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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-927

Filed 7 October 2026

Gaston County, Nos. 20CR002139-350, 20CR055287-350, 20CR055288-350,
20CR055289-350, 20CR055336-350, 24CR000987-350

STATE OF NORTH CAROLINA

v.

MARSHAWN DEVON SANDERS

Appeal by defendant from judgment entered 10 December 2024 by Judge William T. Stetzer in Gaston County Superior Court. Heard in the Court of Appeals 24 March 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Asa Covington Edwards, IV, for the State.

Phoebe W. Dee for defendant.

FREEMAN, Judge.

Marshawn Devon Saunders, defendant, appeals from a jury verdict of guilty of first-degree murder. On appeal, defendant argues that the trial court erred by failing to instruct the jury on the lesser included offense of second-degree murder. Defendant also argues that the trial court erred by not intervening *ex mero motu*

during the State’s closing arguments. After careful review, we hold that defendant received a fair trial free from reversible error.

I. Factual and Procedural Background

The evidence presented at trial tended to show the following: In early 2020, defendant had been living with his girlfriend, Brittany. Around February 2020, defendant and Brittany ended their relationship, and Brittany moved out of their shared home. After the relationship ended, Brittany took money out of defendant’s bank account, to which she had access. She then took defendant’s gun and gave it to her friend, Eric.

On 29 April 2020, defendant sent Brittany text messages about the money and gun she had taken from him, messaging, “[i]t’s on sight every where I catch u and if I can’t get to you I’ll take the ones u love [] and idc if u show the police this bc I mean what I’m saying.” On 30 April 2020, defendant texted, “[t]his the 3rd time u done put the law on me and I’m going out with a bang now.” Defendant repeatedly challenged Brittany to give him her new address so he could come fight her, adding that he was willing to “do life.”

On 9 June 2020, defendant and his new girlfriend, Ashley, drove to Gastonia to find Brittany, who was reportedly staying at her sister’s house. Before they arrived at the house, they saw Brittany at a gas station. Defendant told Ashley to turn around and pull into the gas station; she obliged. Defendant then fired numerous

shots from a handgun towards Brittany's car. Eric, who was with Brittany at the gas station, was shot in the chest and died at the scene.

On 6 July 2020, the grand jury indicted defendant for (1) first-degree murder, (2) two counts of attempted first-degree murder, (3) two counts of discharging a weapon into an occupied vehicle, and (4) possession of a firearm by a felon. The matter came on for trial on 2 December 2024. Brittany and Ashley both testified.

During closing arguments, the prosecutor said:

One of the things I noticed about Ashley, if you paid attention to her interview. When she really wanted to get this off her chest. She puts her head down. She puts her hands—runs her hands through her head, and she is afraid.

Defendant asked the trial court to instruct the jury on second-degree murder. The trial court declined to give the instruction because it found no evidence tending to negate premeditation and deliberation.

The jury convicted defendant of first-degree murder on the basis of both (1) premeditation and deliberation and (2) felony murder, for discharging a firearm into an occupied vehicle. Defendant timely appealed.

II. Jurisdiction

“A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered.” N.C.G.S. § 15A-1444(a) (2025).

III. Standard of Review

“We review the trial court’s denial of the request for an instruction on the lesser included offense de novo.” *State v. Holmes*, 263 N.C. App. 289, 298 (2018) (quoting *State v. Laurean*, 220 N.C. App. 342, 345 (2012)).

“We will not find error in a trial court’s failure to intervene in closing arguments *ex mero motu* unless the remarks were so grossly improper they rendered the trial and conviction fundamentally unfair.” *State v. Garcell*, 363 N.C. 10, 61 (2009) (quoting *State v. Raines*, 362 N.C. 1, 14 (2007)).

IV. Discussion

Defendant brings two arguments on appeal. First, he argues the trial court erred by declining to instruct the jury on the lesser included offense of second-degree murder. Second, defendant argues the trial court erred by not intervening *ex mero motu* when the prosecutor improperly expressed an opinion on a witness’s credibility during closing arguments. We address each argument in turn.

A. Jury Instruction

Defendant argues the jury should have been instructed on second-degree murder because the evidence showed he did not act with premeditation or deliberation. Specifically, defendant maintains: (1) the meeting at the gas station was unplanned; (2) defendant was in the area that day to collect money; and (3) defendant believed Eric was armed at the gas station.

A trial court must give a jury instruction on a lesser included offense “only if

the evidence would permit the jury rationally to find defendant guilty of the lesser offense and to acquit him of the greater.” *Holmes*, 263 N.C. App. at 298 (quoting *State v. Millsaps*, 365 N.C. 556, 561 (2002)). “When determining whether there is sufficient evidence for submission of a lesser included offense to the jury, we view the evidence in the light most favorable to the defendant.” *State v. Ryder*, 196 N.C. App. 56, 64 (2009) (citing *State v. Barlowe*, 337 N.C. 371, 378 (1994)). When a defendant charged with first degree-murder requests a jury instruction on the lesser included offense of second-degree murder, the court shall submit the instruction only if the State has presented insufficient evidence of each element of first-degree murder.

If the evidence is sufficient to fully satisfy the State’s burden of proving each and every element of the offense of murder in the first degree, including premeditation and deliberation, and there is *no* evidence to negate these elements other than defendant’s denial that he committed the offense, the trial judge should properly exclude from jury consideration the possibility of a conviction of second degree murder.

Holmes, 263 N.C. App. at 298–99 (quoting *Millsaps*, 365 N.C. at 560).

“The elements of first-degree murder are: (1) the unlawful killing, (2) of another human being, (3) with malice, and (4) with premeditation and deliberation.” *State v. Fowler*, 159 N.C. App. 504, 511 (2003) (quoting *State v. Coble*, 351 N.C. 448, 449 (2000)). To prove the defendant’s act was premeditated, the State must demonstrate “the act was thought over beforehand for some length of time, however short.” *Holmes*, 263 N.C. App. at 299 (quoting *State v. Taylor*, 362 N.C. 514, 531

(2008)). “[N]o particular amount of time is necessary to illustrate that there was premeditation.” *State v. Frye*, 341 N.C. 470, 500 (1995) (quoting *State v. Sierra*, 335 N.C. 753, 758 (1994)). To prove deliberation, the defendant must be shown to have had “an intent to kill, carried out in a cool state of blood . . . and not under the influence of a violent passion or a sufficient legal provocation.” *Holmes*, 263 N.C. App. at 299 (quoting *Taylor*, 362 N.C. at 531). “Premeditation and deliberation are typically proven through circumstantial evidence.” *Id.* at 299 (citing *State v. Childress*, 367 N.C. 693, 695 (2014)).

Our Supreme Court has recognized specific “conduct on the part of a defendant before, during, and after a murder that supports an inference of premeditation and deliberation.” *Taylor*, 362 N.C. at 531. Before a murder, “entering the site of the murder with a weapon, which indicates the defendant anticipated a confrontation and was prepared to use deadly force to resolve it,” has been shown to be evidence of premeditation and deliberation. *Id.* (citing *State v. Leazer*, 353 N.C. 234, 239 (2000)). Firing numerous shots is also evidence of premeditation and deliberation because “some amount of time, however brief, for thought and deliberation must elapse between each pull of the trigger.” *Id.* (quoting *State v. Austin*, 320 N.C. 276, 295 (1987)). After a shooting, “attempting to cover up involvement in the crime” has also been shown to be evidence of premeditation and deliberation. *Id.* (citing *State v. Chapman*, 359 N.C. 328, 376 (2005)).

“The elements of second-degree murder, on the other hand, are: (1) the

unlawful killing, (2) of another human being, (3) with malice, but (4) without premeditation and deliberation.” *Fowler*, 159 N.C. App. at 511 (quoting *Coble*, 351 N.C. at 449).

Our Supreme Court has explained what evidence may establish premeditation and deliberation sufficient for first-degree murder. *Taylor*, 362 N.C. at 530–31. In *Taylor*, the defendant killed the victim during a failed grocery store robbery, and the uncontroverted evidence showed: (1) the defendant arrived armed at the grocery store; (2) upon hearing shots at the front of the store, the “defendant stepped around the corner from the back of the store into the front area”; (3) the defendant then fired his semiautomatic weapon “at least seven times”; and (4) he attempted to “cover up his participation in the murder” by fleeing the scene and then lying to the authorities. *Id.* at 531–32. Our Supreme Court held that the defendant in *Taylor* was not entitled to an instruction on second-degree murder because this was “uncontroverted evidence from which the jury could rationally infer that [the] defendant formed the requisite intent for first-degree murder.” *Id.* at 533.

Here, defendant threatened Brittany a month prior to the shooting. He texted her, “[i]t’s on sight every where I catch u and if I can’t get to you I’ll take the ones u love [] and idc if u show the police this bc I mean what I’m saying,” stated he was willing to serve a life sentence, and warned, “[t]his the 3rd time u done put the law on me and I’m going out with a bang now.”

These texts are evidence of premeditation and deliberation, in that defendant

thought about the act over a month before the shooting. Also, as in *Taylor*, defendant already had a firearm with him before Ashley picked him up. After seeing Brittany at the gas station, defendant asked Ashley to turn the car around, giving him time to think and deliberate about the act, like the defendant in *Taylor*.

During the shooting, defendant fired numerous shots at Brittany's vehicle without speaking or interacting with Brittany or Eric. The time between each shot gave defendant numerous opportunities to think and deliberate. The lack of interaction and provocation between defendant and the victims is further evidence of deliberation.

Defendant fled the scene immediately after firing at Brittany's vehicle, similar to the behavior of the *Taylor* defendant, who fled after the shooting. *Id.* at 532. The uncontradicted evidence showed that defendant acted with premeditation and deliberation, and no evidence negates these elements. Therefore, the trial court did not err by declining to instruct the jury on the lesser included offense of second-degree murder.

B. Closing Argument

Defendant also argues the trial court erred by not intervening *ex mero motu* when the prosecutor expressed her opinion during closing arguments.

"During a closing argument to the jury an attorney may not . . . express his personal belief as to the truth or falsity of the evidence" N.C.G.S. § 15A-1230(a) (2010). "[W]hen defense counsel fails to object to the prosecutor's improper argument

and the trial court fails to intervene, the standard of review requires a two-step analytical inquiry: (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." *State v. Huey*, 370 N.C. 174, 179 (2017).

When assessing if the improper statement is grossly improper, the statement is viewed "in context and in light of the overall factual circumstances to which they refer." *Huey*, 370 N.C. at 180 (quoting *State v. Alston*, 341 N.C. 198, 239 (1995)). "When this Court has found the existence of overwhelming evidence against a defendant, we have not found statements that are improper to amount to prejudice and reversible error." *Id.* at 181. A statement is considered grossly improper whenever it denies the defendant's right to due process. *Id.*; see also *State v. Sexton*, 336 N.C. 321, 363–64 (1994) (holding that the prosecutor improperly called the defendant a liar, but the statement was not considered grossly improper because overwhelming evidence of the defendant's guilt precluded a showing of prejudice).

During closing arguments, the prosecutor said:

One of the things I noticed about Ashley, if you paid attention to her interview. When she really wanted to get this off her chest. She puts her head down. She puts her hands—runs her hands through her head, and she is afraid.

The prosecutor's closing statement suggests Ashley was being truthful based on her physical response to questioning. This suggestion was improper, because the prosecutor expressed her "personal belief as to the truth or falsity of the evidence."

N.C.G.S § 15A-1230(a) (2010).

While the prosecutor's statement about the truth of Ashley's testimony was improper, the statement must be further evaluated to see if it is so grossly improper as to impede defendant's right to a fair trial to be a reversible error. *Huey*, 370 N.C. at 182. In the absence of Ashley's testimony, the evidence against defendant was still overwhelming. Brittany's version of events was nearly identical to Ashley's version. Brittany also testified that defendant was the shooter. Further, defendant repeatedly sent threatening text messages to Brittany before the shooting. Even though the prosecutor's statement was improper, it was not so grossly improper that it amounts to prejudice. *See Huey*, 370 N.C. at 182. Therefore, the trial court did not reversibly err in not intervening *ex mero motu* during closing arguments.

V. Conclusion

For the foregoing reasons, the trial court did not err in declining to instruct the jury on second-degree murder, nor did it reversibly err by not intervening *ex mero motu* during closing arguments.

NO ERROR.

Judges TYSON and COLLINS concur.

Report per Rule 30(e).