FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-3491

ASHLEY MCARTHUR,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Escambia County.
Jan Shackelford, Judge.

April 16, 2021

OSTERHAUS, J.

Ashley McArthur was tried and convicted for the first-degree premeditated murder of her friend after the victim's remains were found at McArthur's family farm. McArthur seeks a new trial because the jury inadvertently saw a photo of McArthur pointing a shotgun. She also argues that the trial court erroneously admitted statements that she made to law enforcement, certain cell phone records, and the victim's text messages. We affirm.

I.

The victim in this case went missing on September 8, 2017. McArthur emerged as a suspect after an investigation found her to be the last person known to be with the victim that day.

McArthur's bank records also showed that she deposited a $34,000 cashier's check made out to the victim into her own checking account and later spent the money.

On October 19, 2017, investigators called McArthur to the police station to return her cell phone and then, after advising her of her *Miranda* rights, asked questions related to their ongoing missing-person investigation. McArthur told investigators that she had deposited a cashier's check made out to the victim into a checking account that had her and the victim's name on it. Investigators also asked McArthur about cell tower records showing her to be in Cantonment at a time that she claimed to be in Milton.

After the interview, the victim's remains were found under concrete and potting soil along the fence line of a Cantonment farm owned by McArthur's aunt. The State charged McArthur with first-degree premeditated murder. Before trial, McArthur sought to suppress statements she made to investigators at the October interview as well as her cell phone records. She also filed a motion in limine to exclude any statements or text messages from the victim as hearsay. The trial court denied McArthur's motions to suppress and motion in limine. McArthur proceeded to trial on the murder charge.

During the State's examination of one of its witnesses, a photo showing McArthur in the woods crouching in hunting gear and aiming a shotgun was briefly and inadvertently published to the jury. McArthur moved for a mistrial on the grounds of prejudice. The trial court denied the motion but gave a curative instruction. McArthur was found guilty as charged and was sentenced to life in prison.

II.

A.

McArthur first argues that the trial court erred by not declaring a mistrial because a hunting photo was displayed to the jury showing her aiming a shotgun. A trial court's ruling on a motion for mistrial is reviewed for an abuse of discretion. *Williams*

v. State, 297 So. 3d 660, 662 (Fla. 1st DCA 2020). "A trial court should only grant a motion for mistrial when an error is deemed so prejudicial that it vitiates the entire trial and deprives the defendant of a fair trial." *Id.* (citing *Heady v. State*, 215 So. 3d 164, 165–66 (Fla. 1st DCA 2017)).

We see no abuse of discretion in the trial court's refusal to grant a mistrial due to the inadvertent display of the hunting photo. A photo of McArthur crouching in hunting gear and pointing a shotgun (not the murder weapon) accidentally flashed on the screen during trial and was before the jury for a second or two. After an objection, the court addressed the issue quickly by giving a cautionary instruction that was requested by the defense. Meanwhile, other trial testimony had noted that McArthur owned firearms, and there were photos in evidence of her in camouflage holding or shouldering firearms. Taking these factors together, the trial court's decision that the photo wasn't so prejudicial as to vitiate the entire trial cannot be considered erroneous. *See Green v. State*, 824 So. 2d 311, 314 (Fla. 1st DCA 2002) ("[F]actual decisions by the trial court are entitled to deference commensurate with the trial judge's superior vantage point for resolving factual disputes." (quoting *State v. Setzler*, 667 So. 2d 343, 344–45 (Fla. 1st DCA 1995))); *Jackson v. State*, 25 So. 3d 518, 528–29 (Fla. 2009) (concluding that state witness's brief mention of Appellant possessing a gun was not so prejudicial as to vitiate the entire trial); *Tumblin v. State*, 29 So. 3d 1093, 1102 (Fla. 2010) ("The giving of a curative instruction will often obviate the necessity of a mistrial." (quoting *Graham v. State*, 479 So. 2d 824, 825 (Fla. 2d DCA 1985))); *Clark v. State*, 881 So. 2d 724, 727 n.2 (Fla. 1st DCA 2004) ("[O]ne isolated comment does not entitle a defendant to a mistrial, especially when an appropriate curative instruction is given by a trial judge.").

B.

McArthur next argues that the statements she made to investigators during the October 19 interview were admitted in violation of her *Miranda* rights. "The Supreme Court determined in *Miranda v. Arizona* that the State 'may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of

procedural safeguards effective to secure the privilege against self-incrimination.'" *Hall v. State*, 248 So. 3d 1227, 1229–30 (Fla. 1st DCA 2018) (quoting *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)).

In this instance, McArthur was not interrogated prior to being advised of her *Miranda* rights. Rather, a conversation between McArthur and the two investigators progressed from casual talk into an interrogation. Only after McArthur was read her *Miranda* rights and she had waived them in writing did the conversation shift to covering potentially incriminating questions about the investigators' ongoing investigation. *See Wilson v. State*, 242 So. 3d 484, 492 (Fla. 2d DCA 2018) ("[A]n interrogation takes place 'when a state agent asks questions or engages in actions that a reasonable person would conclude are intended to lead to an incriminating response.'" (quoting *State v. McAdams*, 193 So. 3d 824, 833 (Fla. 2016))).

As to statements McArthur made after waiving her *Miranda* rights, the trial court correctly found that the State met its burden of proving that McArthur had waived her rights. "A defendant may waive so-called *Miranda* rights, but only if the defendant is informed of those rights and 'the waiver is made voluntarily, knowingly and intelligently.'" *Hall*, 248 So. 3d at 1230 (quoting *Miranda*, 384 U.S. at 444). This is not a case where *Miranda* warnings were minimized or improperly administered as to lull McArthur into not paying attention to her rights. *See Ross v. State*, 45 So. 3d 403, 428 (Fla. 2010) (concluding that the defendant's *Miranda* rights were minimized and downplayed where a detective asserted the rights were only a matter of procedure, lulled the defendant into a false sense of security, and did not stop interrogating the defendant when he indicated a hesitancy in talking). In fact, McArthur, who had previously studied criminal justice in college and had worked in the sheriff's office as a crime scene technician, indeed exercised her *Miranda* rights by seeking a lawyer about an hour into this interrogation.

C.

McArthur next argues that the application law enforcement used to obtain her cell phone records was constitutionally and statutorily insufficient. The State obtained McArthur's cell records

by filing an application and affidavit for an order for disclosure under § 934.23. "A court may issue the order . . . only if the 'officer offers specific and articulable facts showing that there are reasonable grounds to believe the contents of a wire or electronic communication or the records of other information sought are relevant and material to an ongoing criminal investigation.'" *Mitchell v. State*, 25 So. 3d 632, 634 (Fla. 4th DCA 2009) (quoting § 934.23(5), Fla. Stat.). McArthur claims that the application in this case deficiently listed only a cell phone number without detailing that the number was Appellant's number. When read as a whole, however, the application makes clear that the affiant is referring to McArthur and her cell phone. We find no error here.

D.

McArthur's final argument relates to the victim's text messages and statements that she believes were inadmissible hearsay. But this evidence was not offered to prove the truth of the matters asserted but was relevant to establishing a timeline, motive, and intent. *See, e.g.*, *Jean–Philippe v. State*, 123 So. 3d 1071, 1079 (Fla. 2013) (noting that a statement may be offered to prove a variety of things besides its truth). The trial court did not abuse its discretion by allowing these into evidence or by failing to give a limiting instruction explaining why this evidence was offered.

III.

The judgment and sentence are AFFIRMED.

ROWE and LONG, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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Ashley Moody, Attorney General, and Daren L. Shippy, Assistant Attorney General, Tallahassee, for Appellee.