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NO. COA01-107

NORTH CAROLINA COURT OF APPEALS

Filed: 19 March 2002

STATE OF NORTH CAROLINA

v. Robeson County
No. 98 CRS 10682

DAVID FITZGERALD McMILLIAN

Appeal by defendant from judgment entered 3 August 2000 by Judge Robert F. Floyd, Jr., in Robeson County Superior Court. Heard in the Court of Appeals 4 December 2001.

Attorney General Roy Cooper, by Special Deputy Attorney General H. Alan Pell, for the State.

Bowen, Berry and Powers, PLLC, by Sue A. Berry, for defendant appellant.

McCULLOUGH, Judge.

Defendant David Fitzgerald McMillian was tried before a jury at the 31 July 2000 Criminal Session of Robeson County Superior Court after being charged with murder. Evidence for the State showed that defendant and the victim, Tina Carol Inman, went to the same high school and dated from the time the victim was fourteen or fifteen years old. The couple lived together during much of their seven-year relationship, and had four daughters together. During the last year of her life, Tina Inman lived in a house directly behind her mother's home with her four daughters.

On 26 May 1998, the victim went to work. Defendant called Tina's mother, Ms. Caroline Inman, to tell her he was coming to Tina's house to pick up a weight bar. He arrived at the house around 11:15 a.m., saw his children, then went out to buy candy for his four daughters. Upon his return, defendant also moved several air conditioning units with a friend of his. Ms. Inman testified that defendant "was fine" when she saw him, though she also stated that he and her daughter had a violent relationship, because he "beat her" regularly.

Around 9:30 p.m., Ms. Inman was on her porch talking to her daughter Tina about defendant and the fact that the two had recently ended their relationship. Ms. Inman testified that Tina was supposed to pick defendant up that evening; however, he failed to call her, and she did not go. Some time later, Ms. Inman was sitting on her porch and her daughter was standing on the ground near her. As they talked, Ms. Inman saw defendant come around the side of her house with a gun in his hand. Ms. Inman testified that defendant looked directly at her daughter Tina and said, "Bitch, I'm going to kill you." Tina ran toward her own house; defendant stumbled on the uneven yard, got up, and chased her. Ms. Inman stated that she "was hollering" and told defendant, "David, you better not shoot my baby, like that." Ms. Inman said defendant then fired several shots at her daughter.

The State also called Mr. Raymond Evans, a neighbor, to testify. Mr. Evans stated he heard five or six shots on the evening of 26 May 1998 between 11:00 and 11:15 p.m. After Mr.

Evans took his two young sons into the house, he returned to his porch and saw a man with a gun run beside his house and through his backyard. He later identified the man as defendant, whom he had seen on several occasions with the victim. When Mr. Evans called 911, he was told that officers were already on the way.

Officer Lee Hall of the Lumberton Police Department responded to a 911 call reporting a shooting just after 11:00 p.m. on 26 May 1998. When he arrived at the scene, he found Tina Inman lying in the grassy area of her yard. He also discovered two shell casings near her body, as well as a bullet. Tina Inman had a pulse at the crime scene, but was later pronounced dead at the hospital. Other officers investigating the murder discovered six spent shell casings at the murder scene; all six shells were in a path between Tina Inman's house and a storage shed.

Meanwhile, Lieutenant Michael McNeill received a call informing him that a suspect wanted to turn himself in. When Lieutenant McNeill arrived at the Robeson County Sheriff's Department, he found defendant and his mother already there. Defendant's mother immediately gave the officers a .45 caliber Norinco semiautomatic pistol wrapped in a towel. Defendant was handcuffed and taken to an interrogation room where he was advised of his *Miranda* rights. Police officers testified that defendant did not appear to be under the influence of any intoxicating or impairing substances. Defendant orally stated that he understood his rights and waived them. He gave a statement, which was written by Detective Danny Russ. Defendant reviewed the statement and

signed it. Defendant admitted he pulled a gun out of his pocket and used it to shoot the victim at least four times. He stated he bought the gun on the street about a month before the incident.

Dr. Robert L. Thompson, a forensic pathologist, conducted the autopsy on the victim's body. He found six gunshot entry wounds on her body, as well as one round which grazed the victim's heel, went into her foot and exited the sole of her shoe. Dr. Thompson opined that the victim was disabled by the shot which entered her front left thigh, broke her femur and exited the back of her thigh. He also stated that she most likely died due to the bullet that entered her right groin area and pierced her bladder, her left iliac vessels, her left hip bone, and lodged in the head of her left femur.

After Dr. Thompson testified, Special Agent Ronald Marrs of the State Bureau of Investigation (SBI) testified regarding the tests that were performed on the gun given to police by defendant's mother. He also testified about the tests that were conducted on the spent shell casings and bullets from the murder scene. Special Agent Marrs testified that the test results conclusively determined that the shots which killed the victim were fired from the .45 caliber Norinco semiautomatic pistol. After hearing from other law enforcement officers involved in the case, the State rested.

Defendant moved to dismiss the charges of first-degree and second-degree murder, arguing that the State failed to provide sufficient evidence of the elements of those crimes. The trial court denied both motions, and defendant did not put on evidence.

After deliberating, the jury returned a verdict of guilty of first-degree murder. Defendant was sentenced to life in prison without parole, and appealed.

On appeal, defendant argues the trial court erred by (I) denying his motion to exclude two autopsy photographs of the victim and allowing those photographs to be admitted over his objection; (II) allowing the jurors to take their notes home during the overnight recesses; (III) allowing admission of statements of the victim over defendant's objection; (IV) allowing admission of statements of the victim's and defendant's children over defendant's objection; (V) overruling defendant's objection to the State's redirect examination of Dr. Thompson; (VI) overruling defendant's objection to the introduction of an officer's notes as a documentary exhibit for corroborative purposes; and (VII) not finding that the cumulative effect of the trial court's evidentiary rulings was prejudicial to defendant. For the reasons set forth herein, we disagree with defendant's arguments and affirm his conviction.

Autopsy Photographs

By his first assignment of error, defendant argues the trial court should have excluded two autopsy photographs of the victim because their inclusion prejudiced defendant and violated his state and federal constitutional rights. The first photograph, subsequently marked and identified as State's Exhibit 14, was an identification photograph of the victim's head and shoulders, with the tongue of the victim showing, but not out of her mouth.

State's Exhibit 16A was a close-up of an exit wound on the victim's genitalia. After careful consideration of these exhibits and the manner in which they were used at trial, we disagree with defendant's arguments and conclude the photographs were properly admitted.

On 28 October 1998, defendant filed a motion to exclude photographs on the grounds that the photographs were inflammatory and non-probative of any issues relevant to determining the facts in issue in his case. Specifically, defendant objected to State's Exhibit 14 because he did not contest the victim's identity and did not see a need for an identification photograph of her. Defendant objected to State's Exhibit 16A, because he did not believe the location of the exit wound was probative of any issue in the case. The trial court considered the motion during a pretrial motion hearing and denied defendant's motion as to the two photographs.

During the trial, Dr. Thompson testified regarding the autopsy he performed on the victim. Dr. Thompson explained that all the autopsy photographs were assigned a number to verify that the photograph was associated with a particular case. He also explained that State's Exhibit 14, which showed a head and shoulders shot of the victim, was an "identification" photograph that accurately depicted the identity of Tina Inman, upon whom he performed the autopsy on 27 May 1998. Similarly, Dr. Thompson testified that State's Exhibit 16A accurately depicted the exit wound left by a bullet that entered Tina Inman's left buttock and exited through her genitalia. Dr. Thompson went on to identify

other photographs that showed the other exit wounds on the victim's body. As the photographs were shown to the jury, the trial court gave the following instruction with regard to State's Exhibit 16A:

> Ladies and gentlemen, these photographs are being shown to you for the purpose of illustrating the testimony of the witness. The next photograph, as I understand the exhibit, shows the genitalia of the deceased. It's being shown not to inflame your emotion or impassion, but again, just to illustrate the testimony of the witness.
>
> This case is to be decided not upon emotion or passion, but to be decided upon the evidence that you find the evidence to be--or the facts as you find the evidence to be from the evidence presented and in accordance with the law as given to you in the Court's instructions.

It is well settled that "'photographs of the victim's body may be used to illustrate testimony as to the cause of death.'" *State v. Cummings*, 332 N.C. 487, 503, 422 S.E.2d 692, 701 (1992) (quoting *State v. Hennis*, 323 N.C. 279, 284, 372 S.E.2d 523, 526 (1988)). "In determining whether to admit photographic evidence, the trial court must weigh the probative value of the photographs against the danger of unfair prejudice to defendant." *State v. Blakeney*, 352 N.C. 287, 309, 531 S.E.2d 799, 816 (2000), *cert. denied*, 531 U.S. 1117, 148 L. Ed. 2d 780 (2001); *see also* N.C. Gen. Stat. § 8C-1, Rule 403 (1999). This determination is based on the totality of the circumstances. *Hennis*, 323 N.C. at 285, 372 S.E.2d at 527. Moreover, the determination

> lies within the sound discretion of the trial court, and the trial court's ruling should not be overturned on appeal unless the ruling was "manifestly unsupported by reason or [was] so

> arbitrary that it could not have been the result of a reasoned decision."

State v. Goode, 350 N.C. 247, 258, 512 S.E.2d 414, 421 (1999) (quoting *Hennis*, 323 N.C. at 285, 372 S.E.2d at 527) (alteration in original).

Our Supreme Court has further stated that

> [p]hotographs of a homicide victim may be introduced even if they are gory, gruesome, horrible or revolting, so long as they are used for illustrative purposes and so long as their excessive or repetitious use is not aimed solely at arousing the passions of the jury.

Hennis, 323 N.C. at 284, 372 S.E.2d at 526. "'Photographs are usually competent to be used by a witness to explain or illustrate anything that it is competent for him to describe in words.'" *State v. Watson*, 310 N.C. 384, 397, 312 S.E.2d 448, 457 (1984) (quoting *State v. Cutshall*, 278 N.C. 334, 347, 180 S.E.2d 745, 753 (1971)). In the context of a first degree murder case, photographs may be admitted to illustrate testimony regarding the manner of the killing so as to prove the elements of the offense circumstantially. *State v. Thomas*, 344 N.C. 639, 647, 477 S.E.2d 450, 453-54 (1996), *cert. denied*, 522 U.S. 824, 139 L. Ed. 2d 41 (1997); *see also Hennis*, 323 N.C. at 284, 372 S.E.2d at 526.

In the present case, the photographs were used by Dr. Thompson to illustrate his testimony regarding the numerous wounds suffered by the victim, after he responded affirmatively that the photographs would assist him in illustrating his testimony to the jury. The photographs were not used repeatedly and were not used

solely to arouse the passions of the jury. Defendant was on trial for first-degree murder, and the photographs helped illustrate the identity of the victim and the numerous wounds inflicted upon her by defendant. Finally, the trial court's instruction insured that the photographs' probative value outweighed any prejudicial effect, confusion of issues or misleading of the jury.

As to defendant's constitutional arguments, we note that he failed to argue how the admission of the photographs would violate his constitutional rights. Constitutional questions not raised and passed upon at trial will not be considered on appeal. *State v. Benson*, 323 N.C. 318, 321-22, 372 S.E.2d 517, 519 (1988). Based on the foregoing, we conclude the trial court did not err in allowing the two autopsy photographs of Tina Inman to be admitted. Defendant's first assignment of error is overruled.

Juror Notes

By his second assignment of error, defendant argues the trial court erred by allowing the jurors to take their notes home during overnight recesses. We do not agree.

Prior to the presentation of opening statements, the trial court reminded the jurors they would be permitted to take notes during the trial and that pens and notepads had been provided for that purpose. The trial court then stated:

> I also indicated to you yesterday that I was going to ask you to leave your notepads in your seats at the end of the day. I'm going to ask you to leave your jury badges in your seats. I'm going to let you take your notepads with you. You are responsible for the maintenance of these notepads. As I

> indicated, you are not to show your notes to anyone else; they may be used by you in accordance with my previous instructions during the deliberation process. One of the reasons is because of housekeeping. I believe the courtroom will be open to housekeeping, and I don't want housekeeping going through your notes. So they will be kept by you. You may take them home, but again, do not show them to anyone else. You will need to bring them back each and every day.

At the conclusion of the trial, the trial court stated:

> In regards to your notepads, I'm going to ask that you take your notes, as I indicated to you, out of your pad. You can destroy those as you see fit. I would suggest tearing them up in many pieces and destroying those notes so they will not be available to anyone for their review now.

Defendant concedes that "[e]xcept where the judge, on the judge's own motion or the motion of any party, directs otherwise, jurors may make notes and take them into the jury room during their deliberations." N.C. Gen. Stat. § 15A-1228 (1999). However, defendant argues the statute does not provide for jurors taking their notes home overnight. Defendant also argues the trial court itself had sufficient resources to hold the jurors' notes overnight. He further believes the trial court did not give proper admonitions to the jurors each day regarding their use of the notes, though the trial court did go into detail with the jury concerning other matters. In sum, defendant believes the trial court's failure to warn jurors about the importance of their notes created an impermissible risk that a juror used the notes in an improper fashion.

Defendant did not raise any objection at trial to the jurors

taking their notes home overnight; thus, defendant has not preserved this issue for appeal. See N.C.R. App. P. 10(b)(1) (1999); N.C. Gen. Stat. § 8C-1, Rule 103(a)(1) (1999). "This Court will not consider arguments based upon matters not presented to, or adjudicated by the trial tribunal." *State v. Hairston*, 123 N.C. App. 753, 761, 475 S.E.2d 242, 247 (1996). This assignment of error is also ineligible for plain error review, as plain error is limited to errors in a trial court's instructions to the jury or its rulings on the admissibility of evidence. *State v. Cummings*, 346 N.C. 291, 313-14, 488 S.E.2d 550, 563 (1997), *cert. denied*, 522 U.S. 1092, 139 L. Ed. 2d 873 (1998).

Upon careful examination of the proceedings below, we conclude that defendant has failed to show that the jurors did anything other than secure their notes and bring them to court at the next day's session. Absent a contrary showing by defendant, his argument is nothing more than mere speculation. Accordingly, defendant's second assignment of error is overruled.

Victim's Statements

By his third assignment of error, defendant contends the trial court erred in allowing into evidence statements made by the victim, Tina Inman, and brought into evidence by her mother's testimony at trial. When Ms. Caroline Inman was on the witness stand, the prosecutor asked her about the moments before her daughter was shot. After a question regarding what time of day it was, Ms. Inman testified as follows:

A. Yeah. We was there out there

between 9:30, then we talked about ten.

And she -- we was out there talking; it was around 10:15. I never forget it, 'cause she looked at her watch and she say, "It's 10:15." She say, "David wanted me to come get him at 10:15." She say, "I'm not going to pick him up."

She say he wanted her to pick him up at 10:00. And she say, "it's 10:15 now."

MR. BOWEN [Defense Attorney]: Object.

THE WITNESS: Said, "I'm not going to go pick him up."

THE COURT: Overruled.

Later, Ms. Inman testified as follows:

Q. What did Tina tell you about her relationship and how she felt about David McMillian?

MR. BOWEN [Defense Attorney]: Object.

THE COURT: Overruled.

MS. BURTON [Prosecutor]: Your Honor, this is offered as to the mental state of the victim, Tina Inman, not as to the truth of the matter.

MR. BOWEN [Defense Attorney]: Desire an instruction.

THE COURT: All right. Ladies and gentlemen, you are about to receive evidence with regard to the relevant -- or is being offered for purpose of showing the mental state of the victim, Tina Inman. It is not being offered to prove the truth of the matters asserted in the statements -- well, let me -- it is not being offered to prove the truth of any conduct that may be described in the statements.

Q. (BY MS. BURTON) [Prosecutor:] Mrs. Inman, what did your daughter Tina tell you?

A. She told me she was afraid of David and that he was going to kill her.

Q. Did she tell you why she was afraid of David McMillan [sic]?

A. Yes. On account he was beating on her.

Q. And, ma'am, did you have any other conversations that week with Tina?

A. Yes, I did.

Q. About her being afraid and any thoughts she had about dying?

A. Yes.

Q. What did she tell you?

A. She -

MR. BOWEN [Defense Attorney]: Object to this whole line.

THE COURT: It's overruled.

THE WITNESS: She was talking about dying, and she said she didn't want all that dirt over her.

Q. (BY MS. BURTON) [Prosecutor]: Is that the extent of what she said as to dying?

A. Yes.

Q. Did you have any conversation with her concerning her children if she died?

A. Yes, she did.

Q. What did she say?

A. She told me -- she said, "Mama, please don't let them McMillians have my kids, because I don't want them having no part of my kids. You take my kids and raise them and don't let them have them."

And I said, "I promise you, baby, I

will."

Defendant contends this testimony constituted inadmissible hearsay that prejudiced his right to a fair trial. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C. Gen. Stat. § 8C-1, Rule 801 (1999). Hearsay is inadmissible, unless it falls under one of the recognized exceptions to the hearsay rule. *See* N.C. Gen. Stat. § 8C-1, Rules 801 and 802 (1999). One such exception is found in N.C. Gen. Stat. § 8C-1, Rule 803(3) (1999), which grants an exception for testimony which is a statement of the declarant's then existing state of mind, emotion, sensation, or physical condition. Rule 803(3) excepts from the hearsay rule:

> A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

"The state of mind exception allows for the introduction of hearsay evidence which tends to 'indicate the victim's mental condition by showing the victim's fears, feelings, impressions or experiences,' so long as the possible prejudicial effect of such evidence does not outweigh its probative value under Rule 403." *State v. Corpening*, 129 N.C. App. 60, 66, 497 S.E.2d 303, 308, *disc. review denied*, 348 N.C. 503, 510 S.E.2d 659 (1998) (quoting *State v. Walker*, 332 N.C. 520, 535, 422 S.E.2d 716, 725 (1992),

cert. denied, 508 U.S. 919, 124 L. Ed. 2d 271 (1993)).

As to the first part of Ms. Inman's testimony, defendant asserts that the statements attributed to Tina Inman were statements of fact rather than expressions of fear, feelings, impressions, or experiences. He further contends the testimony was used to attribute to defendant a motive for the killing; that he was angry the victim failed to pick him up on time. As to the second part of Ms. Inman's testimony, defendant asserts that the majority of the testimony was irrelevant to the jury's determination of whether defendant acted with premeditation and deliberation.

The State, on the other hand, asserts that the testimony complained of by defendant was not offered for the truth of the matter asserted, such that the trial court did not err in denying defendant's objection. Our Supreme Court

> has consistently held that a murder victim's statements that she fears the defendant and fears that the defendant might kill her are statements of the victim's then-existing state of mind and are "'highly relevant to show the status of the victim's relationship to the defendant.'"

State v. Hipps, 348 N.C. 377, 392, 501 S.E.2d 625, 634 (1998), *cert. denied*, 525 U.S. 1180, 143 L. Ed. 2d 114 (1999) (quoting *State v. Crawford*, 344 N.C. 65, 76, 472 S.E.2d 920, 927 (1996) (quoting *State v. Alston*, 341 N.C. 198, 230, 461 S.E.2d 687, 704 (1995), *cert. denied*, 516 U.S. 1148, 134 L. Ed. 2d 100 (1996))).

After careful consideration of the testimony, we conclude the

victim's statements were directly related to her relationship to defendant, as well as her fear that he would kill her. To obtain a conviction for first-degree murder, the State must prove that defendant acted with malice, premeditation and deliberation; such mental states are not ordinarily susceptible to direct evidence and are proven, instead, by circumstantial evidence.

> Circumstances which give rise to an inference of premeditation and deliberation are (1) "conduct and statements of the defendant before and after the killing," (2) "threats made against the victim by the defendant, ill will or previous difficulty between the parties," and (3) "evidence that the killing was done in a brutal manner." *State v. Bullard*, 312 N.C. 129, 161, 322 S.E.2d 370, 388 (1984); *see also State v. Walker*, 332 N.C. at 533, 422 S.E.2d at 724.

Corpening, 129 N.C. App. at 67, 497 S.E.2d at 308. We believe the present case is similar to *Corpening*, and conclude the victim's statements relate to conduct, statements of defendant before and after the killing, threats made by defendant to the victim, and ill will between the parties. The statements brought into evidence through Ms. Inman's testimony corroborate the victim's state of mind, and the trial court did not err in allowing the statements into evidence. Defendant's third assignment of error is overruled.

Statements by Victim's Children

Defendant next argues the trial court erred in allowing Ms. Pam Mitchell to testify as to what the victim's children said as their mother was being shot by their father. The State, on the other hand, contends the testimony was offered to explain Ms. Mitchell's subsequent actions, and not for the truth of the matter

asserted. We agree with the State.

Ms. Mitchell was the granddaughter of Ms. Caroline Inman, but lived with her and called her "mother." She also referred to Tina Inman, the victim, as her "sister," though in reality Ms. Mitchell was Tina Inman's aunt. The State called Ms. Mitchell to testify, since she was living at Ms. Inman's house and was present when the victim was shot. On the evening of 26 May 1998, Ms. Mitchell saw defendant cross Caroline Inman's yard. Ms. Mitchell subsequently went into her room. She related the events as follows:

> Q. What happened then?
>
> A. And I heard the girls, they started hollering and screaming, saying, "David is going to kill my mother. He's -"
>
> MR. BOWEN [Defense Attorney]: Object; move to strike. Desire a jury instruction.
>
> MS. BURTON [Prosecutor]: Would not offer it for the truth of the matter; offer it for what she heard, what she did as a result of what she heard.
>
> THE COURT: Well, at this point, I am going to grant the motion; I'm going to strike it.
>
> And, ladies and gentlemen, do not consider the last response about what she heard as evidence.
>
> . . . .
>
> Q. And what did you hear before the girls came into the home?
>
> A. Before - I didn't hear anything until the girls came in screaming.
>
> MR. BOWEN [Defense Attorney]: Object.
>
> THE COURT: Overruled.

> Q. (BY MS. BURTON) What did the girls say?
>
> MR. BOWEN [Defense Attorney]: Object.
>
> THE COURT: Overruled.
>
> Q. (BY MS. BURTON) What did the girls say?
>
> A. They were saying many things. They were saying, "Daddy is going to kill my mother."
>
> MR. BOWEN [Defense Attorney]: Object.
>
> THE WITNESS: He had a gun.
>
> THE COURT: Overruled.
>
> THE WITNESS: "Please don't --"
>
> MR. BOWEN [Defense Attorney]: Object.
>
> THE COURT: Overruled.
>
> THE WITNESS: "-- kill my mama."
>
> MR. BOWEN [Defense Attorney]: Object.
>
> THE COURT: Overruled.
>
> Q. (BY MS. BURTON) When you were on the phone, what made you then get on the phone?
>
> A. 'Cause my Mama came in and she was like, "Pam, please call." She couldn't take the phone and call. And she wanted us to try and get to Tina before anything happened. (Crying.)

We disagree that the aforementioned testimony constituted inadmissible hearsay whose only function was to incite the passion of the jury. Rather, we agree with the State that the testimony was used to explain the conduct of Ms. Pam Mitchell in calling the police and was relevant and admissible. *See State v. Call*, 349

N.C. 382, 409-10, 508 S.E.2d 496, 513 (1998); and *State v. Lamb*, 342 N.C. 151, 157-58, 463 S.E.2d 189, 192-93 (1995).

With regard to defendant's constitutional claims, we do not discern any error. First, defendant failed to raise a constitutional claim before the trial court, and cannot now do so before this Court. *See Benson*, 323 N.C. at 321-22, 372 S.E.2d at 519. Second,

> [n]either a hearsay nor a confrontation question would arise had [the witness'] testimony been used to prove merely that the statement had been made. The hearsay rule does not prevent a witness from testifying as to what he has heard; it is rather a restriction on the proof of fact through extrajudicial statements. From the viewpoint of the Confrontation Clause, a witness under oath, subject to cross-examination, and whose demeanor can be observed by the trier of fact, is a reliable informant not only as to what he has seen but also as to what he has heard.

Dutton v. Evans, 400 U.S. 74, 88, 27 L. Ed. 2d 213, 226 (1970). Finally, even if the testimony was improperly admitted, defendant cannot show that a different result would have been reached had the testimony been excluded. *See State v. Locklear*, 322 N.C. 349, 360, 368 S.E.2d 377, 384 (1988). Defendant's fourth assignment of error is overruled.

Redirect Examination of Dr. Thompson

By his fifth assignment of error, defendant argues the trial court erred in allowing questions that exceeded the scope of the direct examination when Dr. Thompson was called on redirect examination. Dr. Thompson's direct testimony was concerned with the autopsy and his findings. Cross-examination was limited to the

size of the victim, clarifications of markings on the autopsy diagram, the location of bullet wounds on the diagram, the absence of powder burns, and a discussion of which wounds were fatal. Defendant also focused on Dr. Thompson's inability to say for certain whether the victim was running, walking, or standing still when she was shot. On recross-examination, the questions referred only to evidence of powder residue and its absence in this case. On redirect examination, the following exchange occurred:

> Q. (MS. BURTON) Dr. Thompson, based upon your autopsy, do you have an opinion as to whether or not wounds No. 2, 3 and 5 are consistent with Tina Inman running away from a shooter.
>
> MR. BOWEN [Defense Attorney]: Object. Object.
>
> THE COURT: Just a minute. Overruled.
>
> THE WITNESS: I have an opinion, yes.
>
> Q. (MS. BURTON) What is your opinion?
>
> MR. BOWEN [Defense Attorney]: Object.
>
> THE COURT: Overruled.
>
> THE WITNESS: Gunshot wounds No. 2 and 3 have the entrance on the back. These are certainly consistent with her having been running away.
>
> Whereas, No. 5 has the entrance on the front. And it's not consistent with her running away.

The purpose of redirect examination is to clarify any questions raised on cross-examination concerning the subject matter of direct examination and to confront any new matters which arose during cross-examination. *State v. Price*, 301 N.C. 437, 452, 272

S.E.2d 103, 113 (1980). Defendant maintains the testimony by Dr. Thompson exceeded the scope of redirect examination and did not explain or rebut any evidence introduced by defendant. Thus, defendant argues, the testimony added nothing of value and merely served to inflame the jury.

The State points out that defendant did not properly preserve this issue for appellate review because he lodged only a general objection to Dr. Thompson's testimony. "[A] general objection, if overruled, is ordinarily not effective on appeal." *State v. Hamilton*, 77 N.C. App. 506, 509, 335 S.E.2d 506, 508 (1985), *disc. review denied*, 315 N.C. 593, 341 S.E.2d 33 (1986). *See also Hairston*, 123 N.C. App. at 761, 475 S.E.2d at 247 (explaining that this Court will not consider arguments based upon matters not presented to or adjudicated by the trial court). After carefully reviewing the trial transcript, we believe defendant's objection was, essentially, that Dr. Thompson did not have a sufficient basis upon which to give an opinion. We agree with the State that defendant has failed to explain how the allegedly improper redirect examination of Dr. Thompson violated his constitutional rights; thus, his argument in that regard is deemed abandoned. *See* N.C.R. App. P. 28(b)(5) (1999).

Finally, we agree with the State that the scope of the redirect examination was proper. *See State v. Cummings*, 352 N.C. 600, 620, 536 S.E.2d 36, 51 (2000), *cert. denied*, ___ U.S. ___, 149 L. Ed. 2d 641 (2001). In *Cummings*, our Supreme Court stated:

> [W]e have held that "the scope of permissible

> cross-examination is limited only by the discretion of the trial court and the requirement of good faith." *Locklear*, 349 N.C. at 156, 505 S.E.2d at 299. "'A prosecutor's questions are presumed to be proper unless the record shows that they were asked in bad faith.'" *State v. Fleming*, 350 N.C. 109, 139, 512 S.E.2d 720, 740 (quoting *State v. Bronson*, 333 N.C. 67, 79, 423 S.E.2d 772, 779 (1992)), *cert. denied*, 528 U.S. 941, 145 L. Ed. 2d 274 (1999).

As in *Cummings*, the record in the present case "does not support defendant's broad and unsubstantiated allegation that [the] question[s] by the prosecutor [were] asked in bad faith." *Cummings*, 352 N.C. at 620, 536 S.E.2d at 51. The questions on cross-examination dealt with the proximity of the gun to the victim, and defendant was trying to negate the prosecution's theory that he chased the victim and shot her at close range. There was some evidence that the victim was running away from defendant, since some of the shots entered from the back of her body and shell casings were retrieved from various locations. We again note that malice, premeditation and deliberation were issues in this case. We also recognize that the trial court has broad discretion regarding the examination of witnesses. We therefore conclude the trial court neither abused its discretion nor engaged in prejudicial error when it allowed the prosecutor to ask questions that rebutted defendant's questions. Defendant has failed to show any evidence of bad faith on the part of the prosecutor. Even if the scope of the redirect examination exceeded the scope of cross-examination, Dr. Thompson's admission that he could not tell for certain whether the victim was running, walking, or standing still

cured any possible prejudice that resulted from the trial court's allowance of the redirect examination. Defendant's fifth assignment of error is overruled.

Introduction of Prior Statement for Corroboration

By his sixth assignment of error, defendant contends the trial court erred by allowing Officer Danny Russ' notes into evidence for corroborative purposes. We do not agree.

Officer Russ spoke to Ms. Caroline Inman the day after her daughter Tina was killed, and asked her to describe what she had seen on 26 May 1998. As a result of the meeting, Officer Russ made notes of Ms. Inman's statements to him. During the course of the trial, Officer Russ' notes were marked as Exhibit 1C, a documentary exhibit. Officer Russ was allowed to read his notes over defendant's objection. The trial court instructed the jury that

> the statement that has been read to you by Officer Russ of Caroline Inman was offered into evidence by the State for the purpose of corroborating Ms. Inman's in-court testimony. The statement itself is not to be considered by you as substantive evidence of what occurred because it was not made under oath during this trial. It's to be considered only for the purpose of corroborating the in-court testimony of Ms. Inman, if you find it so does.

Defendant concedes that a witness' prior consistent statements are admissible as corroborative evidence. *State v. Ramey*, 318 N.C. 457, 468, 349 S.E.2d 566, 573 (1986). To be considered corroborative, "the prior statement of the witness need not merely relate to specific facts brought out in the witness's testimony at trial, so long as the prior statement in fact tends to add weight

or credibility to such testimony." *Id.* at 469, 349 S.E.2d at 573. However, defendant argues Officer Russ' notes could, at most, have been used to refresh his recollection or as corroborative of his testimony regarding what Ms. Inman told him, but were not corroborative of Ms. Inman's testimony since there was no indication that Ms. Inman endorsed Officer Russ' notes as her own statement. Defendant argues that, because Officer Russ did not offer independent testimony about what Ms. Inman told him, his notes should have been deemed inadmissible.

The State, on the other hand, argues that the officer's notes were properly admitted over defendant's objection. After the notes were read into evidence by Officer Russ, defendant again objected that the statement was not corroborative. The objection was overruled, and the trial court gave the above-recited instruction.

Defendant's argument, that Ms. Inman never endorsed the exhibit, is raised for the first time on appeal. Defendant has also failed to properly argue his constitutional violation and such argument is deemed abandoned under N.C.R. App. P. 28(b)(5). We agree with the State that defendant has provided no legal authority for his argument that an officer's testimony that he took a statement from a witness, and his in-court identification of an exhibit as that statement, is insufficient to establish that the statement is the prior statement of the witness. See *State v. Cook*, 65 N.C. App. 703, 309 S.E.2d 737 (1983) (deputy sheriff allowed to testify as to witness' prior consistent statement). Defendant's sixth assignment of error is overruled.

Cumulative Effect of Trial Court's Rulings

Lastly, as an alternative to defendant's previous arguments, defendant urges us to consider the sum total of the trial court's evidentiary rulings and conclude that he did not receive a fair trial. Our Supreme Court has previously held that the cumulative effect of a trial court's rulings may deprive a defendant of his right to a fair trial, even though the defendant has failed to show that any of the trial court's rulings, considered individually, were sufficiently prejudicial to require a new trial. *See State v. White*, 331 N.C. 604, 616, 419 S.E.2d 557, 564 (1992). However, defendant has failed to carry that burden here.

After careful consideration of the entire record, we conclude that defendant received a fair trial, free from prejudicial error.

No error.

Judges GREENE and CAMPBELL concur.

Report per Rule 30(e).