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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-492

Filed 2 April 2025

Durham County, Nos. 20CRS1532, 20CRS1537, 20CRS54994, 20CRS49945

STATE OF NORTH CAROLINA

v.

LARRY JOSEPH HARWELL, and TAYLOR JONES, Defendants.

Appeal by defendants from judgment entered 1 March 2023 by Judge Josephine K. Davis of Durham County Superior Court. Heard in the Court of Appeals 27 February 2025.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Nicholas G. Vlahos, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Aaron Thomas Johnson, for defendant-appellants.

FLOOD, Judge.

Defendants Larry Joseph Harwell and Taylor Marquez Jones appeal from the trial court's judgment finding each Defendant guilty of second degree murder. On appeal, Defendants each argue the trial court reversibly erred by failing to instruct the jury on the lesser-included offense of involuntary manslaughter. Defendant

Harwell further argues the trial court reversibly erred in polling the jury, when the clerk of court failed to ask two of the twelve jurors whether the returned verdict accurately reflected the jury's verdict as to Defendant Harwell. Upon review, we conclude that, as the Record contains no evidence Defendants unintentionally discharged their firearms at the rear of a car operated by the victim, Defendants have failed to demonstrate their entitlement to an involuntary manslaughter instruction. We therefore find no error as to the trial court's denial of their request for such instruction. Further, as Defendant Harwell failed to timely object to the clerk of court's colloquies with the polled jurors, he has waived on appeal any argument concerning improper jury polling, and we therefore dismiss this argument.

I. Factual and Procedural Background

On 13 September 2020, Otho Ray Watson spent the day with Shamara Lewis-Watson, whom he had been "seeing" for "[a]bout six months." At some point that evening, the pair and four of their acquaintances left Lewis-Watson's home in Durham, North Carolina, and drove in a red Dodge Journey rental car (the "rental car") to go to a "car meet"¹ in Apex, North Carolina. After some time had passed, Watson, Lewis-Watson, and three of their acquaintances left the car meet and drove to another car meet in Durham, located in a parking lot next to the Cook Out on

¹ Per testimony contained in the Record on appeal, a "car meet" is a type of social gathering where people meet in a large parking lot with their vehicles, where they engage in conduct such as playing music, dancing, and doing "doughnuts" and "tricks" with their vehicles.

Hillsboro Road. Upon arrival at the second car meet, Watson parked the rental car in front of a nearby tobacco and vape shop called VIP Smoke and Vape; Lewis-Watson and another female got out of the rental car, climbed on to the car's roof, and started dancing on top of it. As they were dancing, others joined in, and people began gathering around the rental car.

After some time had passed, by which point Defendants—whom Lewis-Watson personally knew—and Defendant Harwell's brother, Rashawn Harwell—whom Lewis-Watson did not know—had joined the gathering, Defendant Harwell tapped one of the three acquaintances on the shoulder, and asked him why he was with Watson. The conversation escalated into an argument until someone invited Watson to “[c]ome around the corner to fight,” and according to Lewis-Watson, Defendants and Rashawn all wanted to fight Watson. At this time, Lewis-Watson and Watson left the group of people, returned to the rental car, and Watson got into the driver's seat. While Watson sat in the driver's seat, Lewis-Watson stood outside the passenger side of the rental car and spoke with Watson through an open window, telling him to get out of the car, as she had seen Rashawn armed with a gun and believed there was either going to be a fight or a shooting. At this time, Rashawn approached the passenger side of the rental car and stood near Lewis-Watson, before walking around to the driver's side where Watson was still sitting. Lewis-Watson again told Watson to get out of the rental car and fight, because she believed there “was either going to be [a] fight, or dea[th].” When Watson did not get out of the

rental car, Defendant Harwell approached the car as well, and Lewis-Watson told Defendant Harwell, “[d]on’t do this[,]” but Defendant Harwell did not reply and only looked at her.

Soon after Defendant Harwell approached the rental car, Watson began to drive away, at which point Lewis-Watson “heard two shots go off” and then “a lot of shooting[,]” and Watson was struck in the head by one of the bullets. After the shooting began, Lewis-Watson stood in place for “five minutes,” and then ran behind VIP Smoke and Vape, at which time gunshots were still being fired. Eventually, a friend of Lewis-Watson’s arrived by car to retrieve her from VIP Smoke and Vape, after which the pair went to Watson’s mother’s home to tell her Watson had been shot. The pair then went back to Cook Out, where they hoped to locate Defendant Harwell; after they ascertained he was not at Cook Out, they went to Duke Hospital, where they found Defendant Harwell. At some point following Lewis-Watson’s arrival at the hospital, police officers also arrived at the hospital. Lewis-Watson told the officers that Defendant Harwell shot Watson, but that she “did not see” Defendant Jones shooting at Watson. She did not tell the officers anything about Rashawn, however, because she “didn’t know his name at the time.” After speaking with the officers, Lewis-Watson remained at the hospital until Watson’s mother came to her, and told her that Watson was dead.

After speaking with Lewis-Watson, police officers recovered surveillance video footage from VIP Smoke and Vape (the “shop footage”). The shop footage showed the

following, relevant events: Rashawn approached VIP Smoke and Vape, calling out to Defendants, and then drew a handgun out of the left side waist band of his pants and held it down by his side; Rashawn approached the passenger side of the rental car, while Defendants took a position several feet behind him by the trunk of a black Ford Mustang convertible; Rashawn orally engaged the occupant of the rental car through the passenger side window, while Defendants approached the passenger side of the rental car; Rashawn walked around the front of the rental car and spoke to the occupant through the driver's side window, while Defendants shuffled about on the passenger side of the rental car; Watson began to drive away in the rental car and turned left to exit the parking lot, at which point Rashawn immediately fired two shots; and after Rashawn fired his two shots, as Watson drove away in the rental car, Defendants withdrew handguns, began firing at the back of the rental car, and continued discharging their firearms until the rental car passed out of view.

On 13 September 2020—the same day as the shooting—Defendant Jones was arrested, and on 16 September 2020, Defendants Harwell and Rashawn were arrested. On 5 October 2020, a Durham County grand jury returned true bills of indictment against Defendants and Rashawn, charging them each with first degree murder; conspiracy to commit first degree murder; and assault with a deadly weapon with intent to kill, inflicting serious injury. The State filed a pre-trial motion to join the charges against Defendants and Rashawn, and on 20 February 2023, when this matter came on for hearing, the trial court granted the motion as to Defendants, but

denied the motion as to Rashawn.²

During evidence, the State presented Lewis-Watson's testimony as to the events surrounding the shooting, and played the shop footage for the jury. The State also presented testimonies from police officers investigating the shooting, the State's forensic pathologist, and an owner of Durham's Auto Mart, which is located across the street from Cook Out and whose surveillance video footage captured Watson driving the rental car away from the shooting. From these testimonies, the jury was presented with the following evidence: after Watson drove the rental car away from the shooting, the rental car came to a stop at Durham's Auto Mart, where it struck a number of parked cars and the dealership sign; law enforcement did not locate any weapons inside the rental car, but did retrieve a .40 caliber casing from the right rear floorboard; the rental car's rear window appeared to be shattered by bullets, with a heavy concentration of glass in the rear cargo area of the vehicle; a bullet hole was located in the interior of the rental car's driver's side door, which lined up with a bullet hole located on the exterior of the driver's side door; law enforcement found Watson in the driver's seat of the rental car, who was unresponsive and had a gunshot wound to the back of his head; there were fragments of a single bullet still lodged in Watson's head, there was no indication that any other bullets struck him, and his cause of death was determined to be the gunshot wound to the head; and when

² As the charges against Rashawn were not joined with those against Defendants, Rashawn is not a party to this appeal.

executing a search warrant of Rashawn's apartment, where Rashawn was found and arrested, law enforcement recovered a .40 caliber handgun underneath the bed in which Rashawn was sleeping.

Additionally, the State presented testimony from the State's firearms and toolmark expert. As part of his testimony, the expert opined that: the .40 caliber casing found in the rental car was fired from the handgun recovered from Rashawn's apartment; he could not determine whether the bullet fragments found in Watson's head were fired from the .40 caliber handgun found in Rashawn's apartment; there were at least three firearms fired at the scene of the shooting, because the expert identified three types of spent casings recovered from the scene—(1) .40 caliber casings manufactured by Smith & Wesson; (2) 9-millimeter Luger casings manufactured by Federal; and (3) .22 long rifle casings manufactured by CCI. On cross-examination, however, the expert testified that, from the properties of the forty-five casings submitted to him for examination, he could conclude that they had been extracted from seven different firearms. Defendants presented no evidence.

Following evidence, during the charge conference, the State requested the jury be charged on first and second degree murder, but not voluntary or involuntary manslaughter. Defendants objected, and requested the trial court instruct only on involuntary manslaughter, with a "possibility" of instructing on voluntary manslaughter. Based on the evidence presented by the State, the trial court dismissed Defendants' objection, and thereafter instructed the jury on first and

second degree murder, but omitted instructions on voluntary and involuntary manslaughter. Pursuant to the pattern jury instruction on second degree murder, the trial court instructed the jury on the three following bases for malice: (1) actual malice; (2) condition of mind malice; and (3) depraved-heart malice. The trial court also instructed the jury to specify on the verdict sheet its “theory or theories” for malice, and that the jury “must do so unanimously.”

The jury retired to deliberate, but returned with a question regarding the instructions, which prompted the trial court to repeat its instructions, and the trial court did so without objection from the parties. The jury thereafter returned its verdicts, finding Defendants guilty of second degree murder, and acquitting them of the remaining charges. On each verdict sheet for second degree murder, the jury handwrote the basis for its verdict, finding that malice arose for each Defendant from the commission of an act “inherently dangerous to human life” undertaken without “regard for human life[.]”

After the jury returned its verdicts, Defendants requested the trial court poll the jury, and the trial court did so. When the clerk of court polled the foreperson and juror number three (collectively, the “polled jurors”), however, the clerk asked them to confirm their verdict with regard to Defendant Jones, but not Defendant Harwell. Neither Defendant objected during the polling process or afterwards, and when the trial court asked if there was “[a]nything else further from the defense for the jury[.]” Defendant Harwell’s counsel thanked the jury for their service on behalf of Defendant

Harwell. Defendants timely appealed.

II. Jurisdiction

Defendants’ appeal is properly before this Court as an appeal from final judgments of a superior court pursuant to N.C.G.S. §§ 7A-27(b) and 15A-1444(a) (2023).

III. Analysis

On appeal, Defendants each argue (A) the trial court reversibly erred by failing to instruct the jury on the lesser-included offense of involuntary manslaughter. Defendant Harwell further argues (B) the trial court reversibly erred in polling the jury, when the clerk of court failed to ask two of the twelve jurors whether the returned verdict accurately reflected the jury’s verdict as to Defendant Harwell. We address each argument, in turn.

A. Involuntary Manslaughter

Defendants contend the trial court’s denial of their request for a jury instruction on involuntary manslaughter was in error, as the evidence presented would have allowed the jury to find them each guilty of involuntary manslaughter, rather than second degree murder. Defendants further contend that this error prejudiced their case. We disagree.

“A trial court’s decision not to give a requested lesser-included offense instruction is reviewed *de novo* on appeal[.]” *State v. Matsoake*, 243 N.C. App. 651, 657 (2015), where this Court “considers the matter anew and freely substitutes its

own judgment for that of the lower tribunal.” *State v. Miller*, 292 N.C. App. 519, 521 (2024) (citation and internal quotation marks omitted). Under such review, we view the evidence in the light most favorable to the defendant, but where the State’s evidence “is clear and positive with respect to each element of the offense charged and there is no evidence showing the commission of a lesser-included offense, it is not error for the trial judge to refuse to instruct the jury on the lesser offense.” *Matsoake*, 243 N.C. App. at 658 (citation and internal quotation marks omitted) (cleaned up). Moreover, an instructional error amounts to reversible error only upon a defendant’s showing of prejudice, that “there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” *State v. Castaneda*, 196 N.C. App. 109, 116 (2009) (citation and internal quotation marks omitted).

Under North Carolina Law, involuntary manslaughter is defined as “the unlawful and unintentional killing of another human being, without malice, which proximately results from an unlawful act not amounting to a felony or from an act or omission constituting culpable negligence.” *State v. Wood*, 149 N.C. App. 413, 416 (2002) (citation and internal quotation marks omitted) (cleaned up). “In the context of a shooting, the charge of involuntary manslaughter requires evidence of ‘the absence of intent to discharge the weapon.’” *State v. Coleman*, 254 N.C. App. 497, 505–06 (2017) (quoting *State v. Robbins*, 309 N.C. 771, 779 (1983)). In *Coleman*, where the defendant was convicted of voluntary manslaughter for shooting his wife,

we considered on appeal whether the trial court reversibly erred in failing to instruct the jury on the lesser-included offense of involuntary manslaughter. 254 N.C. App. at 500, 505. Upon review, we concluded that the trial court's omission of the instruction was not error, as "there was no evidence at trial suggesting that [the defendant] did not intend to shoot his wife." *Id.* at 506; *see also Robbins*, 309 N.C. at 778–79 (providing that, as the State's evidence "tends to show an intentional shooting [and t]here is no evidence from which the jury might infer that there was an unintentional discharge of the weapon[.]" the trial court did not err in denying the defendant's request for an involuntary manslaughter instruction).

Here, the State presented evidence from the shop footage that, as Watson drove away in the rental car, Defendants each aimed their handguns at the rear of the car and fired several consecutive shots. Viewing this evidence in the light most favorable to Defendants, this evidence demonstrates Defendants intentionally discharged their firearms at the rear of the car in which Watson was attempting to flee. *See Matsoake*, 243 N.C. App. at 658. As set forth above, Defendants put on no evidence, and none of the State's evidence suggests that Defendants' discharging of their firearms was unintentional. *See Coleman*, 254 N.C. App. at 505–06; *see also Robbins*, 309 N.C. at 779; *Matsoake*, 243 N.C. App. at 658. As such, because "there is no evidence showing the commission of a lesser-included offense," Defendants have failed to show they were entitled to an instruction on involuntary manslaughter, and the trial court

committed no instructional error, and certainly no prejudicial error.³ *See Matsoake*, 243 N.C. App. at 658; *see also Castaneda*, 196 N.C. App. at 116.

B. Jury Polling

Defendant Harwell argues the trial court reversibly erred in polling the jury, as the clerk of court failed to ask the polled jurors whether the verdict they returned during deliberations accurately reflected their verdict regarding Defendant Harwell. As explained below, however, this argument is not preserved for our appellate review.

“In order to preserve a question for appellate review, a party must have presented the trial court with a timely request, objection or motion, stating the specific grounds for the ruling sought if the specific grounds are not apparent.” *State v. Eason*, 328 N.C. 409, 420 (1991) (citing N.C.R. App. P. 10(a)(1)). “It is also necessary for the complaining party to obtain a ruling upon the party’s request, objection, or motion.” N.C.R. App. P. 10(a)(1). As to allegations of improper jury polling, this Court has provided that, where a trial court grants a defendant’s request to poll the jury, and the defendant fails to challenge the manner in which the jury was polled, he waives any argument to that effect on appeal. *See State v. Holadia*,

³ Each Defendant contends in his reply brief that the legal standard expressed in *Coleman* conflicts with that expressed by our Supreme Court in *State v. Brewer*, 325 N.C. 550 (1989), and as such, *Brewer* controls. *See Brewer*, 325 N.C. at 575–76 (providing that, where there was no evidence tending to indicate the defendant intentionally discharged the firearm, the allegation of instructional error for failing to instruct on involuntary manslaughter was “not disposed of because of a lack of evidence of an unintentional shooting”). We do not consider this contention because, as explained herein, the evidence demonstrates Defendants intentionally discharged their firearms at the rear of the rental car driven by Watson, and as this Court has routinely provided, a defendant “may not use his reply brief to make new arguments on appeal.” *State v. Triplett*, 258 N.C. App. 144, 147 (2018).

149 N.C. App. 248, 259 (2002).

Here, as set forth above, Defendant Harwell objected neither during nor following the clerk of court's colloquies with the polled jurors. As Defendant Harwell failed to bring a timely request, objection, or motion at trial, he has waived any appellate review of this issue, and we therefore dismiss Defendant Harwell's argument. *See id.* at 259; *see also Eason*, 328 N.C. at 420; N.C.R. App. P. 10(a)(1).

IV. Conclusion

Upon review, as the Record contains no evidence Defendants unintentionally discharged their firearms at the rear of the rental car operated by Watson, we conclude Defendants have failed to demonstrate their entitlement to an involuntary manslaughter instruction, and affirm the trial court's denial of their request for such instruction. Further, as Defendant Harwell failed to timely object to the clerk of court's colloquies with the polled jurors, he has waived on appeal any argument concerning improper jury polling. We therefore dismiss this argument.

NO ERROR In Part, and DISMISSED In Part.

Judges STROUD and GRIFFIN concur.

Report per Rule 30(e).