IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-361

Filed: 17 October 2017

Henderson County, Nos. 16 CRS 000190-91

STATE OF NORTH CAROLINA

v.

RONNIE GLEN BELL

Appeal by defendant from judgments entered 28 September 2016 by Judge Mark E. Powell in Henderson County Superior Court. Heard in the Court of Appeals 21 September 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sharon Patrick-Wilson, for the State.

Sarah Holladay for defendant-appellant.

ARROWOOD, Judge.

Ronnie Glen Bell ("defendant") appeals from judgments entered on his convictions of second degree burglary, possessing implements of house breaking, and attaining habitual felon status. On appeal, defendant argues that the trial court erred by denying his motion to dismiss the second degree burglary charge, denying

defendant's request for the jury instruction on the lesser included offense of misdemeanor breaking and entering, overruling objections to the prosecutor's closing argument urging the jury to "send a message" to defendant, and failing to intervene *ex mero motu* during the prosecutor's closing arguments. For the reasons stated herein, we find no error.

I. Background

On 21 March 2016, defendant was indicted for first degree burglary in violation of N.C. Gen. Stat. § 14-51, possession of burglary tools in violation of N.C. Gen. Stat. § 14-55, and for attaining habitual felon status in violation of N.C. Gen. Stat. § 14-7.1.

Defendant was tried at the 19 September 2016 criminal session of Henderson County Superior Court, the Honorable Mark E. Powell presiding. The trial court recognized that the indictment for first degree burglary failed to state that the residence was occupied at the time of the break-in and thus the case proceeded to trial on the charge of second degree burglary.

The State's evidence tended to show that in December 2015, Marielle Sherwood ("Marielle") was living with her mother, Lorna Sherwood ("Lorna"), at her mother's house. The house was located at 124 Cinnamon Way in Flat Rock, North Carolina. Marielle's sister and sister's daughter also stayed at the house "like every now and then." Defendant, who was Lorna's boyfriend, used to live at and had a key

to the house, but the locks were changed after Lorna obtained a restraining order against defendant.

On 24 December 2015, defendant called Marielle, "begging" to talk to Lorna. Lorna had changed her phone number and did not want to talk to defendant. Defendant then rang the doorbell at the house and police were called. By the time police arrived, defendant had left. On 25 December 2015, defendant continued to call Marielle and was mad "[a]bout [Lorna] not wanting to talk to him at that time."

During the early morning hours of 26 December 2015, Marielle was alone, asleep in the house. Lorna was at a safe house, a place for abuse victims. Marielle awoke to a "banging" noise from the garage and basement area. Marielle heard footsteps and recognized the voice of defendant. Marielle then heard defendant come up the stairs from down in the garage and basement area and she believed that he checked Lorna's room. Marielle called the police.

Marielle testified that the front door and sliding door were locked that night. The garage doors were always locked. She did not check the basement door but it was usually locked. Marielle also testified that after the incident, the sides of the basement door were bent and there were scrape marks on the side of the door frame. Defendant did not have a key to the house on 26 December 2015 and Marielle did not give defendant permission to enter the home. On the night of 26 December 2015,

defendant had belongings in the house that included clothes in the master bedroom, tools, and "other things in the basement[.]"

Deputy Nicholas Newell ("Deputy Newell") of the Henderson County Sheriff's Office testified that on 26 December 2015, he was dispatched to 124 Cinnamon Way at approximately 5:52 a.m. Deputy Newell and his fellow officers approached the house on foot. As they approached the driveway, they saw a shadow of an individual walking inside the garage. The officers went around to the back side of the house and saw that the backdoor appeared to be pried open. There was damage on the door and door frame. Shortly thereafter, defendant exited the backdoor with a metal object in his hand. Officers ordered defendant to get on the ground and to drop the object in his hand. Defendant did not comply with the commands. Deputy Newell testified that defendant turned his back to him and raised his arm. Defendant still had the metal object in his hand and went around the corner of the house, toward the garage doors. Another officer on the scene shot defendant in the back with a taser.

Defendant fell against the garage doors and multiple officers jumped on defendant. Officers fought to pry the metal object out of defendant's hands. The metal object turned out to be a screwdriver. Deputy Newell testified that during the struggle, defendant "was screaming and cussing us and also threatening [Lorna]." Defendant stated, "If I ever walk the street again, I will kill that f***ing wh***" multiple times. He said, "She f***ed around on me, and I will kill that b****."

Defendant also threatened the officers by stating, "If I get up, I will knock you all of you-all's teeth out." Eventually, officers were able to get handcuffs on defendant. After defendant had been arrested, served with warrants, and processed through a magistrate, defendant stated, "This is f***ing ridiculous. I have to break into my own home to steal my clothes."

A tire iron and a pair of pliers were found outside on the ground, next to the basement door. Deputy Newell testified that he believed there was "fresh" damage on the door and door frame and that a window next to the door "had been messed with."

Deputy Clerk of Court Kayla Cantrell testified that on 17 December 2015, defendant was served with a temporary restraining order that stated he was not to contact Lorna or be at 124 Cinnamon Way. This order was in effect until a hearing set on 22 December 2015. Defendant did not appear at the hearing. The trial court judge then entered a one-year restraining order against defendant prohibiting defendant from having any contact with Lorna or going about the residence of 124 Cinnamon Way. It took effect on 22 December 2015. However, defendant was not served with the order until 10 February 2016.

Assistant Clerk of Court Christine Cairnes testified regarding a charge of communicating threats against defendant by Lorna. The complaint was initiated on 17 December 2015. On 19 December 2015, defendant was released on bond and was

ordered not to have contact with Lorna until his court date scheduled for 13 January 2016.

At the conclusion of the State's evidence, defendant made a motion to dismiss all charges which was denied. Defendant did not present any evidence. At the conclusion of all the evidence, defendant renewed his motion to dismiss all charges which was again denied.

On 28 September 2016, a jury found defendant guilty of second degree burglary and possessing implements of house breaking. Defendant pleaded guilty to attaining habitual felon status.

Defendant was sentenced to 120 to 156 months for the second degree burglary conviction. Defendant was also sentenced to 40 to 60 months for the possession of burglary tools conviction, to be served at the expiration of the first sentence.

Defendant entered oral notice of appeal in open court.

II. Discussion

On appeal, defendant argues that the trial court erred by (A) denying his motion to dismiss the second degree burglary charge; (B) denying defendant's request for a jury instruction on the lesser included offense of misdemeanor breaking and entering; (C) overruling his objections to the prosecutor's closing argument urging the jury to "send a message" to defendant; and (D) failing to intervene *ex mero motu* during the prosecutor's closing argument when she stated a personal opinion, made

an incorrect statement of law, and made assertions unsupported by the evidence. We address each argument in turn.

A. Motion to Dismiss

In his first argument on appeal, defendant contends that the trial court erred by denying his motion to dismiss the second degree burglary charge where there was insufficient evidence that defendant intended to commit a felony upon entering the house. Specifically, defendant argues the State failed to present sufficient evidence of intent to commit larceny where defendant stated he entered the house to retrieve his own clothing and intent to commit felony assault where defendant knew Lorna was not at home and did not make threats against her until after he exited the home. We are not convinced by defendant's arguments.

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (citation omitted), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d

164, 169 (1980). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

"To survive a defendant's motion to dismiss a charge of second-degree burglary, the State must provide substantial evidence that the defendant committed a (1) breaking (2) and entering (3) of an unoccupied dwelling house or sleeping apartment of another (4) in the nighttime (5) with the intent to commit a felony therein." *State v. Lucas*, 234 N.C. App. 247, 251-52, 758 S.E.2d 672, 676 (2014); N.C. Gen. Stat. § 14-51 (2015). Because defendant only challenges whether there was sufficient evidence of his intent to commit a felony therein, we limit our review to this issue.

At trial, the State proceeded on the theory that defendant was guilty of second degree burglary in that he intended to commit either assault inflicting serious injury and/or larceny upon entering the house.

As to larceny, the State argued during closing arguments that the presumption set out in *State v. McBryde*, 97 N.C. 393, 1 S.E. 925 (1887), applied to defendant's case. Now on appeal, defendant argues that the *McBryde* presumption does not apply to his case because defendant did not attempt to avoid discovery and had the intent

to retrieve his own clothing, an act which would not constitute larceny. He cites to *State v. Cook*, 242 N.C. 700, 89 S.E.2d 383 (1955), to support this proposition.

In *McBryde*, the defendant entered another person's house at 2:00 a.m. When the occupant of the house awoke to see the defendant sitting at the foot of her bed, the occupant screamed and the defendant immediately ran and jumped out of an open window. *McBryde*, 97 N.C. at 393-94, 1 S.E. at 925. On appeal, the defendant argued that the State had failed to produce sufficient evidence that at the time he entered the house, he had the intent to commit larceny. *Id.* at 395-96, 1 S.E. at 926. The North Carolina Supreme Court held:

> The intelligent mind will take cognizance of the fact that people do not usually enter the dwellings of others in the night-time, when the inmates are asleep, with innocent intent. The most usual intent is to steal; and, when there is no explanation or evidence of a different intent, the ordinary mind will infer this also. The fact of the entry alone, in the night-time, accompanied by flight when discovered, is some evidence of guilt, and, in the absence of any other proof, or evidence of other intent, and with no explanatory facts or circumstances, may warrant a reasonable inference of guilty intent.

McBryde, 97 N.C. at 396-97, 1 S.E. at 927.

In *Cook*, the North Carolina Supreme Court held that the *McBryde* presumption did not apply where

> the defendant did not flee when he was discovered, but upon inquiry as to what he wanted, he inquired about Joyce, a girl who worked at the hospital and who had gone home for the week-end. Her room was located near that of

> Miss Wiggins. Nothing was taken, and when the defendant was requested to leave, "he tip-toed out of the room and went down the hall and went down the stairs."

Cook, 242 N.C. at 703, 89 S.E.2d at 385.

Viewing the evidence in the present case in the light most favorable to the State, we find the circumstances distinguishable from *Cook* and analogous to *McBryde*. Unlike the defendant in *Cook*, defendant attempted to flee when he exited the backdoor of 124 Cinnamon Way and was confronted by police. Deputy Newell testified that defendant went around the corner of the house and was apprehended after he was shot in the back with a taser. In addition, all the State's evidence in *Cook* tended to negate the fact that defendant had the requisite intent: when asked what he wanted, the defendant inquired about a girl who worked at the hospital but was not present; nothing was taken; and when asked to leave, the defendant complied. *Cook*, 242 N.C. at 703, 89 S.E.2d at 385. Here, however, there was evidence that the backdoor of 124 Cinnamon Way was pried open, defendant exited the house with a screwdriver in his hand, attempted to flee, did not comply with the police's demands, and immediately following his arrest, defendant made statements threatening Lorna and police.

Defendant argues that there was some evidence defendant had another intent in regards to his statement to police that "This is f***ing ridiculous. I have to break into my own home to steal my clothes." However, it was only until after defendant

had been arrested, served with warrants, and processed through a magistrate that defendant made any statement in regards to breaking into 124 Cinnamon Way to retrieve his clothes. Furthermore, although there was evidence that there were some personal items belonging to defendant at 124 Cinnamon Way, there was no evidence that he gathered those items while in the house or that he was carrying those items out when he exited the house. Based on the foregoing, we reject defendant's argument that the *McBryde* presumption does not apply to his case where defendant broke and entered the dwelling house of another at night and attempted to flee.

As to the State's theory that defendant intended to commit assault inflicting serious injury upon breaking and entering the house, defendant argues that the State failed to present sufficient evidence of his intent where defendant knew Lorna was not in the house and did not make threats against her until after he exited the house. Defendant contends that if he had broken into the house with the intent to assault Lorna, he would have withdrawn upon seeing that Lorna's car was not in the garage. Defendant asserts that because he proceeded upstairs, spoke aloud while walking throughout the house, went directly to the bedroom where his clothes were, stayed there a short time, and then left quickly in a "normal manner[,]" these facts "are much more consistent with [defendant] going into the house, changing clothes, and leaving again than with any intent to assault someone who was not present." We disagree.

"The intent to commit the felony must be present at the time of entrance, and this can but need not be inferred from the defendant's subsequent actions." *State v. Montgomery*, 341 N.C. 553, 566, 461 S.E.2d 732, 739 (1995).

Considering the evidence in the light most favorable to the State and resolving any conflicts in the evidence in favor of the State, the State presented the following evidence: Lorna had taken out a temporary restraining order on defendant that lasted from 17 December 2015 to 22 December 2015; on 19 December 2015, defendant was out on bond on a charge of communicating threats against Lorna and was ordered not to have contact with Lorna until his court date on 13 January 2016; defendant unsuccessfully attempted to contact Lorna on 24 and 25 December 2015; defendant showed up to the house on 24 December 2015 but left before police arrived; defendant was mad that he could not speak with Lorna; after entering the house, defendant went to check Lorna's room; defendant exited the house with a screwdriver in his hand; defendant fled upon exiting the house; and during the struggle with police and immediately after being subdued, defendant was threatening Lorna and repeatedly stating that he would kill Lorna. This evidence could support a conclusion by a reasonable juror that defendant entered Lorna's home with the intent to commit assault inflicting serious injury. Accordingly, the trial court did not err by denying defendant's motion to dismiss the charge of second degree burglary.

B. Jury Instructions

In his second argument on appeal, defendant asserts that the trial court erred by denying his request to instruct the jury on the lesser included offense of misdemeanor breaking and entering where there was evidence that he entered into the home to retrieve his own belongings. Defendant argues that there was "ample evidence from which the jury could have concluded that [he] did not have felonious intent" and relies on the holdings in *State v. Peacock*, 313 N.C. 554, 330 S.E.2d 190 (1985) and *State v. Owen*, 111 N.C. App. 300, 432 S.E.2d 378 (1993).

"We review *de novo* the trial court's decision on whether to instruct the jury on a lesser-included offense." *State v. Broom*, 225 N.C. App. 137, 147, 736 S.E.2d 802, 810, *disc. review denied*, 366 N.C. 580, 739 S.E.2d 853 (2013). "An instruction on a lesser-included offense must be given only if the evidence would permit the jury rationally to find defendant guilty of the lesser offense and to acquit him of the greater." *State v. Millsaps*, 356 N.C. 556, 561, 572 S.E.2d 767, 771 (2002).

As previously stated, second degree burglary is the breaking and entering of an unoccupied dwelling house of another during the nighttime with the intent to commit a felony therein. N.C. Gen. Stat. § 14-51. "The lesser included offense of misdemeanor breaking and entering must be submitted to the jury if there is *substantial evidence* that the defendant broke and entered for some non-felonious reason other than that alleged in the indictment." *Owen*, 111 N.C. App. at 309, 432

S.E.2d at 384 (emphasis added); *see also State v. Merritt*, 120 N.C. App. 732, 743, 463 S.E.2d 590, 596 (1995), *disc. review denied*, 342 N.C. 897, 467 S.E.2d 738 (1996).

In *Peacock*, the defendant was indicted for first degree burglary and on appeal, challenged the trial court's denial of his request for a jury instruction on misdemeanor breaking and entering. *Peacock*, 313 N.C. at 557, 330 S.E.2d at 192. After consuming LSD and alcohol, the defendant was hallucinating and remembered "thinking about going down and talking to [the victim] about the rent." *Id.* at 559, 330 S.E.2d at 193. He banged on the victim's door and when she did not answer, he kicked the door, breaking the glass and molding on the door, and reached inside to unlock it. *Id.* at 559, 330 S.E.2d at 194. The defendant stated that it was only *after* he was inside that he decided to rob the victim. *Id.* The defendant's statements were corroborated by a police officer who transcribed the defendant's statements to police. *Id.* The North Carolina Supreme Court held that "there was some evidence in this case which may have convinced a rational trier of fact that defendant did not form the requisite intent to commit larceny at the time he broke and entered the deceased's apartment[]" and ruled that the trial court failed to instruct the jury on misdemeanor breaking and entering. *Id.* at 559, 330 S.E.2d at 193.

Similar to the defendant in *Peacock*, the defendant in *Owen* was indicted for first degree burglary and challenged the trial court's denial of his request for a jury instruction on misdemeanor breaking and entering. *Owen*, 111 N.C. App. at 308, 432

S.E.2d at 384. The State's evidence indicated that the defendant had broken into his friend's house and after being confronted by his friend, the defendant stated, "I want my shotgun." *Id.* at 302, 432 S.E.2d at 381. The defendant struggled with his friend, putting his friend's face down on the living room floor with a knife to his throat. *Id.* The friend sustained an injury to his hand but when challenged by his friend's wife and another individual, the defendant ran out of the house, taking nothing from the house. *Id.* at 303, 432 S.E.2d at 381. At trial, a taped police interview where the defendant stated that he asked his friend, "where's my shotgun?" upon entering the house was admitted into evidence. *Id.* at 304, 432 S.E.2d at 381. The defendant testified that he did not have the intent to commit larceny but broke into the house to retrieve a shotgun that belonged to him. *Id.* at 304, 432 S.E.2d at 381-82. The victims also testified that the defendant had been in their house before, could have seen a shotgun there, and that in the night in question, the defendant had shouted that he wanted his shotgun. *Id.* at 309, 432 S.E.2d at 385. Our Court held that the trial court erred in refusing to submit the lesser included offense of misdemeanor breaking and entering because the defendant's evidence supported a contrary view of why he broke into the premises and there was substantial evidence in the record to support the defendant's position. *Id.* at 309-10, 432 S.E.2d at 385.

Although defendant relies on *Peacock* and *Owen* for the proposition that there was ample evidence he broke and entered 124 Cinnamon Way for a non-felonious

reason, both cases are distinguishable from the present case. In *Peacock*, the defendant's statements to police were corroborated by testimony from a police officer that the defendant did not form the intent to commit larceny until after he had entered the victim's home. *Peacock,* 313 N.C. at 559-60, 330 S.E.2d at 194. Likewise, in *Owen*, the defendant presented evidence that he entered the premises to retrieve his shotgun and this evidence was corroborated by the defendant's post-arrest statement to police, as well as the victims' testimony. *Owen*, 111 N.C. App. at 309-10, 432 S.E.2d at 385. Here, defendant has failed to point to substantial evidence that he broke into 124 Cinnamon way for a non-felonious reason. Instead, defendant relies solely on a single comment made after he was arrested, served with warrants, and processed through a magistrate that he entered the house to retrieve his clothing. This lone comment, uncorroborated by testimony or other evidence, does not amount to substantial evidence that defendant broke and entered into the house for a non-felonious reason.

At trial, the State presented evidence that after a contentious relationship with Lorna and failed attempts at trying to come into contact with Lorna, defendant broke and entered her home at nighttime. Once in the home, defendant went into Lorna's bedroom. He exited the home with a screwdriver in his hand and when confronted by police, attempted to flee. There was no evidence that defendant gathered his clothing or any other personal belongings while in the house or that he exited the

house with any personal possessions. During his struggle with police, defendant repeatedly threatened Lorna and stated that he would kill her. Although defendant argues that his post-arrest statement provided an alternative, non-felonious motive for entering the house, we do not find that this statement would have allowed a jury, if instructed on the lesser included offense, to rationally find from the evidence that defendant was guilty of the lesser included offense of misdemeanor breaking and entering and not guilty of the greater offense. *Millsaps*, 356 N.C. at 561, 572 S.E.2d at 771. Therefore, we hold that the trial court did not err by denying defendant's request for a jury instruction on the lesser included offense of misdemeanor breaking and entering.

C. Overruling Objections to Prosecutor's Closing Argument

In his third argument on appeal, defendant contends that the trial court abused its discretion in overruling his objections to the prosecutor's closing argument urging the jury to "send a message" to defendant. Defendant argues that the prosecutor improperly appealed to the passions of the jury and that he was prejudiced by these statements. We disagree.

"The standard of review for improper closing arguments that provoke timely objection from opposing counsel is whether the trial court abused its discretion by failing to sustain the objection." *State v. Jones*, 355 N.C. 117, 131, 558 S.E.2d 97, 106 (2002).

> When applying the abuse of discretion standard to closing arguments, this Court first determines if the remarks were improper. . . . [I]mproper remarks include statements of personal opinion, personal conclusions, name-calling, and references to events and circumstances outside the evidence, such as the infamous acts of others. Next, we determine if the remarks were of such a magnitude that their inclusion prejudiced defendant, and thus should have been excluded by the trial court.

State v. Sanders, 201 N.C. App. 631, 641-42, 687 S.E.2d 531, 538-39 (citation omitted), *disc. review denied*, 363 N.C. 858, 695 S.E.2d 106 (2010).

"As a general rule, counsel possesses wide latitude to argue facts in evidence and all reasonable inferences arising from those facts." *State v. Wiley*, 355 N.C. 592, 620, 565 S.E.2d 22, 42 (2002). "Statements made during closing arguments to the jury are to be viewed in the context in which the remarks are made and the overall factual circumstances to which they make reference." *State v. Harris*, 236 N.C. App. 388, 399, 763 S.E.2d 302, 311 (2014).

In the present case, defendant contends that the prosecutor made the following three pleas to the jury to "send a message" to defendant with their verdict:

> So even though she didn't testify, thinking about circumstantial evidence, think about what you do know, what picture have you formed in your mind about Lorna Sherwood and the efforts that she was taking *to send the message to that man* to stay away from her, have no contact with her, not be on her property?
>
> . . . .
>
> The next day the defendant kept calling. Imagine that. I

> mean, Marielle is trying to enjoy Christmas. The family is trying to enjoy Christmas, and here's *this guy won't get the message*. Okay? He keeps violating the order "no contact."
>
> . . . .
>
> So they did what they thought they had to do. They did everything they thought they had to do. You're not trying the case of was the 50B valid, was the criminal process valid. That's not why you are here. The purpose of that information was to get a point – get the point across that Lorna Sherwood was telling him no contact. Stay away. Okay? *He was not getting the message.*

(emphasis added).

Applying the principles set forth above, we find no impropriety. In view of the context and overall factual circumstances of this case, the foregoing three challenged statements do not constitute a plea to the jury that they "send a message" to defendant with their verdict. Rather, the prosecutor was arguing facts in evidence and reasonable inferences arising therefrom. In the first instance, the prosecutor was referring to the restraining order that Lorna had against defendant, prohibiting him from contacting Lorna or being at 124 Cinnamon Way. The prosecutor was arguing that Lorna was sending a message to defendant. In the second instance, the prosecutor was referencing the phone calls made by defendant to Marielle on 24 and 25 December 2015 in an attempt to talk to Lorna. Lorna had changed her number and stated that she did not want to talk to defendant. The prosecutor's argument was that despite the foregoing actions, defendant was not getting the

message that Lorna did not want contact with defendant. As to the last instance, the prosecutor was referencing the restraining order taken against defendant. She was arguing that Lorna was unsuccessfully attempting to send a message to defendant that she wanted no contact with him. Moreover, our Courts have "repeatedly stated that the prosecutor may properly urge the jury to act as the voice and conscience of the community." *State v. Peterson*, 350 N.C. 518, 531, 516 S.E.2d 131, 139 (1999). Therefore, we hold that the trial court did not abuse its discretion in overruling defendant's objections to the challenged arguments made by the prosecutor.

D. Failing to Intervene *Ex Mero Motu* During Prosecutor's Closing Arguments

In his final argument on appeal, defendant asserts that the trial court erred by failing to intervene *ex mero motu* when the prosecutor stated a personal opinion, made an incorrect statement of law, and made assertions unsupported by the evidence in her closing argument. We are not convinced by defendant's arguments.

> 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*. 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 and: (1) precluded other similar remarks from the offending attorney; and/or (2) instructed the jury to disregard the improper comments already made.

Jones, 355 N.C. at 133, 558 S.E.2d at 107 (internal citation omitted).

Although counsel is given wide latitude in arguments to the jury and are permitted to argue reasonable inferences from the evidence, "counsel may not, by argument or cross-examination, place before the jury incompetent and prejudicial matters by injecting his own knowledge, beliefs and personal opinions not supported by the evidence." *State v. Jones*, 358 N.C. 330, 350, 595 S.E.2d 124, 137 (citation omitted), *cert. denied*, 543 U.S. 1023, 160 L. Ed. 2d 500 (2004). In addition, incorrect statements of law are improper. *State v. Martin*, __ N.C. App. __, __, 786 S.E.2d 426, 429 (2016).

On appeal, defendant contends that the prosecutor made three improper arguments that did not provoke an objection from the defense but required the trial court to intervene *ex mero motu*.

First, defendant argues that the prosecutor injected her personal opinion when she stated:

> So I want to let you know why – why is larceny in there? Why are you being instructed on that? Okay? Well, there is his statement, all right, that he broke in to steal his clothes. Now, *I really believe that what he was doing was breaking in to assault Lorna*, just based on all of this evidence.

(emphasis added). In light of the State's evidence that defendant broke into Lorna's home, went straight to her bedroom, exited the house holding a screwdriver, and

stated multiple times while being apprehended that he would kill Lorna, we find the prosecutor's statement to be a reasonable inference from the evidence.

Second, defendant alleges that the following arguments were an incorrect statement of law:

> Well, there is his statement, all right, that *he broke in to steal his clothes.*
>
> . . . .
>
> *You can't steal your own stuff? Well, there are ways legally.* If he really wants to get his stuff back, he can go to the sheriff's office, ask for an escort, ask for something – some contact through the sheriff's office to get his stuff.

(emphasis added). The first portion of the prosecutor's statement that "he broke in to steal his clothes[,]" when read in context, reveals that the prosecutor is summarizing defendant's post-arrest statement that he broke into Lorna's home to retrieve his clothing. The prosecutor goes on to state that although there is no evidence of defendant actually stealing anything, there is the *McBryde* legal presumption. In the second portion, the prosecutor is explaining to the jury that defendant had legal alternatives to retrieving his belongings besides breaking and entering into 124 Cinnamon Way. The prosecutor is not declaring misstatements of law.

Third, defendant maintains that the prosecutor had no evidentiary support for the following two arguments:

> [Lorna's] Honda was not in the garage. He knew that. He knew that was her car. He knew she wasn't there. Didn't see her car. She wasn't in her bed. He broke in in the middle of the night to assault her. That's what he was doing. So he waited. *He was lying in wait*. And these officers came up. And that's why he had this in his hand, because he was madder than hell.
>
> . . . .
>
> *We don't need to bring [Lorna] in here that was absolutely petrified of him,* because Marielle was there and she can testify to hearing his voice, she can testify about the 911 call, she can testify about the locks being changed, the fear her mother had, all of that stuff.

(emphasis added). As to the "lying in wait" statement, the prosecutor is arguing a reasonable inference that could be construed from the State's evidence. Defendant first entered the garage and Lorna's car was not there. He then went to Lorna's bedroom where she was not present. When he finally left the house, he had a screwdriver in his hand. The prosecutor's argument that Lorna was petrified of defendant is also a reasonable inference from the State's evidence that Lorna had previously had a restraining order against defendant, that she changed her phone number, changed the locks on her house door, and did not want to have contact with defendant.

In conclusion, we find that the challenged portions of the prosecutor's closing arguments were not improper, much less grossly improper, and that the trial court did not err by failing to intervene *ex mero motu*.

We conclude that defendant received a fair trial, free from error.

NO ERROR.

Judges HUNTER, JR. and DILLON concur.

Report per Rule 30(e).