

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

No. COA23-67

Filed 20 August 2024

Pitt County, Nos. 18CRS57744, 18CRS57746

STATE OF NORTH CAROLINA

v.

GEORGE QUINTIN KNIGHT, JR., Defendant.

Appeal by defendant from judgments entered on or about 3 December 2021 by Judge Marvin K. Blount III in Superior Court, Pitt County. Heard in the Court of Appeals 3 October 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Alesia Balshakova, for the State.*

*Arnold & Smith, PLLC, by Paul A. Tharp, Ashley A. Crowder, and Pamela L. Williams, for defendant-appellant.*

STROUD, Judge.

Defendant appeals his judgments convicting him of first-degree murder and attempted first-degree murder. Defendant challenges the admission of video exhibits and testimony regarding those exhibits and contends that his motion to dismiss should have been allowed. We conclude Defendant did not demonstrate error in the

admission of and testimony regarding the video surveillance exhibits, and the trial court did not err in denying Defendant's motion to dismiss.

### **I. Background**

The State's evidence tended to show that on 13 November 2018, Carlos Woolard and Deontay Parrish—who was also known as D—were in D's blue Nissan Maxima in the driveway of the home of Mr. Woolard and his girlfriend, Shantelle Pope, on Tyson Street in Greenville, North Carolina. At about 8:50 pm, Ms. Pope was standing outside of D's car talking to Mr. Woolard when a silver vehicle drove by; shots were fired from the vehicle. Mr. Woolard directed D to shoot back at the car, and Mr. Woolard heard D return fire. Ms. Pope was hit by a bullet and fell to the ground. Two days later, Ms. Pope died at the hospital from a "penetrating gunshot wound of [the] abdomen." The bullet from Ms. Pope's body was identified by a forensic scientist as a 9-millimeter bullet. Defendant was indicted for murder of Ms. Pope and attempted first-degree murder of Mr. Woolard<sup>1</sup> and Mr. Parrish.

During Defendant's trial, the State's evidence included testimony from Detective Alvaro Elias of the Greenville Police Department. Detective Elias responded to the scene of the shooting on Tyson Street and spoke to Mr. Woolard; Detective Elias testified that Mr. Woolard said, "he didn't see who shot [Ms. Pope]"

---

<sup>1</sup> The record contains the indictment for the attempted first-degree murder of Deontay Parrish; however, the record does not contain the indictment for the attempted first-degree murder of Carlos Woolard.

but he described the vehicle as “a small silver car,” which “shot up [D’s Maxima] at least twice.” Detective Elias then went to the police station and using Greenville’s extensive camera system with “over 552 cameras all around the city,” he accessed the footage from the day of the shooting. Detective Elias downloaded the surveillance videos from the different cameras onto CDs; the CDs were entered into evidence as Exhibits 11, 12, and 17. Exhibit 17 was a compilation of all the relevant surveillance videos from 13 November, including those in Exhibits 11 and 12, in chronological order.

As the footage contained in Exhibits 11, 12, and 17 was played for the jury, Detective Elias testified about the silver car’s movements on 13 November. Detective Elias testified that at 8:47 pm, two men got into the silver car; at 8:54 pm, the car drove toward Tyson Street; and at about 8:56 pm, “[t]he silver car makes a right turn [on Tyson Street], passes by D’s car, [and] brakes” before “tak[ing] off.” Detective Elias explained there was a “very significant” point when the car’s headlights dimmed, which indicated that was the time when Ms. Pope was shot, and her body fell in front of the car’s headlight. At 8:59 pm, the silver car drove to Vance Street and parked in the driveway of a house that was later identified as Defendant’s parents’ house. The driver and passenger then exited the car and walked next door to King’s convenience store. After being inside King’s for about two minutes, the men walked out of the store at 9:02 pm.

STATE V. KNIGHT

*Opinion of the Court*

Detective Elias testified that when he ran the license plate for the silver car, he discovered it was owned by Defendant's sister. Defendant's sister testified that Defendant borrowed her car on 13 November; Defendant dropped his sister off at work at 4:00 pm and picked her up at 10:00 pm. On 16 November 2018, Detective Elias spoke with Yasser Eid, who was employed as a cashier at King's. Mr. Eid showed Detective Elias the surveillance videos from the store from the evening of 13 November.

Mr. Eid testified at trial that he recognized Defendant from the store videos from around 9:00 pm on 13 November, when Defendant and another man came into King's. Mr. Eid testified Defendant "bought a Black and Mild [cigar] and asked to wash his hands." Mr. Eid gave Defendant some alcohol and Defendant "went to the front door, washed his hands and came back to the counter and wiped his hands down with a napkin." Mr. Eid testified that the store had three surveillance cameras that all faced the front door and three surveillance cameras outside the door. The surveillance video from inside the store, which captured Defendant buying a cigar and rinsing his hands, was entered into evidence as Exhibit 10.

Mr. Demetric Ward also testified for the State. Mr. Ward, acknowledging he did not know Defendant's real name, identified Defendant in the courtroom by his nickname "TI." Mr. Ward testified that he and Defendant were "housed together in Pitt County Detention Center[.]" Mr. Ward wrote a letter to his lawyer about what he overheard Defendant tell another inmate regarding the shooting; the letter was

entered into evidence. Mr. Ward testified that Defendant said he got into a fight with a man named “DD” at a party and the next day he saw DD. According to Mr. Ward, after seeing DD, Defendant “circled the block and picked up his homeboy, Travis[.]” Defendant and Travis then “went back to the spot where [Defendant] saw D and shot twelve to thirteen times.” Mr. Ward further testified Defendant said he “thought he shot an innocent girl” but then stated, “f\*\*k the girl, he took off to a store and try and wash his hands trying to get the gunpowder residue off.” Defendant told the other inmate that he buried the 9-millimeter gun he used in the shooting behind his friend’s house. The weapon was never recovered.

Defendant was found guilty by a jury of the first-degree murder of Ms. Pope based on malice, premeditation, and deliberation *and* the felony murder rule, with the underlying felony being discharging a weapon into an occupied vehicle. Defendant was also found guilty of the attempted first-degree murder of D. Defendant was found not guilty of attempted first-degree murder of Mr. Woolard. The trial court sentenced Defendant to life imprisonment without parole for the first-degree murder conviction and a minimum term of 207 months with a maximum term of 261 months for attempted murder. Defendant appeals.

## **II. Video Surveillance**

We address Defendant’s third argument first, as the first argument in his brief—plain error in admission of testimony identifying Defendant as the person shown in the surveillance videos—depends on this issue. Defendant contends

“[e]rroneous admission of video evidence prejudiced Defendant’s case to the point that he is entitled to [a] new trial. In the alternative, admitting the videos was plain error.” The videos at issue include: (1) State’s Exhibit 10 from King’s; and (2) State’s Exhibits 11, 12, and 17, which include traffic camera videos from the area around the crime scene at the time of the shooting.

North Carolina General Statute Section 8-97

allows a party to introduce, *inter alia*, videotapes “as substantive evidence upon laying a proper foundation and meeting other applicable evidentiary requirements.” N.C. Gen. Stat. § 8-97 (2019). For authentication purposes, the main evidentiary requirement comes from Rule of Evidence 901. Rule 901(a) provides: “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” N.C. Gen. Stat. § 8C-1, Rule 901(a) (2019). Rule 901(b) then provides a non-exhaustive list of “examples of authentication or identification conforming with the requirements of this rule.” N.C. Gen. Stat. § 8C-1, Rule 901(b).

In *State v. Snead*, our Supreme Court recognized the example listed in Rule 901(b)(9) applies to surveillance videotapes like the ones at issue here: “Recordings such as a tape from an automatic surveillance camera can be authenticated as the accurate product of an automated process under Rule 901(b)(9).” *Snead*, 368 N.C. at 814, 783 S.E.2d at 736 (citation and quotation marks omitted).

*State v. Jones*, 288 N.C. App. 175, 187, 884 S.E.2d 782, 793 (2023) (brackets omitted); see N.C. Gen. Stat. § 8-97 (2023).

Both Defendant and the State rely on *State v. Snead*, 368 N.C. 811, 783 S.E.2d

733 (2016), a case “about whether the State properly authenticated a surveillance video showing defendant stealing shirts from a Belk Department Store (Belk) and whether a witness’s lay opinion testimony based on that video was admissible.” *Id.* at 812, 783 S.E.2d at 735. In *Snead*, a Belk’s surveillance camera captured the defendant stealing clothing and at the defendant’s trial, “the State called Toby Steckler, a regional loss prevention manager for Belk, to authenticate the surveillance video for admission into evidence and to offer his opinion about the contents of the video.” *Id.* This Court held that the trial court erred in admitting the video because it had not been properly authenticated; our Supreme Court reversed this Court’s opinion, holding that Mr. Steckler’s testimony “was sufficient to authenticate the surveillance video under North Carolina Rule of Evidence 901.” *Id.* at 814, 783 S.E.2d at 736.

The Supreme Court explained:

Given that defendant freely admitted that he is one of the two people seen in the video stealing shirts and that he in fact stole the shirts, he offered the trial court no reason to doubt the reliability or accuracy of the footage contained in the video. Regardless, Steckler’s testimony was sufficient to authenticate the video under Rule 901. Steckler established that the recording process was reliable by testifying that he was familiar with how Belk’s video surveillance system worked, that the recording equipment was “industry standard,” that the equipment was “in working order” on 1 February 2013, and that the videos produced by the surveillance system contain safeguards to prevent tampering. Moreover, Steckler established that the video introduced at trial was the same video produced by the recording process by stating that the State’s exhibit

at trial contained exactly the same video that he saw on the digital video recorder. Because defendant made no argument that the video had been altered, the State was not required to offer further evidence of chain of custody. Steckler's testimony, therefore, satisfied Rule 901, and the trial court did not err in admitting the video into evidence.

*Id.* at 815-16, 783 S.E.2d at 737. In sum, the Supreme Court held that “[e]vidence that the recording process is reliable and that the video introduced at trial is the same video that was produced by the recording process is sufficient to authenticate the video and lay a proper foundation for its admission as substantive evidence.” *Id.* at 814, 783 S.E.2d at 736. Additionally, this Court has also noted that “video surveillance can be authenticated by a witness testifying the video accurately depicted events that he had observed.” *Jones*, 288 N.C. App. at 188, 884 S.E.2d at 793 (citation, quotation marks, and brackets omitted).

#### **A. Exhibit 10**

Defendant argues that Exhibit 10 was not properly authenticated because Mr. “Eid did not maintain the system, did not know if it recorded over itself or how long the camera system recorded before recording over, and did not know how the cameras kept time” and also Mr. Eid “was not a witness (nor did the State present one) who could have testified that the video accurately depicted events that he had observed.”

When an objection has been properly preserved, “[w]e review *de novo* rulings on authentication issues under Rule of Evidence 901.” *Id.* at 187, 884 S.E.2d at 793. Here, however, during Defendant’s trial, when the State moved to introduce Exhibit



10 into evidence, the trial court asked Defendant if he had any objections. Defendant's counsel responded, "Could we approach, Your Honor?" The transcript then notes a "[b]ench conference." Following the bench conference, Mr. Eid's testimony continued. Thereafter, when the State again moved to introduce Exhibit 10, Defendant's counsel stated, "We still object, Your Honor." The trial court overruled the objection. This Court has held:

Under our Rules of Appellate Procedure, "in order to preserve an issue for appellate review, a party must have presented to the trial court 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 objection must be made in the presence of the jury. *See State v. Snead*, 368 N.C. 811, 816, 783 S.E.2d 733, 737 (2016) ("An objection made only during a hearing out of the jury's presence prior to the actual introduction of the testimony is insufficient." (citation and quotation marks omitted)). But if the party made a specific objection outside the presence of the jury, a general objection in the presence of the jury can be sufficient when it is clear from context the party was renewing the same objection made outside the presence of the jury. *See State v. Rayfield*, 231 N.C. App. 632, 637-38, 752 S.E.2d 745, 751 (2014) (holding an issue was preserved for appellate review when the defendant made an objection at trial that did not state the grounds for the objection because it was "clear from the context" the defendant was renewing an earlier objection made in a pretrial motion to suppress).

*Id.* at 180, 884 S.E.2d at 788-89 (brackets omitted). Here, it is clear that Defendant's objection in the presence of the jury was a renewal of the objection made outside the presence of the jury. Yet, the specific basis for the objection made outside the

presence of the jury was in a bench conference that was not recorded; although, based on the State's questions to Mr. Eid before moving to admit Exhibit 10, it appears Defendant's objection was based on authentication grounds. Defendant alternatively contends that if the objection was not preserved, the admission of Exhibit 10 was plain error. *See* N.C. R. App. P. 10(a)(4) ("In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.").

For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings.

*State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (citations, quotation marks, and brackets omitted). However, because we conclude below that the trial court did not err in admitting Exhibit 10, we need not establish whether the objection was properly preserved.

Here, Mr. Eid testified about the location of the six cameras both in and around the store; he also testified they were "working properly" on the night in question. Mr.

Eid testified he had reviewed the videos with Detective Elias, and Detective Elias testified he went to King's on 16 November, within three days of the shooting. Detective Elias also testified he had downloaded the videos from King's and that the videos had not been changed since then. As in *Snead*, the testimony established the cameras were "in working order" on 13 November and that Exhibit 10 was the same surveillance video initially watched by Mr. Eid and Detective Elias. See *Snead*, 368 N.C. at 814, 783 S.E.2d at 736 (noting that "[e]vidence that the recording process is reliable and that the video introduced at trial is the same video that was produced by the recording process is sufficient to authenticate the video").

Defendant seeks to interpret *Snead* as requiring the witness testifying to authenticate the video to have reviewed the video "immediately" after it was taken. However, *Snead* does not even use the word "immediately"; *Snead* merely quotes this word in the parenthetical of a different case:

"A detailed chain of custody need be established only when the evidence offered is not readily identifiable or is susceptible to alteration and there is reason to believe that it may have been altered." *Campbell*, 311 N.C. at 389, 317 S.E.2d at 392; *Kistle*, 59 N.C.App. at 726, 297 S.E.2d at 627 ("[T]he State need not establish a complete chain of custody [when a] witness who had inspected the film **immediately** after processing testified that the photographs introduced at trial were the same as those he had inspected **immediately** after processing."); accord *United States v. Van Sach*, No. 1:09CR03, 2009 WL 3232989, at \*3 (N.D.W.Va. Oct. 1, 2009) (unpublished order) ("Establishing a formal chain of custody of evidence is no longer required [to support a finding that evidence is authentic]. Rather, it is sufficient for the party offering the

[videotape] simply to satisfy the trial court that the item is what it purports to be and has not been altered.” (citation omitted)). “[A]ny weak links in a chain of custody relate only to the weight to be given evidence and not to its admissibility.” *Campbell*, 311 N.C. at 389, 317 S.E.2d at 392 (citations omitted).

*Id.* at 815, 783 S.E.2d at 737 (emphasis added) (alterations in original).

*Snead* did not focus on the exact timing of Mr. Steckler’s review of the video. *See id.* In *State v. Kistle*, 59 N.C. App. 724, 297 S.E.2d 626 (1982), the case cited in the parenthetical for *Snead*, the use of the word “immediately” was based on the unique facts of that case. In *Kistle*, the State presented evidence that the defendant left a roll of unprocessed film at the Coast Guard Exchange for development. *See id.* at 725, 297 S.E.2d at 627. After developing the film, the film processor discovered photographs of a nude child; the processor reported the photos, and the defendant was arrested. *See id.* This Court held the photographs were sufficiently authenticated and the State did not need to

establish a complete chain of custody. A witness who had inspected the film *immediately* after processing testified that the photographs introduced at trial were the same as those he had inspected *immediately* after processing. That testimony sufficiently established the authenticity of the exhibits in question when taken in conjunction with the testimony of another witness who stated that the undeveloped film had been brought to the Coast Guard Exchange by the defendant.

*Id.* at 726, 297 S.E.2d at 627 (emphasis added).

Thus, *Snead* does not stand for the proposition that Mr. Eid and Detective

Elias were required to view the video on 13 November, the day of the shooting, to be able to properly authenticate it. *See Snead*, 368 N.C. at 815, 783 S.E.2d at 737. Instead, *Snead* concluded that “[a] detailed chain of custody need be established only when the evidence offered is not readily identifiable or is susceptible to alteration and there is reason to believe that it may have been altered.” *Id.* (citation and quotation marks omitted). Here, the videos are readily identifiable, and there is no reason to believe they may have been altered. *See id.* We hold that because there was “[e]vidence that the recording process is reliable and that the video introduced at trial is the same video that was produced by the recording process,” *id.* at 814, 783 S.E.2d at 736, Exhibit 10 was properly authenticated. Thus, Defendant has failed to demonstrate error, let alone plain error, in the admission of Exhibit 10 and this argument is overruled.

### **B. Exhibits 11, 12, and 17**

Defendant argues that Exhibits 11, 12, and 17 were not properly authenticated because Detective Elias “never testified that Exhibits 11, 12, or 17 ‘fairly and accurately illustrated the events filmed,’ nor could he have, because [Detective] Elias was not a witness to the events.” Defendant further contends that Detective Elias “did not provide ‘proper testimony concerning the checking and operation of the video camera’ *and* the chain of evidence concerning the surveillance.” (Emphasis in original.)

Defendant objected to the admission of Exhibit 11 and Exhibit 12 on

“foundation” grounds; however, Defendant did not object to the admission of Exhibit 17. Exhibit 17 was a CD that included the contents of the video footage identified as Exhibits 11 and 12. At trial, Detective Elias explained:

Q. And, Detective Elias, I’ve got a CD I’ve marked State’s Exhibit Number 17. Have you had a chance to review that CD?

A. I did.

Q. And what does it contain?

A. The 5 videos.

Q. And which videos are they?

A. The same intersections of what we’re looking at.

Q. The ones we just went through?

A. Yes.

Q. And are they the same recordings?

A. Same recordings, everything.

Q. Haven’t been altered or changed in any way?

A. No, sir.

Q. What’s the only difference in this CD and the other ones?

A. It’s organized, it’s in chronological order.

Because Defendant did not object to the admission of Exhibit 17, we review this argument for plain error. *See State v. Washington*, 277 N.C. App. 576, 582, 859 S.E.2d 246, 252 (2021) (“It is well established that a criminal defendant loses the benefit of

an objection when the same or similar evidence is later admitted without objection.” (citation and quotation marks omitted)).

As to the reliability of the recording process, during Defendant’s trial, Detective Elias testified extensively about the city’s camera system; he noted there is a specific software, “Milestone,” that exports the video “so it cannot be tampered with.” Detective Elias further testified he found the camera system to be “[v]ery reliable” and, “I would say I have over hundreds of hours on the Milestone camera. I’m not going to say I’m an expert in it, but I’m very proficient in finding where all the cameras are at and I’m very fast at getting to them.” Detective Elias testified that he watched the 13 November surveillance videos from multiple cameras from 3:30 pm to late in the night and downloaded the videos onto five different CDs.

Additionally, the silver car’s movements on 13 November as seen in Exhibit 17 matched witness testimony regarding the car’s whereabouts. *See Jones*, 288 N.C. App. at 188, 884 S.E.2d at 794 (“In addition, the investigating officer testified the footage the homeowner sent matched what the homeowner described had happened. . . . While the homeowner did not testify to this directly, the fact that his description matched the footage provides further support for the reliability of the surveillance footage by showing it recorded accurately as checked by someone who had observed the events.”). Specifically, the surveillance on the car matched Defendant’s sister’s testimony about the timeframe Defendant was in possession of her car; Mr. Woolard’s testimony regarding the timing and details of the shooting; Mr. Eid’s testimony about

Defendant's actions in King's; and Mr. Ward's testimony about Defendant's whereabouts throughout that day. Although Defendant argues that Detective Elias did not provide proper testimony about the "chain of evidence concerning the surveillance,"

[a] detailed chain of custody need be established only when the evidence offered is not readily identifiable or is susceptible to alteration and there is reason to believe that it may have been altered. Rather, it is sufficient for the party offering the videotape simply to satisfy the trial court that the item is what it purports to be and has not been altered. *Any weak links in a chain of custody relate only to the weight to be given evidence and not to its admissibility.*

*Snead*, 368 N.C. at 815, 783 S.E.2d 737 (emphasis added). Because there was no reason to believe the videos were altered, a detailed chain of custody was not necessary. *See id.*

Even assuming the State did not properly authenticate Exhibit 17, Defendant has not shown "the error had a probable impact on the jury's finding that the defendant was guilty." *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334. Given all the other evidence establishing Defendant's guilt, including Exhibit 10 and the testimony of Mr. Ward, Mr. Eid, and Defendant's sister, Defendant has not demonstrated plain error. This argument is overruled.

### **III. Motion to Dismiss**

Defendant contends "[t]he trial court erred when it denied Defendant's motion to dismiss where the State failed to present evidence raising more than a suspicion



of guilt or conjecture that Defendant was the perpetrator of the shooting or acted with malice, premeditation, and deliberation.” As to the charge of first-degree murder and attempted first-degree murder, Defendant contends that the State presented insufficient evidence that Defendant acted with malice, premeditation, and deliberation. As to the charge of first-degree murder under the felony murder rule, Defendant argues that “the State failed to produce evidence amounting to more than suspicion of guilt or conjecture that Defendant was the person who willfully or wantonly discharged or attempted to discharge a firearm into the blue Maxima.”

Our standard of review on a motion to dismiss for insufficiency of the evidence

is whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense.

Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. In ruling on a motion to dismiss, the trial court must examine the evidence in the light most favorable to the State, and the State is entitled to every reasonable inference and intendment that can be drawn therefrom.

*State v. Clagon*, 207 N.C. App. 346, 350, 700 S.E.2d 89, 92 (2010) (citations and quotation marks omitted). “If there is substantial evidence of each element of the offense charged, or any lesser included offenses, the trial court must deny the motion to dismiss as to those charges supported by substantial evidence and submit them to the jury for its consideration” because “the weight and credibility of such evidence is a question reserved for the jury.” *State v. McAvoy*, 331 N.C. 583, 589, 417 S.E.2d 489,

493-94 (1992).

**B. Malice, Premeditation, and Deliberation**

Defendant contends the “State’s evidence of malice, premeditation, and deliberation failed to rise above the level of suspicion or conjecture[.]” We disagree.

First-degree murder (non-felony murder) and attempted first-degree murder require a defendant act with premeditation and deliberation. *See State v. Cozart*, 131 N.C. App. 199, 202-03, 505 S.E.2d 906, 909 (1998) (defining first-degree murder as “the unlawful killing of a human being with malice and with a specific intent to kill, committed after premeditation and deliberation” and attempted first-degree murder as when a person “specifically intends to kill another person unlawfully; he does an overt act calculated to carry out that intent, going beyond mere preparation; he acts with malice, premeditation, and deliberation; and he falls short of committing the murder” (citations omitted)).

Premeditation means that the defendant formed the specific intent to kill the victim some period of time, however short, before the actual killing. Deliberation means an intent to kill executed by the defendant in a cool state of blood, in furtherance of a fixed design for revenge or to accomplish an unlawful purpose and not under the influence of a violent passion, suddenly aroused by lawful or just cause or legal provocation.

*State v. Clark*, 231 N.C. App. 421, 423, 752 S.E.2d 709, 711 (2013) (citation and quotation marks omitted).

It is “recognized that it is difficult to prove premeditation and deliberation and

that these factors are usually proven by circumstantial evidence because they are mental processes that are not readily susceptible to proof by direct evidence.” *State v. Sierra*, 335 N.C. 753, 758, 440 S.E.2d 791, 794 (1994) (citation omitted). Our Supreme Court

has identified several examples of circumstantial evidence, any one of which may support a finding of the existence of these elusive qualities:

(1) absence of provocation on the part of the deceased, (2) the statements and conduct of the defendant before and after the killing, (3) threats and declarations of the defendant before and during the occurrence giving rise to the death of the deceased, (4) ill will or previous difficulties between the parties, (5) the dealing of lethal blows after the deceased has been felled and rendered helpless, (6) evidence that the killing was done in a brutal manner, and (7) the nature and number of the victim’s wounds.

*State v. Childress*, 367 N.C. 693, 695, 766 S.E.2d 328, 330 (2014) (citations omitted).

Defendant contends that “[t]he only evidence informing factors relating to malice, premeditation, and deliberation were [Mr.] Ward’s self-serving statements, which pointed to ‘ill-will or previous difficulty between’ a person named ‘TI’ and a second person named ‘DD.’” In addition to Mr. Ward’s testimony, the State presented testimonial and video surveillance evidence from which a rational juror could infer Defendant acted with premeditation and deliberation. The evidence at trial shows the absence of provocation by Ms. Pope. *See id.* There was no evidence that Ms. Pope had ever met Defendant, let alone had any sort of dispute with him; indeed,

Defendant acknowledged as much when Mr. Ward overheard him describe Ms. Pope as “an innocent girl.”

Defendant’s actions before the shooting also support a finding of premeditation and deliberation. *See id.* The State’s evidence tended to show that after seeing D, a man he had gotten into a fight with the previous night, Defendant picked up his friend and, armed with a 9-millimeter gun, returned to the house where he had seen D. *See State v. Taylor*, 362 N.C. 514, 531, 669 S.E.2d 239, 256 (2008) (noting that entering the site of the murder with a weapon constitutes evidence of premeditation and deliberation). As noted by Defendant, this evidence also shows “ill will or previous difficulties between” Defendant and D, who was the intended victim. *See Childress*, 367 N.C. at 695, 766 S.E.2d at 330. Defendant’s actions of rinsing his hands to remove gunshot residue after the shooting is consistent with covering up a crime, which also supports a finding of premeditation and deliberation. *See id.* Immediately after the shooting, Defendant went to a gas station, where he cleaned his hands with rubbing alcohol. Additionally, months after the shooting, Defendant told another inmate he thought he shot “an innocent girl” but then said “f\*\*\* the girl, she should not have been in there, in the way.” Thus, the State presented evidence of various circumstances noted by the Supreme Court from which the jury could infer premeditation and deliberation. *See id.*

Defendant categorizes Mr. Ward’s testimony “about a discussion a person named TI had with an unidentified inmate” as “self serving.” Mr. Ward did not know

Defendant's real name; however, Mr. Ward testified that he knew Defendant's nickname and identified him in the courtroom as the inmate who was speaking about the shooting. And even if Mr. Ward's testimony was self-serving, "the weight and credibility of such evidence is a question reserved for the jury." *McAvoy*, 331 N.C. at 589, 417 S.E.2d at 493-94; *see also State v. Robinson*, 355 N.C. 320, 336, 561 S.E.2d 245, 256 (2002) ("The trial court does not weigh the evidence, consider evidence unfavorable to the State, or determine any witness' credibility." (citation and quotation marks omitted)). Moreover, Mr. Ward's testimony regarding Defendant's statements was quite consistent with other evidence presented by the State including the type of gun involved in the shooting; the "innocent girl" victim who "should not have been in the way[;]" after seeing D, Defendant picking up "his homeboy, Travis[;]" before driving to Mr. Woolard's house; Defendant driving his sister's car; and Defendant's actions at King's after the shooting. Taken in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor, *see Clagon*, 207 N.C. App. at 350, 700 S.E.2d at 92, we conclude that the evidence of premeditation and deliberation presented at trial was more than sufficient to support the trial court's denial of Defendant's motion to dismiss.

### **C. Defendant as Perpetrator**

Defendant also argues that the State did not present sufficient evidence that he was the perpetrator of the crime of discharging a firearm into an occupied vehicle,

the underlying felony for the felony murder conviction. We disagree. The State's evidence tended to show that Defendant's sister's car was identified in the surveillance video; Defendant's sister informed law enforcement Defendant was driving her car at the relevant time and thereafter testified as such; surveillance footage shows the silver car turning on the street where the shooting occurred before the shooting; and after the shooting, the car was parked in Defendant's parents' driveway. Additionally, after the shooting, Defendant was shown in the King's video surveillance; Defendant tried to clean his hands right after the shooting took place; Defendant told a cellmate he had a fight with D at a party, went to find D, and shot at him twelve to thirteen times but he thought he had hit an innocent girl; and Defendant told the cellmate after the shooting he had gone to a store to try to clean the gunpowder residue off his hands. Considering all this evidence in the light most favorable to the State, this evidence "is relevant evidence that a reasonable mind might accept as adequate to support a conclusion[.]" *Clagon*, 207 N.C. App. at 350, 700 S.E.2d at 92, that Defendant was the perpetrator of the offense charged. As a result, the trial court did not err in denying Defendant's motion to dismiss.

#### **IV. Identification of Defendant from Video Surveillance**

Finally, Defendant argues he "suffered prejudice warranting a new trial" when the trial court "abused its discretion by allowing Yasser Eid and Detective Elias to identify Defendant as the person depicted on video surveillance." Alternatively, Defendant argues "the trial court's admission of lay opinion testimony identifying

Defendant as the person depicted on video surveillance amounted to plain error.”

While watching Exhibit 10, the State asked Mr. Eid if he saw Defendant; Mr. Eid testified “yes” and identified him as the person in the “[g]rey [s]weater.” Throughout his testimony, Mr. Eid referred to the person in the grey sweater in the video as Defendant and defense counsel did not object. As a result, we review Mr. Eid’s opinion testimony identifying Defendant in Exhibit 10 for plain error. *See* N.C. R. App. P. 10(a)(4). Similarly, Detective Elias identified Defendant in the surveillance videos entered into evidence as Exhibits 11, 12, and 17. As mentioned above, since Defendant did not object to Exhibit 17—which included the contents of the video footage identified as Exhibits 11 and 12—we are also limited to plain error review as to Detective Elias’s opinion testimony. *See Washington*, 277 N.C. App. at 582, 859 S.E.2d at 252.

Defendant specifically contends that “[t]here was no foundation for [Mr.] Eid’s or [Detective] Elias’s testimony identifying Defendant on footage” and, “[e]ven if a sufficient foundation had been laid, there was no reason to allow [Mr.] Eid and [Detective] Elias to identify Defendant as the person depicted in surveillance, because the jury could view it and make up its own mind.” Regarding lay opinion testimony, Rule 701 of the North Carolina Rules of Evidence provides that

[i]f the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a

fact in issue.

N.C. Gen. Stat. § 8C-1, Rule 701 (2023).

Here, assuming *arguendo* that the trial court erred in allowing Detective Elias and Mr. Eid to identify Defendant in the surveillance videos, Defendant has failed to demonstrate this would rise to the level of plain error. The evidence shows Defendant's sister's car was identified as the silver vehicle in the surveillance videos; the silver car's movements on 13 November, as captured on the surveillance videos, correlate with the testimonies of Defendant's sister, Mr. Woolard, and Mr. Eid; and Mr. Ward testified Defendant had said that he got in a fight with D, sought him out, shot at him, hit an innocent girl, went to a store to clean gunpowder residue off his hands, and buried the 9 millimeter gun. We cannot say that without Mr. Eid's and Detective Elias's identifications of Defendant on the surveillance videos, "after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty." *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334. This argument is overruled.

## **V. Conclusion**

We conclude the trial court did not commit plain error by admitting the video surveillance and the testimony identifying Defendant as the person shown in the videos. Additionally, we conclude the trial court did not err in denying Defendant's motion to dismiss because there was substantial evidence of each essential element of the offense charged and of Defendant being the perpetrator of the offense.



STATE V. KNIGHT

*Opinion of the Court*

NO ERROR and NO PLAIN ERROR.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).