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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-886

Filed 16 April 2025

Wake County, Nos. 21CR212029-910, 23CR047315-910

STATE OF NORTH CAROLINA

v.

MARCUS TERRELL WALTON, Defendant.

Appeal by defendant from judgments entered 4 December 2023 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 19 March 2025.

Attorney General Joshua H. Stein, by Assistant Attorney General J. Blake Norman, for the State.

Mark Hayes for defendant-appellant.

FLOOD, Judge.

Defendant Marcus Terrell Walton appeals from the trial court's judgments finding him guilty of first degree murder and possession of a firearm by a felon. On appeal, Defendant argues the trial court erred by: first, overruling Defendant's objection to the State's introduction of responding Officer Kathleen Cowher's body-worn camera footage upon arrival to the scene, and second, barring Defendant from

eliciting testimony from Defendant's former girlfriend. Upon review, we conclude the trial court did not err in overruling Defendant's objection to the body-worn camera footage because its probative value was not substantially outweighed by a danger of unfair prejudice, and Defendant failed to preserve the issue of eliciting testimony from Defendant's former girlfriend, and thus we do not reach Defendant's second argument.

I. Factual and Procedural Background

On the evening of 31 July 2021, Defendant shot and killed Charlie Debnam, a bystander standing outside of a convenience store on Rock Quarry Road, in Raleigh, North Carolina. Prior to the events leading to the shooting, Defendant and another man—Jerome Smith—arrived at the convenience store; at this time, Debnam was in the store. Defendant went into the store, while Smith stood in the parking lot. While Defendant was in the store, Debnam exited the store and began walking away, heading down the street. While Defendant remained in the store, a black SUV drove down Vardeman Street, which is located adjacent to, and in view of, the store. Smith, who was standing outside, drew a handgun and fired three shots at the black SUV. The black SUV then sped up, ran a stop sign, and turned onto Rock Quarry Road. The black SUV was occupied by two persons who had previously stolen Defendant's hot dog stand when Defendant was unarmed.

Defendant, from within the store, heard the gunshots, immediately drew a handgun from his waistband, ran outside of the store and into the middle of Rock

Quarry Road, and fired fourteen shots down Rock Quarry Road in the direction of the black SUV. Two of the fourteen rounds struck Debnam, inflicting wounds from which Debnam died later that night. Defendant was subsequently arrested in Boston, Massachusetts, and on 9 August 2021, was charged by a bill of indictment with first degree murder and possession of a firearm by a felon.

On 27 November 2023, this matter came on for trial. Prior to trial, however, Defendant objected to the State's introduction of the State's Exhibit #5, body-worn camera footage from Officer Cowher, who had arrived on the scene following the shooting. The footage showed Officer Cowher speaking with Debnam, who had not yet died, was lying on the ground, and told Officer Cowher: "A stranger shot me. They were shooting at someone else." The footage also showed medical personnel attending to Debnam and cutting off his clothes. The trial court overruled Defendant's objection. Also, prior to trial, Defendant brought a motion in limine seeking to prevent certain testimony from Defendant's former girlfriend regarding a lost firearm from being introduced by the State.

During the presentation of evidence, the State entered the body-worn camera footage, at which time Defendant renewed his objection, and the trial court again overruled Defendant's objection. The State also presented security footage captured

from both within and outside the store on the day of the shooting, which showed the events, in part, as described above.¹

In addition to video evidence, the State presented testimonial evidence, including that of two eyewitnesses—both of whom testified that Defendant had been shooting down the street, at the black SUV—as well as the testimony of Shonquetta Lloyd, Defendant’s former girlfriend. Per Defendant’s previous motion in limine seeking to prevent certain portions of Lloyd’s testimony from being entered, the trial court conducted voir dire outside the presence of the jury, before Lloyd took the witness stand. During voir dire, Lloyd stated that, seven months prior to the shooting, she believed she dropped a compact purple and black handgun in Defendant’s car. She explained that, while riding in Defendant’s car:

I had a gun on my hip, in a holster, and in the midst of me reaching to put [Defendant’s] car in park, it slipped out of my holster. I didn’t realize it until, you know, he pulled out. He pulled off, and I -- I can’t remember if I called or texted him, but I told him, you know, I thought I had dropped it in [Defendant’s] truck. It wasn’t on the ground outside so I knew it had to fall in [Defendant’s] truck. He said he didn’t see it, he didn’t have it. It was a heated night. I left him alone. I didn’t pressure him about it anymore that night. I left it at that.

¹ The security footage from the store’s videos did not capture Defendant or Smith firing the shots outside of the store, as they were outside of the cameras’ range of view. The store’s videos also did not capture Debnam being shot. The only camera to capture Defendant was the store’s internal camera, showing Defendant pull out a firearm and run out of the store.

Upon objection by Defendant, the trial court excluded this testimony as having little probative value, in light of the possible prejudicial effect. Defense counsel then asked the trial court for clarification about a question she wished to ask Lloyd on cross examination, specifically regarding Lloyd's prior statement to an investigating detective that she had "never seen [Defendant] with the firearm[.]" and whether questioning her about this would open the door for the jury's consideration of the lost purple and black handgun. The trial court replied, "if you're saying have you ever seen him with a firearm, a fair question is have you ever known [D]efendant to possess a firearm, how did you know[.] . . . It sounds like, if one's admitted, then the other is." Defendant did not bring up this question during cross examination of Lloyd.

Defendant put on no evidence, and at no point during trial did Defendant contest the fact that he fired the gun that killed Debnam.

Following trial, on 4 December 2023, the jury found Defendant guilty as charged, basing its finding of first degree murder on premeditation and the first degree felony murder rule by discharging a weapon into an occupied vehicle. The trial court sentenced Defendant to life imprisonment without parole. Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction to review this appeal from a final judgment of a superior court, pursuant to N.C.G.S. § 7A-27(b)(1) (2023).

III. Analysis

On appeal, Defendant argues the trial court erred by: (A) overruling Defendant's objection to the State's introduction of responding Officer Cowher's body-worn camera footage, and (B) barring defense counsel from eliciting testimony from Defendant's former girlfriend, Lloyd, about her statement that she had "never seen [Defendant] with the firearm." We address each argument, in turn.

A. Defendant's Objection to Admission of the Body-Worn Camera Footage

Defendant first argues the trial court erred in overruling Defendant's objection to the State's admission of Officer Cowher's body-worn camera footage, as presented in the State's Exhibit #5. Specifically, Defendant contends that the video footage was unduly prejudicial under Rule 403 because defense counsel did not contest that Defendant shot the victim or that the victim died from the gunshots. We disagree.

Admission of evidence under Rule 403 is reviewed under an abuse of discretion standard. *State v. Triplett*, 368 N.C. 172, 178 (2015). An abuse of discretion occurs when "the 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.* at 178 (citation omitted). "Even where this Court finds the trial court's evidentiary decision was in error, however, evidentiary error does not necessitate a new trial unless the erroneous admission was prejudicial." *State v. Teel*, 909 S.E.2d 541, 549 (2024) (citation and internal quotation marks omitted). "A defendant is prejudiced by evidentiary error when there is a reasonable probability 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.” *Id.* at 549 (citation omitted).

Under Rule 403, “[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]” N.C.R. Evid. 403. Probative value is determined by the evidence’s ability “to prove or disprove a point in issue.” *State v. Young*, 368 N.C. 188, 212 (2015). “As a result, the extent to which evidence does or does not have probative value depends upon the extent to which a reasonable mind would be more or less influenced by the introduction of the evidence in question in determining whether a disputed fact did or did not exist.” *Id.* at 212. Further, because “most evidence tends to prejudice the party against whom it is offered . . . to be excluded under Rule 403, the probative value of the evidence must not only be outweighed by the danger of unfair prejudice, it must be *substantially* outweighed.” *State v. Lyons*, 340 NC 646, 669 (1995). “[U]nfair prejudice within the context of Rule 403 means an undue tendency to suggest [a] decision on an improper basis, commonly, though not necessarily, as an emotional one.” *State v. Ayscue*, 169 N.C. App. 548, 553 (2005) (citation and internal quotation marks omitted).

The State has the burden to prove every element of the crime, regardless of whether a defendant does or does not contest an element. *State v. Branche*, 291 N.C. App. 214, 227 (2023). When discussing videotape evidence, our Supreme Court stated that

in a criminal case every circumstance calculated to throw any light upon the supposed crime is admissible and permissible[.] It is not required that evidence bear directly on the question in issue, and evidence is competent and relevant if it is one of the circumstances surrounding the parties, and necessary to be known, to properly understand their conduct or motives, or if it reasonably allows the jury to draw an inference as to a disputed fact[.]

State v. Leazer, 337 N.C. 454, 457 (1994) (citation omitted).

In *State v. Roache*, our Supreme Court affirmed the trial court's admission of the State's graphic video in a homicide case, explaining that while "[t]he videotape graphically depicted the crime scene, including the bodies of the five victims, pools of blood surrounding the victims, and the blood spatter on various surfaces in the house[, t]he scenes shown in the videotape illustrated the crime scene encountered by police officers[.]" 358 N.C. 243, 285 (2004). The Court explained that "[t]he videotape provided a unique perspective into the layout of the area in question that the still photographs admitted into evidence did not depict. Specifically, the videotape was helpful in understanding the locations of the bodies in relation to the houses at the crime scene." *Id.* at 285.

Additionally, we may also look "to the law on photographic evidence in determining the admissibility of videotapes." *Id.* at 285. "When a photograph add[s] nothing to the State's case, then its probative value is nil, and nothing remains but its tendency to prejudice." *State v. Hennis*, 323 N.C. 279, 286 (1988) (citation omitted) (cleaned up). Thus, graphic photographs used for illustrative purposes are admissible

“so long as their excessive or repetitious use is not aimed solely at arousing the passions of the jury.” *Branche*, 291 N.C. App. at 226 (citation omitted).

In *Branche*, this Court affirmed the admission of disturbing, but highly relevant photographs, depicting the victim’s decomposing body, due to the photographs’ substantial probative value. *Id.* at 227–28. This Court explained that “the photographs were used appropriately as evidence to help the State develop and illustrate testimony regarding the extensive search and efforts required to find [the victim’s] body and to discover [the d]efendant’s actions to conceal it[.]” *Id.* at 227. We explained that “a stipulation as to the cause of death does not preclude the State from proving all essential elements of its case[.]” because a “defendant’s tactical decision not to contest an essential element of the offense” does not alleviate “the prosecution’s burden to prove every element of the crime[.]” *Id.* at 227 (citation omitted) (cleaned up). The trial court additionally admitted photographs of the victim’s skull with bullet holes because such images were highly relevant to proving cause of death. *Id.* at 227. As all photographs were deemed highly relevant, the photographs’ probative value was not substantially outweighed by the danger of unfair prejudice, and this Court concluded the trial court did not err in their admission. *Id.* at 227–28.

Here, the body-worn camera footage is highly relevant and has significant probative value. *See* N.C.R. Evid. 403. The body-worn camera footage is illustrative of the State’s case and Officer Cowher’s testimony, as it is the only evidence of the

victim's positioning, and it depicts the victim's condition, his statements to Officer Cowher, and the crime scene. *See Roache*, 358 N.C. at 285. Although Defendant does not contest that he shot and killed Debnam, Defendant argues it was unintentional, and the State still had the burden to prove these elements to prove first degree murder. *See Branche*, 291 N.C. App. at 227 (holding that the State has the burden to prove every element of the crime, regardless of whether a defendant does or does not contest the element).

Further, while the jury may have had an emotional reaction to the body-worn camera footage, the video was: illustrative of Officer Cowher's testimony regarding responding to the scene; not excessively lengthy or repetitive, as it was only shown once; and the only evidence of the crime scene due to Debnam being taken to the hospital before CCBI could take photos of his positioning at the scene. *See Roache*, 358 N.C. at 285. As this video is relevant to the State's case and thus significantly probative, it was "not used excessively or solely to inflame the passions and prejudices of the jury against" Defendant. *See id.* at 286.

Any danger of unfair prejudice by admitting into evidence the body-worn camera footage did not substantially outweigh its probative value, and the trial court properly overruled Defendant's objection to the introduction of this evidence. *See Branche*, 291 N.C. App. at 228; *see also Lyons*, 340 NC at 669. Accordingly, the trial court did not abuse its discretion and committed no reversible error in overruling

Defendant's objection to the body-worn camera footage. *See Roache*, 358 N.C. at 286; *Triplett*, 368 N.C. at 178; *Branche*, 291 N.C. App. at 228; *Lyons*, 340 NC at 669.

B. Eliciting Testimony from Lloyd

Defendant next argues the trial court erred in barring defense counsel from asking Lloyd about her statement that she had “never seen [Defendant] with the firearm.” Defendant, however, has not preserved this issue for appellate review.

Under our North Carolina 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. 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). “To be timely, an objection to the admission of evidence must be made at the time it is actually introduced at trial.” *State v. Snead*, 368 N.C. 811, 816 (2016) (citation omitted) (cleaned up). As such, “[a]n objection made only during a hearing out of the jury's presence prior to the actual introduction of the testimony is insufficient.” *Id.* at 816 (citation omitted) (cleaned up). Thus, “a defendant is not entitled to relief where there was no objection made at the time the evidence was offered.” *Id.* at 816 (emphasis and citation omitted) (cleaned up).

Here, as set forth in the facts above, defense counsel, outside the presence of the jury, asked the trial court about the admissibility of Lloyd's testimony if defense counsel were to ask Lloyd on cross examination about her statement of “never see[ing]

[Defendant] with the firearm.” The trial court responded that eliciting this testimony on cross examination would likely lead to the admission of testimony about Lloyd’s lost firearm. This exchange demonstrates the trial court did not actually prohibit defense counsel from eliciting Lloyd’s testimony, but rather explained what ruling it would likely give if defense counsel chose to proceed and ask Lloyd on cross examination about her prior statement. Despite this lack of prohibition, defense counsel did not attempt to elicit the relevant testimony from Lloyd, and as such, this issue is not preserved for our appellate review. *See* N.C.R. App. P. 10(a)(1); *Snead*, 386 N.C. at 816. We therefore dismiss this argument.

IV. Conclusion

Upon review, we conclude the trial court did not err in in overruling Defendant’s objection to the body-worn camera footage because its probative value was not substantially outweighed by a danger of unfair prejudice. Further, Defendant failed to properly preserve the issue contesting the eliciting of testimony from Defendant’s former girlfriend, and as such, we dismiss this argument.

NO ERROR in part and DISMISSED in part.

Judges ARROWOOD and WOOD concur.

Report per Rule 30(e).