judge L. Lamont Wiggins in Wilson County Superior Court. Heard in the Court of Appeals 18 October 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Daniel P. O'Brien and Thomas H. Moore, for the State-appellee.

William D. Spence for defendant-appellant.

GORE, Judge.

¶ 1 Defendant Miquail Crumbley was convicted of first-degree murder and possession of a firearm by a felon. Defendant was sentenced to life imprisonment without parole for the murder conviction and an additional 19 to 32 months for the firearm possession conviction. Defendant orally appealed at the time of conviction. Upon review of the record, we discern no error in the trial court's judgment.

I.

¶ 2 On 5 October 2019, defendant drove with his cousin, Jeremy Barnes, to Player's Choice Internet Café, a video game casino, and arrived between 2:00 and 2:30 a.m. Upon arrival, defendant saw his sister, Rashaunda Kearney, and her friend parked in the parking lot. Defendant also saw Arsenio Gaskins (the decedent) bent over talking to a woman in her car. Defendant drove fast and close by Gaskins, nearly hitting him, and then pulled back around to park by his sister's car. Once parked, Barnes exited the car with a firearm in his waistband and walked towards Gaskins to "diffuse" an altercation. When Barnes approached, Gaskins punched him, knocking him to the ground.

¶ 3 Gaskins then ran into the casino and soon returned to the parking lot with a group of people. Defendant claims the group surrounded his car and told him they (defendant, his sister, cousin, and sister's friend) needed to leave or they would be killed. Barnes testified that the people who came out with Gaskins asked if he was okay. Barnes and other witnesses also testified defendant grabbed the gun from the car floorboard and circled the car with Gaskins on the other side.

¶ 4 Barnes testified that defendant said to Gaskins, "why you hit my cousin, come here." After defendant and Gaskins circled the car three to four times, Gaskins took off running out of the parking lot. Defendant chased after Gaskins with the gun in his hand. People in the parking lot shouted about the gun in defendant's hand. Both

Gaskins and defendant continued to run out of the parking lot and down a side street, beyond the coverage of a nearby security camera. Defendant testified as he closed in on Gaskins, Gaskins suddenly stopped and said, "I got you now," and then hit defendant with a metal object, which was later determined to be his cell phone. Defendant testified further that he and Gaskins wrestled as Gaskins tried to take defendant's gun. Defendant then shot at Gaskins multiple times striking Gaskins in the back. Another witness for the State testified he saw defendant take the first shot after defendant and Gaskins had left the parking lot.

¶ 5 Gaskins was discovered face down with a gunshot wound through his back; he died before the ambulance arrived. Detectives recovered seven bullet casings near Gaskins's body. The autopsy report stated Gaskins died of the gunshot wound, which entered through his back and exited through his front torso. On 1 June 2020, defendant was indicted for first-degree murder and possession of a firearm by a felon. At trial, defendant relied on a self-defense argument.

II.

¶ 6 Defendant raises the following issues for this Court's review: (1) whether the trial court erred by denying defendant's motion to dismiss for insufficiency of the evidence; (2) whether the trial court erred by declining to provide the jury with a self-defense instruction; and (3) whether the trial court committed reversible error by not intervening *ex mero motu* during the State's closing argument.

A.

¶ 7 Defendant moved to dismiss the first-degree murder charge for insufficiency of the evidence at the close of the State's case and renewed his motion at the close of all the evidence. On appeal, defendant argues the trial court erred because the State brought insufficient evidence for the elements of premeditation and deliberation under the first-degree murder charge. We disagree.

¶ 8 We review a denied motion to dismiss for insufficient evidence de novo. *State v. Southerland*, 266 N.C. App. 217, 219, 832 S.E.2d 168, 170 (2019). This Court may consider the "matter anew and freely substitute[] its own judgment for that of the lower tribunal." *Id.* (citation omitted). When ruling on a motion to dismiss, the lower court must decide if the State presented "substantial evidence" for every element of the charged offenses and for the defendant's identity to properly deny the motion. *Id.* (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Bullard*, 312 N.C. 129, 160, 322 S.E.2d 370, 387 (1984) (citation omitted). It is within the trial court's purview, as "a question of law," to decide whether the evidence is substantial. *State v. Stephens*, 244 N.C. 380, 384, 93 S.E.2d 431, 433 (1956).

¶ 9 The court must view the evidence "in the light most favorable to the State, and the State is entitled to every reasonable inference to be drawn from the evidence." *Bullard*, 312 N.C. at 160, 322 S.E.2d at 387–88. "[C]ontradictions and discrepancies

do not warrant dismissal of the case—they are for the jury to resolve." *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649, 653 (1982). "It is immaterial whether the substantial evidence is circumstantial or direct, or both." *Stephens*, 244 N.C. at 383, 93 S.E.2d at 433. The trial court's duty is to determine if the evidence is substantial enough to send the case to the jury, and it is then the jury's duty to convict if the evidence proves "guilt beyond a reasonable doubt." *Id.* at 384, 93 S.E.2d at 433–34.

¶ 10 Section 14-17 of the North Carolina General Statutes defines first-degree murder. N.C. Gen. Stat. § 14-17 (2019). Amongst the various forms, a defendant is guilty of first-degree murder when he commits an "unlawful killing of a human being . . . with malice, premeditation, and deliberation." *State v. Geddie*, 345 N.C. 73, 94, 478 S.E.2d 146, 156 (1996), *cert. denied,* 522 U.S. 825, 139 L. Ed. 2d 43 (1997) (Mem.); N.C. Gen. Stat. § 14-17. Circumstantial evidence is the predominate way the State proves the elements of premeditation and deliberation. *State v. Bonney*, 329 N.C. 61, 77, 405 S.E.2d 145, 154 (1991).

¶ 11 Premeditation is present when a defendant "form[s] the specific intent to kill the victim some period of time, however short, before the actual killing." *Id.* Deliberation is present when defendant exhibits an "intent to kill . . . in a cool state of blood, in furtherance of a fixed design for revenge or to accomplish an unlawful purpose" but not by a sudden arousal of "violent passion" through "just cause or legal

provocation." *Id.* Yet deliberation is not solely found through the "absence of passion or emotion." *Id.* Indeed, both premeditation and deliberation may be present, even though "prompted and, . . . controlled by passion at the time." *Id.* "[A] person may be excited, intoxicated and emotionally upset, and still have the capability to formulate the necessary plan, design, or intention to commit murder in the first degree." *State v. Mash*, 323 N.C. 339, 347, 372 S.E.2d 532, 537 (1988) (citation omitted).

¶ 12 Defendant questions the sufficiency of the State's evidence presented for the elements of premeditation and deliberation. He argues the timing and emotions present at the time of the incident contradicted defendant's ability to form the requisite intent for first-degree murder. The State presented the following evidence: defendant retrieved a gun from his car; circled around the car multiple times trying to get to Gaskins; chased after Gaskins with the gun in his hands once Gaskins began running away; and admitted to firing the shots that killed Gaskins. Gaskins was found lying face down; Gaskins died from a gunshot wound to his back; seven bullet casings were near Gaskins's body; Gaskins was unarmed during the entire encounter; the chase was lengthy enough to go out of the parking lot and down a side street; and defendant's sister attempted to stop him after he retrieved the gun, but to no avail. Despite defendant's claims he was in fear for his life and trying to protect himself, his cousin, and his sister, these emotions do not negate the State's substantial

circumstantial evidence from which a juror could reasonably infer premeditation and deliberation in Gaskins's killing.

¶ 13 The evidence, taken together and viewed in the light most favorable to the State, was sufficient to withstand a motion for dismissal. The circumstantial evidence pointed to defendant admittedly killing an unarmed Gaskins after first chasing him with a gun and shooting at him multiple times. Even if this evidence could also raise questions of defendant's innocence, as previously stated, under a motion to dismiss standard it just needs to be enough to support a conviction. It is for the jury to weigh the evidence and determine its credibility. Accordingly, the trial court did not err by denying defendant's motion to dismiss the first-degree murder charge.

B.

¶ 14 Defendant challenges the trial court's denial of defendant's request for inclusion of self-defense jury instructions. Defendant argues the self-defense instructions were required because Gaskins assaulted defendant's cousin and then retained a group of friends to threaten and charge at defendant. We disagree.

¶ 15 We must first address defendant's concern of preserving the issue for de novo review. Defendant correctly states he must object during trial to an omission of a jury instruction to preserve the issue for appellate review. *See Wall v. Stout*, 310 N.C. 184, 188, 311 S.E.2d 571, 574 (1984); N.C.R. App. P. 10(b)(2). Failure to properly

object limits review to the plain error standard in criminal cases, while proper preservation allows for de novo review. *See* N.C.R. App. P. 10(a)(4); *State v. Hope*, 223 N.C. App. 468, 471, 737 S.E.2d 108, 111 (2012).

¶ 16 Review of the record confirms defendant properly preserved the issue in accordance with Rule 10(a)(2). Defense counsel filed a written request for self-defense instructions and objected twice during the charge conference when the trial judge denied the request for inclusion of the self-defense instructions. The trial court explicitly stated the exceptions were noted for the record, such that defense counsel relied on the preservation of the same. Our Supreme Court handled a similar case in which defense objected during the charge conference but did not object again after the jury charge. *Wall*, 310 N.C. at 188, 311 S.E.2d at 574. The Court concluded defendant preserved the issue challenging the jury instruction ruling and stated the following:

> It is our conclusion that neither Rule 10(b)(2) nor Rule 21 required plaintiffs to repeat their objections to the jury instructions after the charge was given in order to preserve their objections for appellate review. These rules were obviously designed to prevent unnecessary new trials caused by errors in instructions that the court could have corrected if brought to its attention at the proper time. It is our opinion that this policy is met when a request to alter an instruction has been submitted and the trial judge has considered and refused the request. In most instances, it is obvious that further objection at the close of the instructions would be unavailing.

Id. at 188–89, 311 S.E.2d at 574. Like in the *Wall* case, it would have been both "useless [and] wasteful of the court's time" to once again object after the jury charge. 310 N.C. at 189, 311 S.E.2d at 575. Accordingly, we consider defendant's challenge to the jury instructions de novo.

¶ 17 "[T]he appellate court must consider the evidence in the light most favorable to the defendant" and presume its truth when the issue involves the "trial court's denial of a defendant's request for a self-defense instruction[.]" *State v. Lee*, 258 N.C. App. 122, 127, 811 S.E.2d 233, 237 (2018); *State v. Moore*, 363 N.C. 793, 796, 688 S.E.2d 447, 449 (2010). The trial court must instruct the jury on the applicable law that is supported by the evidence presented during trial. *State v. Whetstone*, 212 N.C. App. 551, 554, 711 S.E.2d 778, 781 (2011). Our Supreme Court previously determined defendant is entitled to a self-defense jury instruction if there is "competent evidence" defendant acted in self-defense, even when defendant does not request the instruction. *State v. Coley*, 375 N.C. 156, 159, 846 S.E.2d 455, 457 (2020). This is a requirement even when the State has "contradictory evidence" or points to inconsistencies in defendant's self-defense claim. *Id.* Competent evidence in the context of self-defense "is evidence that it was necessary or reasonably appeared to be necessary for the defendant to kill his adversary in order to protect himself from death or great bodily harm." *State v. Brown*, 270 N.C. App. 741, 745, 842 S.E.2d 143,

147 (2020) (internal quotation marks and citation omitted). Thus, as stated in *State v. Bush*,

> [B]efore the defendant is entitled to an instruction on self-defense, two questions must be answered in the affirmative: (1) Is there evidence that the defendant in fact formed a belief that it was necessary to kill his adversary in order to protect himself from death or great bodily harm, and (2) if so, was that belief reasonable? If both queries are answered in the affirmative, then an instruction on self-defense must be given. If, however, the evidence requires a negative response to either question, a self-defense instruction should not be given.

307 N.C. 152, 160–61, 297 S.E.2d 563, 569 (1982).[1] If the trial court does err in jury instructions, a new trial is only mandated when it is prejudicial, which is 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[.]" *State v. Castaneda*, 196 N.C. App. 109, 116, 674 S.E.2d 707, 712 (2009).

¶ 18 Considering only defendant's evidence and presuming its truth, the evidence did not support a self-defense jury instruction. Defendant presented the following evidence to support his legal theory of self-defense: Gaskins first punched defendant's cousin in the parking lot and then went into the casino; he soon returned with a group of people that defendant believed were his allies; this group, along with Gaskins, surrounded defendant and his cousin, and told defendant he would be killed if they

[1] "[A] defendant's belief is reasonable only if the circumstances as they appeared to him at the time were sufficient to create such a belief in the mind of a person of ordinary firmness." *Brown*, 270 N.C. App. at 745, 842 S.E.2d at 147 (internal quotations and citation omitted).

didn't leave; defendant was terrified for his life by these actions; Gaskins and others charged defendant with a "mean face"; defendant picked up his cousin's gun to protect himself, his cousin, and his sister; Gaskins was never armed; Gaskins ran away toward the parking lot exit; defendant ran after Gaskins because he thought Gaskins was going to get a gun; once beyond the parking lot and down a side street, Gaskins turned, struck defendant in the head with a "metal object," and tried to take defendant's gun; defendant pulled the trigger and shot Gaskins; defendant fired approximately five to six times; and the autopsy showed Gaskins was shot in the back.

¶ 19 Defendant, through his own testimony, defeats his self-defense argument. Defendant testified to chasing Gaskins with a gun and that Gaskins never possessed any deadly weapon during the altercation. Defendant also admitted on cross-examination that he had at least two opportunities to flee from the danger he feared, and his sister had tried to stop him once he took the gun in his hand. Defendant's choice to chase Gaskins with the gun effectively eliminated the right to a self-defense instruction. Further, even if defendant's evidence, viewed in the most favorable light to him, could raise suspicion he was the provoked party, defendant's response to chase down Gaskins with a gun was not reasonably necessary for defendant to protect himself from great bodily harm. *See* N.C. Gen. Stat. § 14-51.4 (2019); *Bush*, 307 N.C. at 160, 297 S.E.2d at 569. Finally, there is no prejudicial error even if defense could

show the trial court erred in omitting a self-defense instruction, because when considering the entirety of the evidence, this Court is assured the jury verdict would remain the same.

C.

¶ 20 Defendant also challenges the State's closing remarks as improper. Defendant failed to timely object during the closing argument, thus the standard of review is limited. The standard this Court must apply is "whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*." *State v. McNeill,* 360 N.C. 231, 244, 624 S.E.2d 329, 338 (2006) (citation omitted). "[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. Richardson,* 342 N.C. 772, 786, 467 S.E.2d 685, 693, *cert. denied,* 519 U.S. 890, 136 L. Ed. 2d 160 (1996) (Mem.).

¶ 21 Our Courts have established a guiding line that delineates when the court should intervene if improper legal comments are made during closing arguments. It does not have to intervene when the State makes remarks about the law, if the remarks are "substantially correct[,] . . . even if slightly slanted toward the State's perspective." *State v. Barden,* 356 N.C. 316, 366, 572 S.E.2d 108, 140 (2002) (internal quotation marks and citations omitted). However, the parties should not disclose the

legal rulings made outside the presence of the jury since these disclosures could sway the jury's decision despite the jury instructions. *State v. Allen*, 353 N.C. 504, 509–10, 546 S.E.2d 372, 375 (2001). In *State v. Wade* and *State v. Allen*, our Courts ruled on whether the State's closing statements triggered reversible error. *Wade*, 198 N.C. App. 257, 271, 679 S.E.2d 484, 492 (2009); *Allen*, 353 N.C. at 507, 546 S.E.2d at 374.

¶ 22 In *Wade*, this Court held it was error to tell the jury the court's legal ruling that the court determined there was probable cause. 198 N.C. App. at 272, 679 S.E.2d at 493. However, it was not prejudicial error because this Court determined the jury would not have decided differently based upon that argument. *Id.* at 273, 679 S.E.2d at 493.

¶ 23 In *Allen*, the Supreme Court remanded for a new trial due to the State's comments during closing argument. 353 N.C. at 511, 546 S.E.2d at 376. The State communicated the hearsay evidence let in at trial was trustworthy and reliable according to the court. *Id.* at 509–10, 546 S.E.2d at 375. Our Supreme Court reasoned the argument "spoke to and disclosed a legal opinion of the trial court on the admissibility and credibility of evidence, an opinion which was specifically outside the record." *Id.* at 510, 546 S.E.2d at 376. It determined a new trial was required because it was prejudicial to the outcome. *Id.* at 511, 546 S.E.2d at 376.

¶ 24 In the instant case, defense counsel did not object during the closing argument, thus this challenge is reviewed for reversible error as to the trial court failing to

intervene *ex mero motu*. The State did not suggest this was the court's opinion nor did it refer to the credibility of defendant's argument of self-defense. It merely highlighted the lack of self-defense instructions and rebutted the defendant's argument he was acting in self-defense. Unlike *Wade* and *Allen*, the issue of self-defense was not a question for the jury to determine because the trial court did not include such instructions. The State persuasively challenged the self-defense argument. Further, the exclusion of such statements would not reasonably change the jury's determination considering the entirety of the evidence.

¶ 25 Defense suggests the jury would interpret the comments in the following ways: defendant was lying about his fear; the trial court found the testimony to be untruthful and that is why it would not instruct on self-defense; and the court only instructed on matters of law it determined applicable based upon what was truthful testimony. Such claims require an extensive amount of inference and further assume the jury is aware of the way the trial court approves jury instructions.

¶ 26 Defendant stretches the knowledge and depth a jury dives into instructions by suggesting the lack of a jury instruction causes the jury to infer credibility determinations by the trial court. This argument not only charges the trial court with error in not intervening, but also suggests the trial court acted outside its purview by making determinations of credibility and reliability. This is not the case. The trial court determined as a matter of law the evidence was lacking for inclusion

of a self-defense instruction. The State's argument bringing attention to the lack of self-defense instructions was merely its attempt to discredit defendant's argument. Therefore, the trial court did not err in failing to intervene *ex mero motu* during the State's closing argument.

III.

¶ 27 For the foregoing reasons, the trial court did not err in its judgment.

NO ERROR.

Judges DIETZ and CARPENTER concur.

Report per Rule 30(e).