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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-728

Filed 16 May 2023

Wake County, No. 19CRS220756

STATE OF NORTH CAROLINA

v.

CARLTON HARRIS, Defendant.

Appeal by defendant from judgment entered 26 January 2022 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 25 April 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Thomas O. Lawton, III, for the State-appellee.*

*Widenhouse Law, by M. Gordon Widenhouse, Jr., for defendant-appellant.*

GORE, Judge.

Defendant, Carlton Harris, appeals from judgment entered upon his conviction for first-degree murder and sentence imposed of life imprisonment without parole.

I.

Defendant and Spencer Sellers co-owned a tattoo business, Nine19 Ink Gallery, in which they also rented booths to three additional tattoo artists, Antonio

Early, Darryl Collier, and Thorne Pasillas. On 8 November 2019, defendant, Pasillas, Collier, and Early were all working at the tattoo shop. Defendant's cousin, Drew Smith was also at the shop. The victim, Early, brought his two young daughters to play in the lobby while he worked. Smith went into the lobby area and told Early's daughters to clean up their mess, and Early quickly told Smith to only talk to him rather than his daughters. Soon after, Smith saw Early's daughters using soap to clean the windows, and intervened to have them use Windex, which frustrated Early.

At this point, Smith and Early went outside and began fighting. Defendant and Collier also went outside and after arguing with Early, defendant ultimately fired Early. Early returned to the shop to gather his things and his daughters to leave. Collier reiterated to Early that he must leave; Early took out his gun and walked out to his vehicle and placed the gun in the vehicle.

Early went back into the shop and began arguing with defendant and Smith once again. Defendant removed his pistol from his coat pocket and held it by his side. Early was not dissuaded and continued to argue with defendant making statements such as, "I'll beat you up with your gun." After a few moments, Early walked out of the shop, but defendant followed him and shot Early multiple times. According to Pasillas's, Collier's, and a detective's testimony, after shooting Early, defendant dropped his gun, walked past the victim, removed Early's gun from his car to eject unfired bullets, and drove away in a car with Smith.

Police officer J.A. Posthumus was in a nearby location and heard the gunshots.

He drove toward the sound of the gunshots while radio assistance provided the exact location. Upon arrival, Officer Posthumus saw Early on the ground and discovered the body had multiple gun wounds, including a gunshot wound to the head. Medical assistance and additional police officers arrived at the scene shortly after Officer Posthumus. Officer Posthumus investigated the scene and noticed security cameras around the shop.

Posthumus spoke with both Collier and Pasillas and learned they were both tattoo artists at the tattoo shop. Upon request, Pasillas took Officer Posthumus into the shop and into the room where the surveillance system was located. At first, Pasillas attempted to access the system, but he was unable to discern the password. Pasillas called Sellers, the co-owner of the tattoo shop, to get the password and Sellers told him possible passwords to access the video footage. Pasillas testified he signed a consent form from Officer Posthumus to give access, through the owner, to seize the surveillance system. After a few attempts, Pasillas and Officer Posthumus determined the password and accessed the footage.

Defendant pled not guilty to the indictment for first degree murder and the case came on for jury trial on 18 January 2022. Prior to the hearing, defendant sought to suppress the video footage seized, but the trial court denied the motion to suppress. Defendant renewed his objection to the admission of the video footage at trial.

Additionally, during the trial, defendant called an expert witness in forensic psychiatry, Dr. Bellard. The expert witness testified he diagnosed defendant with

Post-Traumatic Stress Disorder (“PTSD”) after interviewing defendant. The expert witness testified that three prior life events caused defendant’s PTSD. The expert testified that defendant was stabbed outside of a club, defendant was robbed at gun point a few years later, and defendant’s house was burglarized just months before this present case. Defendant sought admission of the expert witness’s report, but the trial court denied it on hearsay grounds, and instead allowed defendant to question the expert witness extensively.

The jury returned a guilty verdict for first degree murder and defendant was convicted and sentenced to life imprisonment without parole. Defendant timely appealed in open court pursuant to section 7A-27(b).

## II.

Defendant raises three issues for review: (1) whether the trial court erred by excluding the expert witness’s psychological report (“report”); (2) whether the trial court erred by denying defendant’s motion to suppress the surveillance video footage seized during a warrantless search; and (3) whether the trial court erred by not intervening *ex mero motu* during the prosecution’s closing argument.

### A.

Defendant first argues the trial court erred by excluding the report of defendant’s expert witness, Dr. Bellard. The State argues defendant failed to preserve the report, because defendant gave no offer of proof when the trial court sustained the objection to exclude the report, and the report was not included in the

record. Defendant supplemented the record through Rule 9(b)(5) and argued the parties agreed all exhibits, including those denied by the trial court are “a necessary part of the Record on Appeal.”

The necessity for preservation of potential errors is a well-established rule under the North Carolina Rules for Appellate Procedure. Rule 10(a)(1) requires the party asserting the error to have made “a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C.R. App. P. 10(a)(1). “The specificity requirement in Rule 10(a)(1) prevents unnecessary retrials by calling possible error to the attention of the trial court so that the presiding judge may take corrective action if it is required.” *State v. Bursell*, 372 N.C. 196, 199, 827 S.E.2d 302, 305 (2019). Furthermore, “[i]t is well settled that an error . . . that defendant does not bring to the trial court’s attention is waived and will not be considered on appeal.” *Id.*

Defendant made no offer of proof once the trial court ruled to exclude the report over the State’s objection as to portions of the report it believed was inadmissible hearsay within the report. Defendant argued he sought to admit the report “[t]o show what my - - my client was going through psychologically at the time of this.” Based upon defendant’s specified grounds, the trial court sustained the objection and excluded the report but allowed defendant to thoroughly question the expert witness.

Later, defendant objected when the State asked the expert witness questions

about what defendant told him from the report and argued, “I thought those reports should come in,” which the court overruled. Defendant then revisited the court’s ruling to exclude the report by asking why the State could cross examine the expert witness about the report, and the trial court stated it was for a non-hearsay purpose, impeachment. Defendant once again clarified with the court for the purpose of preservation, the basis for the trial court’s ruling. The trial court stated,

Because the report is hearsay. . . . Yes, it was – the purpose for offering it, as I asked you, was to reflect his opinions, which is – therefore, it was being offered for the truth of the matter it asserted, and it is not. So it is, by definition, hearsay and does not fall under an exception.

The trial court requested any case law to challenge the ruling and defendant provided none.

It is difficult to ascertain what defendant would have used the report for given the trial court provided opportunity for defendant to fully examine the expert witness on his opinion of defendant’s mental state and the bases for this opinion. At trial, defendant argued he sought to admit the report to show defendant’s psychological state, yet on appeal defendant argues the report should have been admitted because it is nonhearsay as prior consistent statements of the expert witness; it is admissible as a report that show the bases of the expert’s opinion under Rule 703; and it was admissible under the completeness doctrine of Rule 106.

Looking to the context of defendant’s objections within the transcript, only defendant’s latter objection under the completeness doctrine is “apparent from the

context” of defendant’s colloquy with the trial court. N.C.R. App. P. 10(a)(1). Accordingly, on appeal, we only consider the specific legal errors raised by defendant at the trial court. *See Bursell*, 372 N.C. at 200, 827 S.E.2d at 305 (discussing how the defense objected but failed to reference the constitutional grounds for his objection and “[a]s a result, defendant failed to object . . . with the requisite specificity, thereby waiving the ability to raise that issue on appeal”).

Defendant argues the entire report should have been admissible once the State examined the expert about a portion of the report under the completeness doctrine. We review a claim of error pertaining to Rule 106 for abuse of discretion. *State v. Thompson*, 332 N.C. 204, 220, 420 S.E.2d 395, 403 (1992). Rule 106 of the North Carolina Rules of Evidence, also called the completeness doctrine, states “[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.” N.C. R. Evid. 106. Our Supreme Court previously held, “[w]here one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though such later evidence would be incompetent or irrelevant if it had been offered initially.” *State v. Ratliff*, 341 N.C. 610, 615, 461 S.E.2d 325, 328 (1995). “The purpose of the completeness rule . . . is merely to ensure that a misleading impression created by taking matters out of context is corrected on the spot[.]” *Thompson*, 332 N.C. at 220,

420 S.E.2d at 403–04 (internal quotation marks and citation omitted).

Defendant cites to *State v. Ratliff* in support of his argument the entire report was admissible upon the State’s reference to the report during cross examination. In *Ratliff*, the defense utilized a fragment of a sentence to suggest the victim had made inconsistent statements. 341 N.C. at 616, 461 S.E.2d at 328. The State then requested to admit the remainder of the sentence because the statement was taken out of context. *Id.* at 615, 461 S.E.2d at 327. The trial court agreed and admitted the remainder of the sentence. *Id.*

However, a portion of a sentence quoted from a report that excludes context, differs from referring to a statement in the report, which does not appear to be taken out of context. This is a broad reading of Rule 106, considering defendant does not argue the State took any statements from the report out of context. The only portion in the transcript we find on review that refers to the report, states as follows:

Q: Did the defendant tell you he had ever contacted the police about any of these events?

A [Dr. Bellard]: I don’t remember asking.

Q: Okay. In part of your report, the defendant did tell you that, you know, there were - - the person who stabbed him was never found. That’s in your report?

A: He did say that, yes. And in the report about the home break-in, he also said he didn’t –

MR. SAPARILAS: Your Honor. I’m objecting. I thought those reports should come in.

THE COURT: Overruled.

BY MS. MERLE: Q: He also told you, the home invasion, he didn’t know who that was; right?

A: He had some suspicions, but he did not know.

Q: Are you aware that there is over a hundred pages of discovery in the



police report for all three of those incidents that the defendant told you about?

A: No, I have not seen those.

It appears defendant had already discussed the substance of this portion of the report during direct examination of his expert witness. Defendant seeks to admit the entire report based upon this portion of cross examination, but he never argued the statement was “misleading.” *Thompson*, 332 N.C. at 220, 420 S.E.2d at 403. The trial court determined the State only discussed the report to impeach the expert witness, and overruled defendant’s objection. The trial court did not abuse its discretion by denying defendant’s Rule 106 objection.

**B.**

Defendant next argues the trial court erred by denying his motion to suppress the video surveillance footage seized without a warrant. Our Courts “employ[] a two-part standard of review on appeal: The standard of review in evaluating the denial of a motion to suppress is whether competent evidence supports the trial court’s finding of fact and whether the findings of fact support the conclusions of law.” *State v. Jackson*, 368 N.C. 75, 78, 772 S.E.2d 847, 849 (2015) (quotation marks and citations omitted). “[T]he trial court’s findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting.” *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (quotation marks and citations omitted). The trial court’s conclusions of law are reviewed de novo on appeal. *Id.* “[T]he trial court’s unchallenged findings of fact are binding on appeal.” *State v. Falls*, 275 N.C. App.

239, 245, 853 S.E.2d 227, 232 (2020) (citation omitted).

Defendant specifically challenges the trial court's finding that "the police obtained consent to seize the surveillance system from a person with actual or apparent authority to consent." Defendant argues the witness, Mr. Pasillas, testified he lacked authority because he was neither an employee nor the business owner. The trial court made the following oral findings regarding Mr. Pasillas's actual authority:

That he was aware that the surveillance system that was on the premises was operational. He knew where it was and had access to -- there was no -- it was not in a locked or confined space, that there was an area of general access to all persons who worked in the facility. Mr. Pasillas had familiarity with the surveillance system, he had previously operated it, he had assisted in setting it up, and he had used it for his own purposes on prior occasions to zoom in and view surveillance camera footage, although he had never gone and attempted to retrieve prior recordings. The -- Mr. Pasillas was a -- in effect, a tenant of the business. He was an independent contractor. He paid booth rental fees for the privilege of operating his own independent business within the premises. He was a co-user of that facility. He had joint access to all portions of that facility of the leased space, or the premises of the Nine 19 tattoo business. He was given a key by the owners -- or the -- or the owners of the business or the ultimate tenants of the property. With respect to his authority to access the system, he contacted the person that he knew to be an owner of the property -- or an owner of the Nine 19 tattoo business. Mr. Spencer -- or Spencer was his first name. He, while on the phone, indicated that he had received -- indicated to Officer Posthumus that he had received consent to surrender the entire system to the Raleigh Police Department from Spencer, although Spencer did not know the password. The security system itself was used for security of the premises and other business purposes for the business -- for the tattoo business conducted within the premises. . . . Based on those findings, the Court finds that Mr. Pasillas had actual authority to grant consent to the Raleigh Police Department to obtain copies of the videos.

These unchallenged findings taken together provide competent evidence to support

the trial court's determination that Mr. Pasillas had actual authority even though it may conflict with a portion of his testimony. The trial court made the following oral findings of fact as to whether Mr. Pasillas had apparent authority:

[B]ased on the totality of circumstances. Based on the facts available to Officer Posthumus that a reasonable belief that Mr. Pasillas did have that authority based on each of the factors that I just described and his behavior and apparent control over premises and the security system during that evening.

Once again, the trial court's unchallenged findings of fact when taken together provide competent evidence to support a conclusion that Mr. Pasillas had apparent authority in addition to actual authority.

Vital to the United States Constitution and to our North Carolina Constitution, is the right to be free from "unreasonable searches and seizures" under the Fourth Amendment applied to the states through the Fourteenth Amendment. U.S. Const. amend. IV, XIV; N.C. Const. art. I, § 20. Therefore, police are generally required to obtain a search warrant prior to searching and seizing property, and failure to comply with this constitutional measure results in exclusion of the evidence seized. *See State v. Garner*, 331 N.C. 491, 505, 417 S.E.2d 502, 510 (1992) (citation omitted) ("Evidence unconstitutionally obtained is excluded in both state and federal courts as an essential to due process[,] . . . as a matter of constitutional law.").

However, consent is an exception to the warrant requirement; it is considered "a special situation" in which a warrantless search is permissible, if considering the "totality of the circumstances," consent is given, and it is "voluntary." *State v. Barden*,

356 N.C. 316, 340–41, 572 S.E.2d 108, 125 (2002) (citations omitted). Consent is not limited to the defendant, but rather a third party may also give consent “[b]y a person who by ownership or otherwise is reasonably apparently entitled to give or withhold consent to a search of [the] premises.” N.C. Gen. Stat. § 15A-222(3) (2021). In determining whether consent is valid, we have previously stated, “The only requirement for a valid consent search is the voluntary consent given by a party who had reasonably apparent authority to grant or withhold such consent.” *State v. Doe*, 190 N.C. App. 723, 728, 661 S.E.2d 272, 275-76 (2008) (citations omitted).

The trial court considered the totality of the circumstances when concluding Mr. Pasillas had actual or apparent authority. The trial court considered the evidence that Mr. Pasillas told the police officer he worked at the tattoo parlor, that he paid a fee to work as an independent contractor, that he “co-used the facility,” that he had a key to the facility, that he had worked on the surveillance system before, that he reached out to the man he believed was a co-owner at the time to obtain the password for the surveillance system, and that while on the phone in front of the police officer, he received permission and information to access the video footage and surrender the surveillance footage to the police officer. These findings taken together provide a police officer with the belief Mr. Pasillas had “reasonably apparent authority” to authorize a search and seizure of the surveillance system.

While defendant argues the administrative dissolution of the business is conflicting evidence as to Mr. Sellers’ co-ownership of the business, he provides no

legal support to demonstrate this technicality would prevent a law officer from presuming valid consent by a third party who acts as an owner of a business. Indeed, it would be strange if the law required officers to first check the Secretary of State to verify the status and ownership of a business prior to discerning valid consent. Further, defendant referred to Mr. Sellers as a co-owner of the business while testifying. Accordingly, the trial court's findings of fact are supported by competent evidence, and in turn, support the trial court's conclusions of law that Mr. Pasillas had actual or apparent authority to give valid consent to search and seize the surveillance system.

Because we determine the trial court did not err in denying the motion to suppress, we do not consider the alternative exception of inevitable discovery.

**C.**

Finally, defendant argues the trial court erred by failing to intervene *ex mero motu* during the prosecution's closing remarks. Defendant argues the prosecution made a "grossly improper argument" by stating "the jury could presume malice from [defendant's] use of a deadly weapon." We disagree. When a party challenges comments made during a closing argument without objection, we review the statements made to determine "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). "Incorrect statements of law in closing arguments are improper . . . ." *State v. Ratliff*, 341 N.C. at 616, 461 S.E.2d

at 328.

Within the State's closing argument, the prosecution stated the following:

Here, malice is presumed. The law finds that malice is presumed when a firearm is used. We know a firearm was used. You saw the firearm, the semi-automatic Glock 9 mm pistol. Defendant told you he used that pistol. He told Detective Jackson he used that pistol. You see him use that pistol on the video surveillance. Malice is presumed. That's the first word. That's the first prong. . . . He fires the handgun intentionally at [Early]. This was a deadly weapon. This was a firearm. Again, malice is presumed with a firearm.

. . .

Remember, we talked about malice is presumed. It's presumed with the use of a firearm. That's easy. We know he used the firearm to shoot [Early], so kills another human being. . . . Again, we already know malice is presumed. He used a firearm.

Defendant argues these statements shift the burden of presumption to defendant and such an argument greatly prejudiced defendant. Defendant argues multiple times in his brief that this statement was wrong and was an incorrect statement of law. Yet, our Supreme Court previously stated, "[m]alice is presumed where the defendant intentionally assaults another with a deadly weapon, thereby causing the other's death." *State v. Leazer*, 353 N.C. 234, 238, 539 S.E.2d 922, 925 (2000) (alteration in original) (citations omitted). Further, "any misstatements of law by the prosecutor were cured by proper instructions given by the trial court when it charged the jury." *State v. Barden*, 356 N.C. at 366, 572 S.E.2d at 140. The trial court included the following jury instructions:

The defendant is presumed to be innocent. The State must prove to you that Defendant is guilty beyond a reasonable doubt.

. . .

For you to find the defendant guilty of first-degree murder on the basis of malice, premeditation, and deliberation, the State must prove five things beyond a reasonable doubt: First, that the defendant, intentionally and with malice, killed the victim with a deadly weapon. Malice means not only hatred, ill will, or spite, as it is ordinarily understood. To be sure, that is malice. But it also means that condition of mind that prompts a person to take the life of another intentionally or to intentionally inflict a wound with a deadly weapon upon another which proximately results in his death without just cause, excuse, or justification. If the State proves beyond a reasonable doubt that the defendant intentionally killed the victim with a deadly weapon or intentionally inflicted a wound upon the victim with a deadly weapon that proximately caused the person's death, you may infer, first, that the killing was unlawful, and, second, that it was done with malice, but you're not compelled to do so. You may consider the inference along with all other facts and circumstances in determining whether the killing was unlawful and whether it was done with malice. A firearm is a deadly weapon.

Assuming, *arguendo*, the prosecution erred by paraphrasing the law to presuming malice by the use of a firearm, the trial court cured this error by communicating the presumption is defendant's innocence and by clarifying the law "infers" malice when the State proves beyond a reasonable doubt defendant "intentionally killed the victim with a deadly weapon or intentionally inflicted a wound upon the victim with a deadly weapon." The prosecutor's statements were not "grossly improper" and therefore, the trial court did not err by failing to intervene *ex mero motu*.

### III.

For the foregoing reasons, we determine the trial court did not err in its rulings of the issues presented on appeal.

STATE V. HARRIS

*Opinion of the Court*

NO ERROR.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).