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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-361

Filed 6 August 2024

Johnston County, Nos. 16CRS2558, 16CRS56417, 18CRS577

STATE OF NORTH CAROLINA

v.

JEREMY KYLE PRICE, Defendant.

Appeal by defendant from judgments entered 5 July 2022 by Judge William D. Wolfe in Superior Court, Johnston County. Heard in the Court of Appeals 14 November 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Marc Bernstein, for the State.

Stanley F. Hammer for defendant-appellant.

STROUD, Judge.

Defendant appeals from judgments convicting him of two counts of first-degree murder under the felony murder rule and robbery with a dangerous weapon. As the evidence was sufficient to reach the jury, and the trial court did not err in its instructions to the jury or by not intervening *ex mero motu* during the State's closing arguments, we hold there was no error.

I. Background

The State's evidence tended to show that Matt Jones lived in a trailer in Johnston County, North Carolina with his two-year-old son and the son's mother. Gerald Paul and Tara Wilson also lived at the home in Johnston County; Mr. Paul and Ms. Wilson were romantically involved and were both regular users of methamphetamine. Ms. Wilson testified her relationship with Mr. Paul got "very abusive" and he would hit and choke her when they got into fights. While Mr. Jones and Mr. Paul "had a good relationship at first[,]” Mr. Jones "kind of took [Ms. Wilson's] side" during arguments and Mr. Jones started to not like Mr. Paul "too much after that.” Mr. Jones also accused both Mr. Paul and Ms. Wilson of stealing from him which resulted in a physical altercation between Mr. Jones and Mr. Paul. By 9 or 10 March 2016, Mr. Paul was kicked out of the trailer and Ms. Wilson and Mr. Paul had broken up for "over a week.” Ms. Wilson was at the trailer on 9 and 10 March 2016, and she urged Mr. Jones not to tell Mr. Paul she was at the trailer as they had been fighting and Ms. Wilson "was just tired of fighting with [Mr. Paul].”

Lacie Mease lived in the trailer with Mr. Jones, Mr. Paul, and Ms. Wilson before the events of 9 and 10 March 2016. Ms. Mease testified on the night of 9 March 2016, Mr. Paul called Mr. Jones "to try to figure out if [Ms. Wilson] was over there” and Mr. Paul was "upset” and "mad[,]” and Ms. Mease eventually took Mr. Paul to Defendant's house. Ms. Mease, Mr. Paul, and Defendant hung out at Defendant's house for a while, and at some point Mr. Paul and Defendant left by themselves. Ms.

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Mease stated she and a friend waited at Defendant's home for about thirty to forty-five minutes and Mr. Paul and Defendant still had not returned, so they left.

Separately, on the same night of 9 March 2016 going into 10 March 2016, Mr. Jones, Ms. Wilson, and another friend named Jessica Pyatte were back at Mr. Jones' trailer. Ms. Wilson testified she saw Mr. Paul walking up to the trailer with Defendant in the early morning hours of 10 March 2016. Mr. Paul had a shotgun in his hands as he approached the trailer, and he told Ms. Wilson he had the gun to sell to Mr. Jones. Mr. Jones was asleep on a recliner when Mr. Paul and Defendant approached, and Ms. Wilson stated she and Ms. Pyatte tried to wake Mr. Jones up, but the next thing Ms. Wilson remembered was Mr. Paul shooting Mr. Jones. Ms. Wilson and Ms. Pyatte started "freaking out" and "screaming" and "crying" after seeing Mr. Paul shoot Mr. Jones. Then, Defendant told Mr. Paul to shoot Ms. Pyatte, and Mr. Paul "turned the shotgun on" Ms. Pyatte and shot her. Defendant told Mr. Paul to shoot Ms. Wilson too, but Mr. Paul convinced Defendant to not shoot Ms. Wilson. After the initial shooting, Ms. Pyatte "was still making noises and - - and then . . . [Defendant] shot her with a littler gun" more than once. Both Mr. Jones and Ms. Pyatte died from their injuries.

After the shooting, Ms. Wilson saw Mr. Paul and Defendant go "in the bedroom looking for stuff" which Ms. Wilson stated was "[p]robably jewelry. Probably guns and drugs. Anything they could steal." Ms. Wilson testified after Mr. Paul and Defendant "got everything that they wanted, [Defendant] said it's time to go." Later on 10 March

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2016, Ms. Wilson and Mr. Paul met up with Donald Johnson, and Ms. Wilson tried to give Mr. Johnson a cellphone that Ms. Wilson and Mr. Johnson identified as belonging to Mr. Jones.

A crime scene investigator testified Ms. Pyatte sustained multiple injuries consistent with gunshot wounds fired at close range. The investigator also testified there were two firearms used in the shootings, either a pistol or rifle and a shotgun. The investigator made this conclusion based on the injuries sustained by Mr. Jones and Ms. Pyatte, as a shotgun wound is “very, very damaging” where a pistol wound would be a smaller injury.

The State also introduced cellphone data from the time of the murders. The data showed both Defendant and Mr. Paul were at Defendant’s house around 3:00-4:00 am on 10 March 2016; Defendant and Mr. Paul travelled together toward a gas station and then towards Mr. Jones’ trailer; phones belonging to Defendant, Mr. Paul, and Mr. Jones were all in the vicinity of Jones’s trailer around 8:30 am; all three phones left Mr. Jones’s trailer back towards the gas station; finally, all three phones were at Defendant’s house at about 11:15 am.

Police eventually apprehended Mr. Paul and Defendant, and Defendant was indicted for two counts of first-degree murder on 7 November 2016 and one count of robbery with a firearm and conspiracy to commit robbery with a firearm on 2 April 2018. Trial began on 27 June 2022 and Defendant testified, admitting he drove Mr. Paul to Mr. Jones’ trailer on the morning of the murders, but that he never met either

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victim, had never been inside the trailer at all, and stayed in the car listening to music while Mr. Paul went into the trailer. Defendant testified after about thirty to forty minutes, Defendant and Ms. Wilson came out from the trailer and got into the car. Finally, Defendant stated he did not see Mr. Paul with a shotgun at any time on the morning of the murders; he did not hear gunshots from inside the trailer while he was waiting in the car outside; and he did not see any blood on Mr. Paul or Ms. Wilson when they got into the car and did not smell any gunpowder.

During closing arguments, the State repeatedly referenced the six-year delay between offense and trial, arguing Defendant had six years to think about his story about the events on 10 March 2016. The State further argued that Defendant committed robbery based on a theory of acting in concert, contending Defendant knew Mr. Paul “was jealous, possessive” of Ms. Wilson and Defendant used that opportunity to convince Mr. Paul to kill Mr. Jones and rob him. Defendant moved to dismiss all charges at the close of the State’s evidence, and the trial court denied the motion except as to the conspiracy charge, which the trial court granted. Defendant renewed his motions to dismiss at the close of the evidence, which the trial court denied.

The jury found Defendant guilty of first-degree murder under the felony murder rule for the murders of Mr. Jones and Ms. Pyatte and of robbery with a firearm. Since robbery was the underlying felony to support the felony murder conviction, the trial court arrested judgment for the robbery with a firearm charge.

Defendant gave notice of appeal in open court.

II. Analysis

Defendant raises several arguments on appeal: (1) “the trial court erred in denying Defendant’s motion to dismiss based on insufficiency of the evidence[;]” (2) “the trial court committed reversible error in denying Defendant’s request that the court instruct the jury on accomplice testimony[;]” (3) “the trial court committed plain error in failing to instruct jurors regarding testimony of a witness granted immunity or quasi immunity[;]” (4) “the trial court committed reversible error in failing to intervene *ex mero motu* in response to the prosecutor’s grossly improper closing argument in which he characterized Defendant as a liar and perjurer who manufactured his testimony during a six year delay between the offense and trial[;]” and (5) “the trial court committed reversible error in failing to intervene *ex mero motu* in response to the district attorney’s closing in which he used corroborative evidence and referred to matters outside the record.” (Capitalization altered.) For the following reasons, we conclude there was no error.

A. Insufficiency of the Evidence

Whether the State presented substantial evidence of each essential element of the offense is a question of law; therefore, we review the denial of a motion to dismiss de novo. The question for a court on a motion to dismiss for insufficient evidence is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant’s being the perpetrator of such offense.

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State v. Tucker, 380 N.C. 234, 236, 867 S.E.2d 924, 927 (2022) (citations and quotation marks omitted). Further, while “[s]ubstantial evidence is the same as more than a scintilla of evidence[,]” “the trial court should be concerned only about whether the evidence is sufficient for jury consideration, not about the weight of the evidence.” *Id.* at 237, 867 S.E.2d at 927. All evidence must be reviewed in the light most favorable to the State, “giving the State the benefit of all reasonable inferences. Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve.” *Id.*

First-degree murder under North Carolina General Statute Section 14-17(a) is defined as:

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony[.]

N.C. Gen. Stat. § 14-17(a) (2015).

The elements of felony murder are (1) that a defendant, or someone with whom the defendant was acting in concert, committed or attempted to commit a predicate felony under N.C. Gen.Stat. § 14-17(a); (2) that a killing occurred in the perpetration or attempted perpetration of that felony; and (3) that the killing was caused by the defendant or a co-felon.

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State v. Maldonado, 241 N.C. App. 370, 376, 772 S.E.2d 479, 483-84 (2015).

Armed robbery under North Carolina General Statute Section 14-87(a) is defined as:

Any person or persons who, having in possession or with the use or threatened use of any firearms or other dangerous weapon, implement or means, whereby the life of a person is endangered or threatened, unlawfully takes or attempts to take personal property from another or from any place of business, residence or banking institution or any other place where there is a person or persons in attendance, at any time, either day or night, or who aids or abets any such person or persons in the commission of such crime, shall be guilty of a Class D felony.

N.C. Gen. Stat. § 14-87(a) (2015).

The essential elements of the crime of robbery with a dangerous weapon, or armed robbery, are: (1) the unlawful taking or attempted taking of personal property from another; (2) the possession, use or threatened use of firearms or other dangerous weapon, implement or means; and (3) danger or threat to the life of the victim.

State v. Sullivan, 216 N.C. App. 495, 501-02, 717 S.E.2d 581, 585-86 (2011) (citations and quotation marks omitted).

Further, “acting in concert” is a theory of robbery whereby two or more people “act together, in harmony or in conjunction one with another pursuant to a common plan or purpose.” *State v. Combs*, 182 N.C. App. 365, 369, 642 S.E.2d 491, 496 (2007) (citation omitted). As this Court has determined, it is not

necessary for a defendant to do any particular act constituting at least part of a crime in order to be convicted of that crime under the concerted action principle so long

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as he is present at the scene of the crime and the evidence is sufficient to show he is acting together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose to commit the crime.

Id. at 369-70, 642 S.E.2d at 496 (citation omitted).

Defendant first contends that since the trial court dismissed the charge of conspiracy to commit robbery and the felony murder charge is based on armed robbery under the theory of acting in concert, there was insufficient evidence to support a conviction of felony murder under the theory of acting in concert to commit a robbery. But Defendant cites to no authority, nor have we found any, supporting the proposition that the trial court must dismiss a charge based on an acting in concert theory when the trial court dismisses a conspiracy charge. While the State points us to *State v. Kemmerlin*, 356 N.C. 446, 476, 573 S.E.2d 870, 891 (2002), to support its contention a conspiracy charge does not merge with a charge under the acting in concert theory, Defendant's argument is that if the evidence was insufficient to prove a conspiracy, it is also insufficient to show the two co-defendants were acting in concert. Still, *Kemmerlin* states that a conspiracy charge and a charge based on an acting in concert theory are not identical, so we will review the evidence in its entirety without regard to the trial court's dismissal of the conspiracy charge. *See id.* at 477, 573 S.E.2d at 891 ("The requirement of an agreement, while necessary to sustain a conviction for conspiracy, is not a necessary element for murder by acting in concert, so defendant's conviction for conspiracy to commit murder does not merge

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into her conviction for murder by acting in concert.”).

Defendant’s overall argument is that “Wilson’s testimony of events that occurred while she was high on methamphetamine and her memory admittedly ‘fuzzy’ are slender filaments of proof” and “[n]o rational juror could find Defendant guilty beyond a reasonable doubt based on Wilson’s testimony[.]” But we do not review the evidence to determine if it was sufficient to convict Defendant “beyond a reasonable doubt” as Defendant contends; our role is to determine whether there was “substantial evidence” Defendant committed the offense. *See Tucker*, 380 N.C. at 236-37, 867 S.E.2d at 927. Further, this Court may not weigh the credibility of witnesses or weigh the evidence; the jury has that role. *See id.*

At trial, cellphone data showed Defendant and Mr. Paul were at Defendant’s house together shortly before the murders, then traveled to Mr. Jones’s house together, and returned to Defendants’ house together. Defendant mostly objects to the robbery charge and acting in concert theory, stating Ms. Wilson’s testimony is the only evidence of a robbery and her testimony alone is too thin and is not “substantial evidence.” Yet as noted above, the jury must weigh the evidence and determine the credibility of the witnesses. *See id.* Defendant testified and denied Ms. Wilson’s accusations, but the jury was free to believe Ms. Wilson instead of Defendant. *See id.*

Ms. Wilson testified Defendant and a co-defendant entered the victims’ home, shot and killed them, searched together for things to steal such as jewelry, guns, or drugs, and took property – the phone; thus, there is substantial evidence an armed

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robbery occurred based on a theory of acting in concert, supported by the cellphone location data, Ms. Wilson's testimony, and Ms. Mease's testimony about Defendant and Mr. Paul leaving Defendant's home early in the morning of 10 June 2016 and not returning before Ms. Mease left thirty to forty-five minutes later. The evidence, viewed in the light most favorable to the State, shows Defendant was actually present, intended to commit a robbery, and assisted in the commission of the armed robbery. *See State v. Bray*, 321 N.C. 663, 672, 365 S.E.2d 571, 576 (1988) ("Defendant's argument that he could not have been acting in concert to commit armed robbery because he personally did not have any intention of stealing Coggins' revolver, and because he had gone back to the truck by the time Rios took the gun, is without merit."); *see also State v. James*, 226 N.C. App. 120, 123, 738 S.E.2d 420, 423-24 (2013) ("The mere presence of the defendant at the scene of the crime, even though he is in sympathy with the criminal act and does nothing to prevent its commission, does not make him guilty of the offense. To support a conviction, the State's evidence must be sufficient to support a finding that the defendant was present, actually or constructively, with the intent to aid the perpetrators in the commission of the offense should his assistance become necessary and that such intent was communicated to the actual perpetrators. The communication or intent to aid, if needed, does not have to be shown by express words of the defendant but may be inferred from his actions and from his relation to the actual perpetrators." (citation omitted)). This argument is overruled.

B. Jury Instructions

Next, Defendant argues “the trial court committed reversible error in denying Defendant’s request that the court instruct the jury on accomplice testimony[;]” and “the trial court committed plain error in failing to instruct jurors regarding testimony of a witness granted immunity or quasi immunity.” (Capitalization altered.) We find no merit in either argument and will review each in turn.

1. Requested Instruction on Accomplice Testimony

Defendant first argues the trial court should have given a requested jury instruction regarding Ms. Wilson being an accomplice in the crime. Generally, we review the omission of a requested jury instruction *de novo*. *See State v. Smith*, 263 N.C. App. 550, 558, 823 S.E.2d 678, 684 (2019) (“Whether evidence is sufficient to warrant an instruction is a question of law. This Court reviews questions of law *de novo*.” (citations, quotation marks, and ellipses omitted)). However, we must first note Defendant failed to comply with our Rules of Appellate Procedure by failing to provide this Court with its proposed instructions to the trial court. *See* N.C. R. App. P. 9(a)(3)(f) (“Composition of the Printed record in Criminal Actions. The printed record in criminal actions shall contain: . . . f. where an issue presented on appeal relates to the giving or omission of instructions to the jury, a transcript of the entire charge given; and identification of the omitted instruction by setting out the requested instruction or its substance in the printed record immediately following the instruction given[.]”).

In his reply brief, Defendant recognizes this error and asks this Court to invoke Rule 2 and address the merits “to prevent manifest injustice.” But since Defendant does not make arguments as to the elements of the crime charged, and there is nothing to suggest Ms. Wilson was an accomplice instead of an accessory after the fact, we see no basis to consider this issue to “prevent manifest injustice[.]” and we decline to address this issue further. *See State v. Bailey*, 254 N.C. 380, 387, 119 S.E.2d 165, 171 (1961) (“[A]n accomplice is a person who knowingly, voluntarily, and with common intent with the principal offender unites with him in the commission of the crime charged, either as a principal, as an aider and abettor, or as an accessory before the fact.”).

2. Requested Instruction on Immunity or Quasi-Immunity

Next, Defendant argues “the trial court committed plain error in failing to instruct jurors regarding testimony of a witness granted immunity or quasi immunity.” (Capitalization altered.)

As Defendant did not request any immunity or quasi-immunity instructions from the trial court, we review this issue only for plain error. *See State v. Banks*, 191 N.C. App. 743, 748-49, 664 S.E.2d 355, 359 (2008) (“If a defendant assigns error to these instructions, but failed to object at trial, the alleged error is subject to review for plain error only.” (citations and quotation marks omitted)). “Plain error with respect to jury instructions requires the error be so fundamental that (i) absent the error, the jury probably would have reached a different verdict; or (ii) the error would

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constitute a miscarriage of justice if not corrected.” *Id.* at 749, 664 S.E.2d at 359 (citation and quotation marks omitted).

Formal immunity under North Carolina General Statute Section 15A-1052 must be communicated to the jury even without a request, but formal immunity requires a court order. *See* N.C. Gen. Stat. § 15A-1052 (2023). Quasi-immunity under North Carolina General Statute Section 15A-1054 does not require this instruction and applies where the district attorney agrees to charge reductions or sentencing concessions but not under a formal court order. *See* N.C. Gen. Stat. § 15A-1054(a) (2023).

Defendant argues that Ms. Wilson could have been charged as a principal to the crime but was not and that “[t]he district attorney’s letter to Wilson’s defense counsel states that ‘the State will not use any statements your client hereafter makes in furtherance of her cooperation against her in any trial, sentencing, hearing related to her charges.’” However, Ms. Wilson testified she did not receive any immunity for her testimony and an investigator for the sheriff’s office also testified “there are no specific concessions[,] just that the State would take her cooperation into consideration[.]” In addition, Defendant leaves out a part of the letter before the part he quoted in his brief, which reads,

If your client agrees to cooperate in the investigation and resolution of criminal cases related to the deaths of Matthew Jones and Jessica [Pyatte], and also agrees to testify truthfully at any criminal proceeding of any codefendant charged in relation to the deaths of Matthew

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Jones and Jessica [Pyatte], the State will take your client's cooperation into consideration regarding the disposition and resolution of her cases.

After this part of the letter is the part Defendant quotes, stating "the State will not use any statements your client hereafter makes in furtherance of her cooperation against her in any trial, sentencing, hearing related to her charges." Defendant asserts this letter "clearly demonstrates that Ms. Wilson was granted use immunity" but does not cite to any authority supporting this assertion. As there is no evidence of a court order for formal immunity, Defendant must be asserting Ms. Wilson had some type of quasi-immunity. *See* N.C. Gen. Stat. § 15A-1052; *see also* N.C. Gen. Stat. § 15A-1054(a).

A plain reading of the letter does not show the State agreed to a charge reduction, even assuming Ms. Wilson could have been charged as a principal as Defendant contends, as there is nothing in our record to suggest she was charged more than an accessory after the fact. There is also no indication the State agreed to a sentencing concession; the State only stated her statements would not be used against her in future sentencing related to her charges. As Defendant has not demonstrated Ms. Wilson had any type of immunity, this argument is overruled. *See State v. Mewborn*, 178 N.C. App. 281, 292, 631 S.E.2d 224, 231-32 (2006) (determining there was a "lack of evidence that [the witness] had been granted immunity or quasi-immunity" in a case where "no evidence was presented at trial that [the witness] testified under an agreement for a charge reduction or an agreement for a sentencing concession" even

where the witness entered into a plea agreement and some charges were dismissed since “there was no agreement between Detective Adkins and [the witness] that resulted in the dismissals”).

C. State’s Closing Arguments

Finally, Defendant argues “the trial court committed reversible error in failing to intervene *ex mero motu* in response to the prosecutor’s grossly improper closing argument in which he characterized Defendant as a liar and perjurer who manufactured his testimony during a six year delay between the offense and trial[,]” and “the trial court committed reversible error in failing to intervene *ex mero motu* in response to the district attorney’s closing in which he used corroborative evidence and referred to matters outside the record.” (Capitalization altered.)

“The standard of review when a defendant fails to object at trial is whether the argument complained of was so grossly improper that the trial court erred in failing to intervene *ex mero motu*.” *State v. Trull*, 349 N.C. 428, 451, 509 S.E.2d 178, 193 (1998). As Defendant did not timely object to any of the challenged statements at trial, we review each challenge under this standard.

1. Characterization of Defendant as a Liar and Reference to Six-Year Delay

Defendant first contends the trial court should have intervened *ex mero motu* when the State argued Defendant used the six-year delay between the offense and trial to create lies and explanations for the murders. We first note the trial court

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specifically barred counsel for either side from discussing the six-year delay, stating discussing the delay would be “outside the record” and “is therefore improper for argument.” As the State notes, this ruling was in response to the State’s request that the trial court give an instruction on the cause of the delay, not that there was a delay. Still, Defendant failed to object during the State’s closing arguments, so we will review whether these statements by the prosecutor were “grossly improper.” *Id.*

Our Supreme Court has noted that during closing arguments, “trial counsel must nevertheless conduct themselves within certain statutory parameters.” *State v. Huey*, 370 N.C. 174, 179-80, 804 S.E.2d 464, 469 (2017) (citation omitted).

It is improper for lawyers in their closing arguments to become abusive, inject their personal experiences, express their personal beliefs 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.

Id. at 180, 804 S.E.2d at 469 (quotation marks and brackets omitted). Yet “we have long recognized that prosecutors are given wide latitude in the scope of their argument and may argue to the jury the law, the facts in evidence, and all reasonable inferences drawn therefrom.” *Id.* Finally, “[a] prosecutor is not permitted to insult a defendant or assert the defendant is a liar” but “[a] prosecutor is permitted to address a defendant’s multiple accounts of the events at issue to suggest that the defendant had not told the truth at his trial.” *Id.* at 182, 804 S.E.2d at 471 (citation omitted).

In *Huey*,

the prosecutor injected his own opinion that defendant was

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lying, stopping just short of directly calling defendant a liar, and his theme, “innocent men don’t lie,” insinuated that because defendant lied, he must be guilty. The focus of the prosecutor’s argument was not on presenting multiple conflicting accounts and allowing the jury to come to its own conclusion regarding defendant’s credibility. Rather, the State’s argument appeared to overwhelmingly focus on attacking defendant’s credibility through the prosecutor’s personal opinion.

Id.

Here, the prosecutor made several remarks asserting Defendant had six years to “think about” his explanation of events and at one point explicitly stated Defendant perjured himself. Even assuming these statements were improper, they do not rise to the level of “grossly improper.” *Trull*, 349 N.C. at 451, 509 S.E.2d at 193. Defendant testified and some of his statements contradicted other evidence, such as the cell phone data. It is proper for the prosecutor to point out conflicts in the evidence and to argue why the jury should consider certain evidence as more credible than other evidence. *See id.* (determining the State’s closing arguments calling the defendant a liar were not grossly improper since “the evidence in this case does support a permissible inference that defendant’s testimony lacked credibility”); *see also State v. Scott*, 343 N.C. 313, 344, 471 S.E.2d 605, 623 (1996) (“When read in context, the prosecutor’s argument was no more than an argument that the jury should consider defendant’s credibility since he had lied about Funderburke’s whereabouts before her body was found. In view of the several conflicting statements made by defendant in this case, we conclude that the prosecutor’s jury argument was

not so grossly improper as to require the trial court's intervention *ex mero motu*.”).

Defendant also contends the State “improperly suggested that defense counsel was complicit in creating Defendant’s allegedly false narrative” since the State “informed the jury that Defendant after ‘viewing the discovery’ tried to create an explanation for the jury.” Defendant cites to *State v. Hembree*, 368 N.C. 2, 770 S.E.2d 77 (2015), to assert the State should not argue a defendant lied in cooperation with their defense counsel. While doing so would be improper, this is not what happened in the present case and it differs from *Hembree*. *See id.* at 19-20, 770 S.E.2d at 89. In *Hembree*, the State explicitly and repeatedly argued the defendant came up “with an elaborate tale” after he could “get legal advice from his attorneys.” *Id.* The State argued “[t]he defendant, along with his two attorneys, c[a]me together to try and create some sort of story.” *Id.* Here, Defendant does not point us to any part of the State’s closing that mentions Defendant’s counsel. The State made a reference that Defendant had an opportunity to manufacture a story after “viewing the discovery” but does not in any way reference Defendant and his counsel coming together to make up a story. This case is distinguishable from *Hembree*, and the State did not make any improper arguments involving Defendant and his counsel. *See id.* Thus, the trial court did not err in not intervening *ex mero motu* during the State’s closing argument regarding Defendant’s truthfulness and the six-year delay. This argument is overruled.

2. Corroborative Evidence and Matters Outside the Record

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Finally, Defendant contends the trial court should have intervened *ex mero motu* when the State played audio recordings of an interview of Ms. Wilson and theorized there was an agreement that Defendant could keep drugs stolen from Mr. Jones and Mr. Paul could keep cameras and other equipment. Defendant argues “the State introduced no evidence that drugs were found on Defendant’s person, or at his house, or in his Jeep, or that drugs were stolen from Matt Jones.” As Defendant did not object at trial he must demonstrate these remarks were “grossly improper.” See *Trull*, 349 N.C. at 451, 509 S.E.2d at 193.

It is well-established that “[a] prosecutor may argue any reasonable inferences from the evidence introduced at trial.” *State v. Bradley*, 279 N.C. App. 389, 407, 864 S.E.2d 850, 864 (2021) (citation omitted). Even if there was no direct testimony Defendant stole drugs from Mr. Jones, the State presented sufficient evidence for a jury to draw a reasonable inference that happened. For example, the State presented testimony Mr. Jones sold drugs; Defendant and Mr. Paul killed Mr. Jones and then searched through his trailer for valuables, including drugs; and Defendant, Mr. Paul, and Ms. Wilson left the trailer together after Defendant and Mr. Paul searched the trailer. In *State v. Campbell*, our Supreme Court addressed a closing argument by the prosecutor where the prosecutor stated “[t]he defendant is smart and he has learned his lesson. You know what happens when you leave people alive? They come in and testify. He’s learned that” and “[t]he only way he’s going to get [a]way with robbing Mr. Hall of everything that has value in that home that he can pick up is to

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kill him;" this argument was not grossly improper. 359 N.C. 644, 686, 617 S.E.2d 1, 27 (2005). While there was no direct evidence the "defendant had victimized trusting people on previous occasions and that this occasion was no different[,]" the argument was "a reasonable inference, given [the] defendant's history of crime." *Id.* Here, even without direct testimony that Defendant stole drugs from Mr. Jones or that Mr. Jones had drugs stolen, it is reasonable for the jury to infer that Defendant and Mr. Paul robbed Mr. Jones and Defendant stole drugs from him after the murder when he searched through the trailer. Thus, this argument is overruled.

III. Conclusion

We conclude the trial court did not err in denying Defendant's motion to dismiss based on insufficiency of the evidence, by not giving the jury instructions, and by not intervening *ex mero motu* during the State's closing arguments. Thus, Defendant received a fair trial free from error.

NO ERROR.

Chief Judge DILLON and Judge ZACHARY concur.

Report per Rule 30(e).