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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-421

Filed 19 March 2025

Guilford County, No. 20 CRS 88477

STATE OF NORTH CAROLINA

v.

AUSTIN ALVY JACKSON

Appeal by Defendant from judgment entered 27 April 2023 by Judge V. Bradford Long in Guilford County Superior Court. Heard in the Court of Appeals 11 February 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Teresa M. Postell, for the State.

Thomas, Ferguson & Beskind, LLP, by Kellie Mannette, for the Defendant.

WOOD, Judge.

Austin Alvy Jackson (“Defendant”) appeals from a jury verdict finding him guilty of first-degree murder and robbery with a dangerous weapon. On appeal, Defendant raises several arguments, arguing the trial court erred by admitting certain evidence; failing to intervene *ex mero motu* during the State’s closing argument; and allowing the jury to review exhibits in the jury room. For the reasons

stated below, we hold Defendant received a fair trial free from prejudicial error.

I. Factual and Procedural Background

On 14 November 2019, twenty-five-year-old Desirae Aimee Hall (“Desirae”) was found deceased in her Toyota Camry, with gunshot wounds to her back and head. The day prior, on 13 November 2019, Desirae was scheduled to work the 7:00 p.m. to 7:00 a.m. shift at Pactiv Evergreen, a plastics manufacturing company in Greensboro, North Carolina. Her boyfriend, Scottie Bratcher (“Scottie”), also worked at Pactiv Evergreen and was scheduled for the same shift that night. At that time, Desirae and Scottie had been dating seven to eight months and shared a vehicle, so they frequently rode to work together.

Desirae picked Scottie up prior to their shift and they went to Texas Roadhouse for dinner. After dinner, she dropped Scottie off at work and told him that she was not going into work that night because she “was going to do something else.” At 6:55 p.m., Defendant texted Desirae asking where she was, and at 6:59 p.m., Desirae attempted to call Defendant. Between 7:02 p.m. and 7:50 p.m., Defendant called Desirae three times. At 8:03 p.m., Desirae drove to Chick-fil-A alone. Defendant tried to reach her while she was there. At 8:05 p.m., she texted Defendant, “Im pullin n. My ma tlkin 2 me.” Defendant called Desirae again at 8:10 p.m. and 8:52 p.m.

At 9:41 p.m., Desirae called her cousin Jessica Levette and asked if she could borrow some money. Jessica agreed and asked why she was not at work. Desirae stated that “she had to take her friend, Cali, to get a coat for his daughter.”

Defendant's name and number were saved in Desirae's phone under his nickname "Cali" and others knew him by this nickname. Desirae told Jessica that she was on the way. She then called Defendant three times: once at 9:42 p.m. and twice at 9:43 p.m.

At 9:49 p.m., Jessica called Desirae and asked where she was. During the call, Jessica heard a male voice in the background. Desirae "giggled," said she was coming, and told Jessica to leave the money outside under the mat. She placed the money under the mat, but Desirae never picked it up.

At 10:02 p.m., Desirae called an unknown individual twice. The first call lasted four seconds and the second call lasted five seconds. There were no other communications between Desirae and this individual prior to that day. However, the phone number associated with Defendant had communications with that individual earlier that day, between 3:11 a.m. and 3:41 a.m. on 13 November 2019. Specifically, four outgoing calls, thirteen outgoing text messages, and three incoming text messages.

At 10:04 p.m., Scottie called Desirae during his break and spoke with her for approximately three minutes. Between 10:02 p.m. to 10:18 p.m. Desirae's phone was in the area of Hampton Park. From 10:19 p.m. to 10:29 p.m., Desirae's phone moved southwest, away from Hampton Park, traveling along Business I-85. After 10:30 p.m., her phone's location indicated it was no longer moving. Law enforcement later found Desirae's phone off Business I-85. At 10:33 p.m. Defendant's phone was located

just southeast of where Desirae's phone stopped moving, and at 10:35 p.m., his phone was located southwest from there. Meaning, "it would be consistent with if [Defendant's] phone was continuing to travel in that . . . southwest direction . . . if these phones would have been located together traveling down Business 85."

Scottie tried to call Desirae shortly after his break at midnight. At 4:19 a.m., Defendant texted Desirae, saying his child was not feeling well and he was at the hospital.

Around 10:00 a.m. on 14 November 2019, Officer Fowler with the Greensboro Police Department was dispatched to Hampton Park after an individual called 911 about a suspicious vehicle. He approached Desirae's vehicle and saw her in the driver's seat, with her head turned to the right, and blood coming from her nose. He observed a white Chick-fil-A cup on the ground outside of the front, passenger side door. Officer Fowler knocked on the windows and yelled, trying to communicate with Desirae. After no response, he opened the driver's side door and found Desirae sitting in the driver's seat facing the passenger side, her right leg was bent, so that her right foot was underneath her left knee, and her arm was resting on her left leg. Officer Fowler quickly discovered that Desirae was deceased.

Upon examination, Desirae sustained five gunshot wounds, including four gunshot wounds in her head and one in her torso. Specifically, one on the right side of her head; on her right ear; on the back of her neck, behind her right ear; on her jawline; and her upper left back. The location of where the bullets were recovered

indicated that the range of fire was “a few inches to a few feet.” When she was shot in the jaw, it appeared, “in all likelihood,” that the gun was closer than a few inches.

Law enforcement observed that no projectiles or shell casings were found inside the vehicle or at the scene. Furthermore, there were no defects or holes on the exterior of the vehicle or its windows that would suggest gunfire originated from outside. Similarly, no evidence, such as holes, was found on the back panel of the driver’s seat, indicating that a bullet had passed through the back seat. After analyzing the bullet fragments, it was further determined that all of the bullets were fired from the same firearm, specifically, a .32 caliber Smith and Wesson Long revolver.

Desirae’s phone records revealed that on 7 September 2019, Defendant texted Desirae and told her he got a “.32 Caliber for a revolver.” He asked Desirae to purchase ammunition for the firearm, specifically “.32 Smith and Wesson Longs.” Desirae texted back that the store was out of them.

On 24 September 2020, law enforcement officers executed a search warrant to obtain a DNA sample from Defendant. Initially, Defendant “clenched his lips and his jaw and . . . refused to open his mouth.” Each time the officer approached him, Defendant would close his mouth. Eventually, the officers were able to swab the inside of his mouth and complete the sample.

The Chick-fil-A cup recovered by Officer Fowler, located outside the front passenger side door, was submitted for DNA testing. The DNA results yielded two

contributors, Desirae and Defendant. Desirae's DNA accounted for eighty-six percent of the sample and Defendant's DNA accounted for thirteen percent. It was theorized that the DNA found on the cup was at least "55.6 septillion times more likely" to have originated from Defendant, as opposed to a second, unknown individual.

Additionally, Desirae's phone was tested for DNA evidence after it was recovered by Officer Snyder from the side of the road off Business I-85. However, neither DNA nor fingerprints were recovered from it. Officer Snyder posited that her phone likely had been stolen and discarded since it was not located on her person or at the crime scene.

On 15 February 2021, Defendant was indicted for first-degree murder and robbery with a dangerous weapon. He was tried in Guildford County Superior Court, and his jury trial lasted from 17 April 2023 to 27 April 2023. Prior to trial, on 14 April 2023, defense counsel received evidence from the State as part of discovery that was intended to be introduced at trial. The evidence consisted of two of Defendant's rap music videos that were posted publicly, under the name "Cali Castro," on Youtube. On 17 April 2023, defense counsel filed a motion in limine to prohibit the State from introducing this evidence. On 25 April 2023, the trial court conducted a hearing to determine its admissibility.

The evidence tended to show that Defendant had posted the first music video entitled "Angry Amy," four days before Desirae's body was found. The second video titled "I think I'm ODB [Ol' Dirty Bastard]" posted ten months prior to Desirae's

death. The trial court ruled that portions of each video were inadmissible under Rule 403 because it painted Defendant as a “thug” and carried the risk of inflaming the jury. However, the trial court found that specific statements and lyrics may be admissible and relevant, as well as a few screenshots from the videos. The trial court stated it would allow, “the State to remove as much prejudicial content as possible and pare the videos down to the few statements that the [trial] [c]ourt has highlighted that may be relevant and may be introduced in this case.”

Following the evidentiary hearing, the State gathered the relevant evidence pursuant to the trial court’s instructions. The trial court allowed the following evidence to be admitted from the first music video, “Angry Amy,”: an audio-only clip, containing the lyrics “This can’t be God’s plan, bro, there’s got to be a better way. Set him up on Monday, he’ll be dead by Saturday[;]” a screenshot of the video posted on Youtube, with the title “Cali Castro ANGRY AMY shot by Drop[;]” and a screenshot from the video of Defendant holding a revolver, pointed at the camera. At trial, Desirae’s cousin, Jessica, testified that people who were close to Desirae called her “Desirae Aimee” or “Aimee.”

The trial court admitted audio-only of the following lyrics taken from the second video, “I think I’m ODB,”:

“I can’t trust nobody. If rapping don’t work, Im gonna rob somebody.”

“If the police ask me about a murder, I tell them I don’t know what happened.”

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“Wipe that boy nose, I shot that boy in the face.”

“If you aint gonna slide that pistol, then why the f*** do you got it for?”

“I can’t trust nobody. If rapping don’t work, Im gonna rob somebody.”

A screenshot of the opening scene of the music video, showing what appears to be a logo of a gorilla with a crown on its head was admitted. Lastly, two screenshots of Defendant performing in the music video were admitted into evidence: one of Defendant shirtless with visible tattoos on his chest, and one of Defendant clothed singing to the camera.

At trial, Cierra Clark, who was a friend of Desirae and saw her “almost every day,” testified. Clark testified about her observations of Defendant and Desirae’s relationship, characterizing it as “friends with benefits.” She stated that Defendant normally sat in the passenger seat of Desirae’s vehicle, while Desirae would run errands, go to the park, pick up her kids from school, and do things of that nature. Defendant would carry a pistol “whenever he would be a passenger.” Additionally, Desirae would take Defendant to Hampton Park, where Defendant would play basketball. Clark stated that Desirae “almost never” went to Hampton Park unless she was taking Defendant there, as she normally went to a different park with Cierra and the kids.

Ultimately, on 27 April 2023, the jury found Defendant guilty of first-degree murder under the theories of both malice, premeditation and deliberation and the

felony murder rule. The jury also found Defendant guilty of robbery with a dangerous weapon. The same day, the trial court sentenced Defendant to life imprisonment without the possibility of parole for the first-degree murder conviction and arrested judgment on the robbery with a dangerous weapon conviction. Defendant gave oral notice of appeal at sentencing and entered written notice of appeal on 5 May 2023.

II. Analysis

On appeal, Defendant raises three issues: (1) the trial court erred by admitting Defendant's rap lyrics, when the lyrics had no connection to his case and were highly prejudicial; (2) the trial court erred by not intervening *ex mero motu* during the State's closing argument, when the State made a grossly improper statement; and (3) the trial court violated N.C. Gen. Stat. § 15A-1233 by allowing the jury to have and review exhibits in the jury room, over objection of defense counsel, which were the subject of contested expert testimony. We address each argument in turn.

A. Admissibility of Rap Lyrics

Defendant first argues the admitted lyrics from "Angry Amy" and "I think I'm ODB," as well as the associated screenshots taken from the videos on Youtube, were not relevant. Furthermore, Defendant argues even if this evidence were relevant, the probative value of this evidence was substantially outweighed by its prejudicial effect. Consequently, Defendant asserts it is likely the jury would have reached a different verdict but for the admission of this evidence.

The trial court admitted this evidence pursuant to North Carolina Rule of

Evidence 401, and found its probative value substantially outweighed the danger of unfair prejudice pursuant to North Carolina Rule of Evidence 403. N.C. Gen. Stat. § 8C-1, Rules 401, 403. Under Rule 401, relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” N.C. Gen. Stat. § 8C-1, 401. Generally, all relevant evidence is admissible at trial, and evidence which is not relevant is not admissible. N.C. Gen. Stat. § 8C-1, 402. Irrelevant evidence is evidence “having no tendency to prove a fact at issue in the case.” *State v. Davis*, 287 N.C. App. 456, 464, 883 S.E.2d 98, 105 (2023) (citation omitted). This Court reviews relevancy determinations *de novo*, and while “rulings on relevancy are technically not discretionary, [] we accord them great deference on appeal.” *State v. Triplett*, 368 N.C. 172, 175, 775 S.E.2d 805, 807 (2015) (citation omitted).

Under Rule of Evidence 403, relevant evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” *State v. Jones*, 288 N.C. App. 175, 185, 884 S.E.2d 782, 792 (2023) (citation omitted). “Unfair prejudice” is defined as “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, as an emotional one.” *Id.* (citation omitted). “All evidence favorable to the State will be, by definition, prejudicial to defendants. The test under

Rule 403 is whether that prejudice to defendants is unfair.” *State v. Summers*, 177 N.C. App. 691, 697, 629 S.E.2d 902, 907 (2006) (cleaned up).

“We review a trial court’s decision to exclude evidence under Rule 403 for abuse of discretion.” *State v. Whaley*, 362 N.C. 156, 160, 655 S.E.2d 388, 390 (2008) (citations omitted). An abuse of discretion occurs when “the [trial] court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *Id.* (citation omitted). Rulings on Rule 403 evidence is “a matter left to the sound discretion of the trial court.” *State v. Martin*, 191 N.C. App. 462, 466, 665 S.E.2d 471, 474 (2008) (citation omitted).

Therefore, we first review whether the challenged evidence met the threshold of relevancy under Rule 401. We note, under this Rule, “[t]he burden is on the party who asserts that evidence was improperly admitted to show both error and that he was prejudiced by its admission.” *State v. Richardson*, 385 N.C. 101, 147, 891 S.E.2d 132, 172 (2023) (citation omitted). Even if the evidence was improperly admitted, the evidence “will be treated as harmless unless prejudice is shown such that a different result likely would have ensued had the evidence been excluded.” *Id.* (citation omitted). If Defendant is able to establish that the evidence was inadmissible and that he was prejudiced as a result, then, under Rule 403, we must determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.

In making its ruling, the trial court cited *State v. Ford*, in which the defendant

argued the admission of a rap song recording was irrelevant and prejudicial. *State v. Ford*, 245 N.C. App. 510, 515, 782 S.E.2d 98, 102-03 (2016). There, the defendant's dog named "DMX" killed the victim. The night before the defendant's trial, a detective found a webpage on "www.myspace.com" with postings by a user named "Flexugod/7." On the webpage, the detective found photos of the defendant and videos of DMX, including a video titled "DMX the Killer Pit." The caption beneath the video read, " 'After a Short Fight, he killed that mut' [sic]; [and] the description read, 'Undefeated.' " *Id.* at 513, 782 S.E.2d at 101. Additionally, the defendant posted a song about the incident and the lyrics denied that DMX caused the victim's death.

At trial, screenshots of the video were admitted into evidence, shown to the jury, and the song posted by the defendant played for the jury. The jury found the defendant guilty of involuntary manslaughter, and he appealed. On appeal, the defendant argued that the song, which contained "profanity and racial epithets, served to offend and inflame the jury's passions and allowed them to 'disregard holes in the State's case.'" *Id.* at 516, 782 S.E.2d at 103. This Court first noted that the lyrics of the song supported the defendant's defense, that the victim's death was not caused by his dog DMX. This Court then held that while the song may have inflamed the passions of the jury, the song was both relevant and probative, which outweighed any prejudicial effect. Moreover, the defendant was unable to establish prejudicial error, as the remaining evidence was overwhelming, including evidence of: previous attacks by DMX, the condition of the victim, DNA from DMX around punctures on

the victims clothing, the cause of death was dog bites, and the victim's blood was found on DMX's fur. Thus, in *Ford*, this Court concluded there was no reasonable possibility that, even if the song had not been admitted, a different result would have been reached at trial. *Id.* at 517, 782 S.E.2d at 104.

Similarly, in *State v. Hayes*, the defendant, who was convicted of first-degree murder, challenged the trial court's admission of song lyrics. During the investigation, law enforcement officers found lyrics to a song titled "Man Killer[.]" which "concerned the first-person killing of a woman by making her bleed and by strangulation." *State v. Hayes*, 239 N.C. App. 539, 542, 768 S.E.2d 636, 640 (2015). At trial, the detective read the lyrics of the song directly to the jury. Overall, the evidence showed that the victim had been stabbed, and the defendant told an individual that he strangled the victim. On appeal, the defendant argued that the admission of the song lyrics was irrelevant and prejudicial. This Court held, "[i]n light of the similarities between the lyrics and the facts surrounding the charged offense, the lyrics were relevant to establish identity, motive, and intent, and their probative value substantially outweighed their prejudicial effect to defendant." *Id.* at 556, 768 S.E.2d at 647.

This Court's holdings in *Ford* and *Hayes* are persuasive and analogous to the present case. As to the song "Angry Amy," the trial court allowed one, audio-only, lyric to be played for the jury and two screenshots from the video to be shown to the jury. The song was relevant, as it was posted days before Desirae's death and

discussed an individual ending up dead within a few days following a set-up. Further, testimony was presented that Desirae's nickname was "Desirae Aimee." Likewise, the screenshots from the videos were relevant. The first screenshot showed the title of the song, and the second screenshot depicted Defendant holding a revolver pointed at the camera. The evidence presented at trial tended to show that Desirae was shot with a .32 caliber revolver.

From the second video, "I think I'm ODB," five lyrics, audio-only, were admitted, as well as three screenshots from the video. The lyrics stated that Defendant was going to "rob somebody" if rapping did not work; that he would tell the police he had no knowledge of a murder, if asked; that he "shot that boy in the face;" and discussed using a pistol. The music video screenshots depicted what appeared to be a logo, Defendant rapping to the camera, and Defendant shirtless with tattoos on his chest. The song discussed murder and robbery similar to the crimes for which Defendant was on trial. Similarly, the song discussed firearms and using a firearm to shoot an individual in the face. Here, Desirae sustained multiple gunshot wounds to her head.

Thus, considering the similarities between the lyrics in "Angry Amy" and "I think I'm ODB" and the facts surrounding Defendant's conviction, we hold that the evidence was relevant under Rule 401. Further, the probative value of the lyrics and screenshots substantially outweighed the prejudicial effect to Defendant.

Presuming *arguendo* that the evidence was improperly admitted, Defendant is

unable to show prejudice. As in *Ford*, there is no reasonable possibility that, even if the lyrics had not been admitted, a different result would have been reached. At trial, the evidence established that Desirae and Defendant planned to hang out that night to get a coat for Defendant's daughter. Desirae's cousin heard a male voice in the background while on the phone with her while Desirae was on the way to get money from her cousin's house. Desirae was killed in her vehicle in Hampton Park, an area she only visited when she would drop Defendant off there. Defendant and Desirae's phones were tracked in the same areas, as well as where Desirae's phone was recovered on Business I-85. Defendant previously asked Desirae to purchase ammunition for a revolver that was of the same type by which she was killed. Defendant's DNA was found on the Chick-fil-A cup that Desirae bought that night, located on the ground outside the passenger side of her vehicle where she was murdered. Lastly, Defendant resisted DNA testing by law enforcement officers. Considering such overwhelming evidence, Defendant cannot demonstrate prejudice. Consequently, we hold there is no reasonable possibility that a different result would have been reached at trial absent the challenged evidence.

B. Closing Arguments

Next, Defendant argues the trial court committed reversible error when it failed to intervene *ex mero motu* during the State's closing argument. "The standard of review for assessing alleged improper closing arguments that fail to provoke timely objection from opposing counsel is whether the remarks were so grossly improper that

the trial court committed reversible error by failing to intervene *ex mero motu*.” *State v. Degraffenried*, 262 N.C. App. 308, 310, 821 S.E.2d 887, 888 (2018) (citation omitted). “In other words, the reviewing court must determine whether the argument in question strayed far enough from the parameters of propriety that the trial court, in order to protect the rights of the parties and the sanctity of the proceedings, should have intervened on its own accord.” *State v. Huey*, 370 N.C. 174, 179, 804 S.E.2d 464, 469 (2017) (citations omitted).

“Only an extreme impropriety” on behalf of the State “will compel this Court to hold that the trial judge abused his discretion in not recognizing and correcting *ex mero motu* an argument that defense counsel apparently did not believe was prejudicial when originally spoken.” *State v. Waring*, 364 N.C. 443, 499, 701 S.E.2d 615, 650 (2010) (citation omitted). “To establish such an abuse, defendant must show that the prosecutor’s comments so infected the trial with unfairness that they rendered the conviction fundamentally unfair.” *Id.*, at 499-500, 701 S.E.2d at 650 (citation omitted). Our Supreme Court has held this standard requires a two-step analysis: “(1) whether the argument was improper; and, if so, (2) whether the argument was so grossly improper as to impede the defendant’s right to a fair trial.” *Huey*, 370 N.C. at 179, 804 S.E.2d at 469.

In this case, Defendant argues the following was grossly improper:

Then we have his other song, “I think I’m ODB.” This video was posted after Desirae was found murdered. “If rapping don’t work, Ima rob somebody. (sic) If the police

ask me about a murder, I'd tell them I don't know what happened."

Mr. Carpenter asked, oh, well, could Detective Snyder ask him what -- what his side of it was. Why didn't he ask him? Why didn't he ask him? He asked him twice. He gave him two opportunities. Ladies and gentlemen, it's never too late to clear your name or give your side, whether it's two days after, ten months, or 13 months. It's never too late.

Law enforcement officers attempted to interview Defendant in September and December 2020, just after he was arrested for the present matter. Defendant declined, as is his constitutional right, to answer questions in both instances. He argues the State tied one of Defendant's rap lyrics to his post-arrest silence in an effort to make his invocation appear to be an admission of guilt. Further, Defendant argues the State improperly commented on Defendant's right to remain silent, in violation of his Fifth Amendment rights.

Even presuming the State's closing argument was improper, we cannot hold that it was an "extreme impropriety" that "so infected the trial with unfairness that [it] rendered [Defendant's] conviction fundamentally unfair." *Waring*, 364 N.C. at 499-500, 701 S.E.2d at 650. As discussed *supra*, evidence of Defendant's guilt was overwhelming, and it is unlikely that the State's closing argument rendered his guilty verdict unfair. Further, the State restated a lyric from "I think I'm ODB" which the jury previously heard. Likewise, the jury previously heard testimony concerning law enforcement attempts to interview Defendant. Detective Snyder testified that he first

saw Defendant in September 2020, and that in December 2020 he attempted to interview him. During Detective Snyder’s cross-examination, he stated, “there were two separate attempts to interview . . . Defendant” and those times were in “September of 2020 and then December of 2020.” Thus, the State’s closing argument referenced information that the jury previously had heard.

For these reasons, the trial court did not abuse its discretion by not intervening *ex mero motu* during the State’s closing argument. Defendant is unable to show that the State’s argument infected his trial to a degree that rendered it unfair, and as a result rendered his conviction unfair.

C. Exhibits in Jury Room

Lastly, Defendant argues the trial court erred by allowing the jury to review over his objections Exhibits 404, 315, and 316 in the jury room during deliberations. Defendant asserts doing so was prejudicial, and but for the trial court doing so, a reasonable possibility exists that the jury would have reached a different outcome.

N.C. Gen. Stat. § 15A-1233(b) states, “[u]pon request by the jury and with consent of all parties, the judge may in his discretion permit the jury to take to the jury room exhibits and writings which have been received in evidence.” “This Court has held that permitting juries to take evidence to the jury room without the consent of the parties constitutes error.” *State v. Mumma*, 372 N.C. 226, 233, 827 S.E.2d 288, 293 (2019) (citations omitted). However, if the jury is permitted to review evidence in the jury room over an objection or without consent, a defendant must show that he

was prejudiced as a result. Meaning, “we examine whether ‘there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached[.]’ ” *Id.* at 233-34, 827 S.E.2d at 293 (citation omitted).

Here, the trial court erred when it allowed the jurors to take the evidence into the jury room during deliberations over his objection and Defendant must establish prejudice as a result. *See Mumma*, at 233-34, 827 S.E.2d at 293 (“In evaluating whether defendant was prejudiced by the trial court's erroneous decision to allow . . . evidence in the jury room without his consent . . . the burden of showing such prejudice under this subsection [is] placed upon the defendant.”) (cleaned up).

Defendant asserts no argument that he was prejudiced by Exhibits 315 and 316. *See* N.C. R. App. P. Rule 28(a) (“Issues not presented and discussed in a party’s brief are deemed abandoned.”). Defendant does argue that he was prejudiced by Exhibit 404, the “CAST Report.” The Report summarized Desirae and Defendant’s phone records, including the location information presented at trial. It showed the proximity of the phones to one another, as well as the location where Desirae’s phone was discarded. Defendant argues he was prejudiced by Exhibit 404 going back to the jury room because a substantial portion of the State’s case relied on this report and Defendant’s expert witness testimony called into question the accuracy of this report.

In *Cannon*, our Supreme Court contemplated whether it was prejudicial for the trial court to allow the jury to review, without consent of the defendant, the statement of the defendant’s confession. *State v. Cannon*, 341 N.C. 79, 85-86, 459

S.E.2d 238, 242 (1995). The Court recognized that the statement previously had been read in its entirety to the jury by a State's witness and the overall evidence against the defendant was substantial. Accordingly, the Court in *Cannon* held that the defendant was unable to establish prejudice, as there was not a reasonable possibility that if the confession had not been given to the jury, the outcome of the trial would have been different. *Id.* at 86, 259 S.E.2d at 243.

As in *Cannon*, Exhibit 404 was introduced into evidence at trial and was the subject of a large portion of the testimony. The State's witness provided detailed testimony about the CAST report and the location of Desirae's and Defendant's phones. Similarly, the evidence against Defendant was substantial and he cannot breach the threshold of prejudice by demonstrating that the outcome at trial would have been different absent the trial court's decision.

III. Conclusion

For the foregoing reasons, we hold that the trial court did not err when it admitted into evidence portions of Defendant's rap lyrics, as the evidence was relevant under Rule 401, and the probative value of the evidence substantially outweighed the prejudicial effect to Defendant under Rule 403. The trial court did not commit reversible error by failing to intervene *ex mero motu* during the State's closing argument. The trial court did not commit prejudicial error by allowing the jury to review Exhibits 315, 316, and 404 in the jury room over Defendant's objection. Accordingly, we conclude Defendant received a fair trial, free from prejudicial error.

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NO PREJUDICIAL ERROR.

Judges GORE and STADING concur.

Report per Rule 30(e).