NO. COA10-1473
NORTH CAROLINA COURT OF APPEALS

Filed: 16 August 2011

STATE OF NORTH CAROLINA

v. Durham County
No. 07 CRS 45692

THOMAS CARROWAY

Appeal by defendant from judgment entered 16 April 2009 by Judge J. B. Allen, Jr. in Durham County Superior Court. Heard in the Court of Appeals 12 May 2011.

Attorney General Roy Cooper, by Special Deputy Attorney General Norma S. Harrell, for the State.

Rudolf Widenhouse & Fialko, by M. Gordon Widenhouse, Jr., for the defendant-appellant.

ERVIN, Judge.

Defendant Thomas Carroway appeals from a judgment sentencing him to a minimum term of 189 months and a maximum term of 236 months imprisonment in the custody of the North Carolina Department of Correction based upon his conviction for second-degree murder. On appeal, Defendant contends that the trial court erroneously failed to instruct the jury concerning the issue of Defendant's guilt of the lesser included offense of

involuntary manslaughter and erroneously sustained the State's objection to the introduction of a video recording of certain tests performed by a defense expert witness upon the shotgun with which the victim was killed. After careful consideration of Defendant's challenges to the trial court's judgment in light of the record and the applicable law, we conclude that Defendant received a fair trial that was free from prejudicial error and that the trial court's judgment should remain undisturbed.

I. Factual Background

A. Substantive Facts

1. State's Evidence

Although Defendant had been living at 3007 Angier Avenue in Durham with Lakeisha Brodie, her mother, her brother, and her sister for approximately eleven months, he was in the process of moving to the house at 3005 Angier Avenue, which was located next door, on 7 May 2007. At approximately 8:00 p.m. on that date, Ms. Brodie arrived at 3007 Angier Avenue. After hearing screams emanating from the front of the residence, Ms. Brodie came out of her room and saw Sheridan Glenn Pierce lying in the doorway. When Mr. Pierce told her that he had been shot, Ms. Brodie called 911 using her cell phone.

At about the same time, Jarmont Barbee, who was driving by, saw a man wearing a blood-drenched tee shirt stumbling on the porch of 3007 Angier Avenue. After making a u-turn, Mr. Barbee

observed the man fall into a doorway and called 911. About five to ten minutes before he heard emergency sirens, Odell Pratt, another Angier Avenue resident, witnessed Defendant walking quickly down the street from the direction of 3007 Angier Avenue.

Officer T.M. Greathouse of the Durham Police Department responded to the 911 calls made by Ms. Brodie and Mr. Barbee. Upon arriving at 3007 Angier Avenue, Officer Greathouse saw Mr. Pierce lying inside a doorway with a wound to the chest. Officer Greathouse also observed a 12-gauge shotgun and a .22 caliber rifle, which were partially visible under a couch near the spot at which Mr. Pierce was lying. A fired shotgun shell was also located on the couch.

Shortly thereafter, Officer D.J. Kuszaj of the Durham Police Department arrived at 3007 Angier Avenue and was directed, along with other investigating officers, to secure a house located at 3005 Angier Avenue. At 3005 Angier Avenue, Officer Kuszaj saw a pool of blood smeared on the landing and on the ground next to the building. Upon entering the residence, Officer Kuszaj also noticed a pool of blood next to the couch and a blood smear leading to the doorway.

Investigator S.M. Pate and another homicide detective with the Durham Police Department located Defendant, who claimed that he was getting ready to turn himself in, on the following day.

At the time that he was apprehended, Defendant gave oral and written statements to the investigating officers. In these statements, Defendant admitted that he had shot Mr. Pierce with a shotgun; however, Defendant claimed that the shooting of Mr. Pierce was an accident which occurred while he was checking to see if the gun was loaded. Defendant claimed to have received a busy signal when he called 911 on his cell phone after Mr. Pierce was injured.

After Defendant was taken to the police station, Investigator Delois West took possession of Defendant's cell phone. Subsequently, investigating officers obtained the call records relating to Defendant's phone. At trial, Officer William McFayden of the Durham Police Department, a specialist in digital forensics, testified that tests showed no indication that a 911 call had been made from Defendant's cell phone. In addition, James Soukup, the director of Durham's emergency response system, testified that he had never heard of any caller encountering a busy signal while attempting to call 911. According to Mr. Soukup, the 911 call center only received two calls relating to the shooting at 3007 Angier Avenue.

A number of witnesses described the relationship between Defendant and Mr. Pierce. Kareem Fox testified that six men, including Defendant, Mr. Pierce, and himself, were smoking marijuana on the afternoon of 7 May 2007. Although Mr. Fox did

not recall that Defendant and Mr. Pierce had had any specific dispute within the month preceding Mr. Pierce's death, he testified that Defendant was both "cool" with and afraid of Mr. Pierce. According to Mr. Pierce's mother, Inita Glenn, Defendant had "beat . . . up" Mr. Pierce approximately two months prior to the date of Mr. Pierce's death.

2. Defendant's Evidence

At trial, Defendant admitted owning the shotgun involved in Mr. Pierce's death. In addition, Defendant testified that he "didn't [ever] mess with that gun" and that he "just thought about going to play with the gun" on the date that Mr. Pierce was killed. Defendant claimed that he was "just playing with the [shot]gun" and that he cocked and pulled the trigger four times before the shotgun discharged the fifth time he repeated the action. Although Defendant had told Mr. Pierce that he would attempt to get help, he left the house at 3005 Angier Avenue, went next door to 3007 Angier Avenue, and placed the firearms under a futon. At the time that he encountered Ms. Brodie, Defendant did not say anything about the shooting.

Mark Duncan, who owned and operated two shooting facilities, testified on Defendant's behalf as an expert witness in firearm operations. Mr. Duncan stated that, despite having repeatedly cycled the shotgun with which Mr. Pierce had been killed, he "could not get it to feed up." According to Mr.

Duncan, this meant that the shotgun would not feed shells into the chamber so as to permit the shotgun to be fired. However, when Mr. Duncan tested the firearm in the courtroom, it functioned properly. After noting on cross-examination that, although a video recording had been made of the test in which the shotgun malfunctioned, Mr. Duncan claimed to have lost this recording in a computer crash. Although at least part of the recording was discovered during a weekend recess, the trial court sustained the State's objection to the introduction of the recording.

B. Procedural History

On 8 May 2007, a warrant for arrest was issued charging Defendant with murdering Mr. Pierce. On 21 May 2007, the Durham County grand jury returned a bill of indictment charging Defendant with the murder of Mr. Pierce. The charge against Defendant came on for trial before the trial court and a jury at the 1 April 2009 criminal session of the Durham County Superior Court. On 8 April 2009, the jury returned a verdict finding Defendant guilty of second-degree murder. At the ensuing sentencing hearing, the trial court found that Defendant had accumulated two prior record points and should be sentenced as a Level II offender. Based upon these determinations, the trial court sentenced Defendant to a minimum term of 189 months and a maximum term of 236 months imprisonment in the custody of the

North Carolina Department of Correction. Defendant noted an appeal to this Court from the trial court's judgment.

II. Legal Analysis

A. Involuntary Manslaughter Instruction

On appeal, Defendant initially contends that the trial court committed plain error by failing to instruct the jury on the issue of his guilt of the lesser included offense of involuntary manslaughter on the grounds that a reasonable jury could have found that Defendant acted with culpable negligence at the time of Mr. Pierce's death. We do not find Defendant's argument persuasive.

1. Standard of Review

As a general proposition, this Court reviews a defendant's challenge to a trial court's failure to instruct the jury on the issue of the defendant's guilt of a lesser included offense, such as involuntary manslaughter, on a *de novo* basis. *State v. Osorio,* 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009) (stating that "[a]ssignments of error challenging the trial court's decisions regarding jury instructions are reviewed *de novo*") (citing *State v. Ligon,* 332 N.C. 224, 241–42, 420 S.E.2d 136, 146–47 (1992) and *State v. Levan,* 326 N.C. 155, 164–65, 388 S.E.2d 429, 433-34 (1990)). "[A] judge presiding over a jury trial must instruct the jury as to a lesser included offense of the crime charged where there is evidence from which the jury

could reasonably conclude that the defendant committed the lesser included offense." *State v. McConnaughey,* 66 N.C. App. 92, 95, 311 S.E.2d 26, 28 (1984) (citing *State v. Wallace,* 309 N.C. 141, 145, 305 S.E.2d 548, 551 (1983) and *State v. Redfern,* 291 N.C. 319, 321, 230 S.E.2d 152, 153 (1976), *disapproved on other grounds by State v. Collins,* 334 N.C. 54, 62, 431 S.E.2d 188, 193 (1993)). In determining whether the evidence is sufficient to support the submission of the issue of a defendant's guilt of a lesser included offense to the jury, "'courts must consider the evidence in the light most favorable to [the] defendant.'" *State v. Clegg,* 142 N.C. App. 35, 46, 542 S.E.2d 269, 277 (quoting *State v. Mash,* 323 N.C. 339, 348, 372 S.E.2d 532, 537 (1988)), *disc. review denied,* 353 N.C. 453, 548 S.E.2d 529 (2001). However, "[i]f the State's evidence is sufficient to fully satisfy its burden of proving each element of the greater offense and there is no evidence to negate those elements other than defendant's denial that he committed the offense, defendant is not entitled to an instruction on the lesser offense." *State v. Smith,* 351 N.C. 251, 267-68, 524 S.E.2d 28, 40 (citation omitted), *cert. denied,* 531 U.S. 862, 148 L. Ed. 2d 100, 121 S. Ct. 151 (2000).

In this case, however, Defendant failed to object to the trial court's failure to instruct the jury on the issue of his guilt of involuntary manslaughter at trial as required by N.C.R.

App. P. 10(a)(2) (stating that "[a] party may not make any portion of the jury charge or omission therefrom the basis of an issue presented on appeal unless the party objects thereto before the jury retires to consider its verdict, stating distinctly that to which objection is made and the grounds of the objection."). As a result, we review Defendant's challenge to the trial court's failure to deliver an involuntary manslaughter instruction utilizing a "plain error" standard of review. "'[A] reversal for plain error is only appropriate in the most exceptional cases.'" *State v. Duke*, 360 N.C. 110, 138, 623 S.E.2d 11, 29 (2005), *cert. denied*, 549 U.S. 855, 166 L. Ed. 2d 96, 127 S. Ct. 130 (2006). The "plain error" rule:

> is always to be applied cautiously and only in the exceptional case where, after reviewing the entire record, it can be said the claimed error is a "*fundamental* error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done," or where the error is such as to "seriously affect the fairness, integrity or public reputation of judicial proceedings" or . . . "had a probable impact on the jury's finding that the defendant was guilty."

State v. Odom, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (quoting *United States v. McCaskill*, 676 F.2d 995, 1002 (4th Cir. 1982). We will now review Defendant's claim utilizing a "plain error" standard of review.

2. Analysis

"The elements of involuntary manslaughter are: (1) an unintentional killing; (2) proximately caused by either (a) an unlawful act not amounting to a felony and not ordinarily dangerous to human life, or (b) culpable negligence." *State v. Hudson*, 345 N.C. 729, 733, 483 S.E.2d 436, 439 (1997) (citations omitted); *see also State v. Powell*, 336 N.C. 762, 767, 446 S.E.2d 26, 29 (1994). Culpable negligence consists of "'such recklessness or carelessness, proximately resulting in injury or death, as imports a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others.'" *State v. Weston*, 273 N.C. 275, 280, 159 S.E.2d 883, 886 (1968) (quoting *State v. Cope*, 204 N.C. 28, 30, 167 S.E. 456, 458 (1933)). Unlike involuntary manslaughter, a showing of guilt of second-degree murder requires proof that the defendant acted with malice. *State v. Snyder*, 311 N.C. 391, 393, 317 S.E.2d 394, 395 (1984) (defining second-degree murder as the "unlawful killing of a human being with malice but without premeditation and deliberation"). Malice, for purposes of the law of homicide, is not equivalent to an actual intent to take a human life or simple hatred. *State v. Wilkerson*, 295 N.C. 559, 578, 247 S.E.2d 905, 916 (1978) (quoting *State v. Wrenn*, 279 N.C. 676, 687, 185 S.E.2d 129, 135 (1971) (Sharp, J., dissenting)). Instead, malice "may be inferential or implied, instead of

positive, as when an act which imports danger to another is done so recklessly or wantonly as to manifest depravity of mind and disregard to human life." *Id.*

In *State v. McCollum*, 157 N.C. App. 408, 579 S.E.2d 467 (2003), *aff'd per curiam*, 358 N.C. 132, 591 S.E.2d 519 (2004), the defendant was convicted of second-degree murder after claiming that a gun had gone off while he was fighting with the victim. Since the defendant failed to request a jury instruction on involuntary manslaughter, this Court determined the extent to which the trial court erred by failing to submit the issue of the defendant's guilt of involuntary manslaughter using a plain error standard. *Id.* at 412, 579 S.E.2d at 469. In concluding that the defendant was not entitled to plain error relief, this Court concluded that, "[i]n light of overwhelming evidence of defendant's guilt, the trial court's failure to instruct on the lesser included offense of involuntary manslaughter did not have 'a probable impact on the jury's finding that the defendant was guilty.'" *Id.* at 413, 579 S.E.2d at 470 (quoting *Odom*, 307 N.C. at 660, 300 S.E.2d at 378).

The facts in this case indicate that a similar result to that reached in *McCollum* is appropriate here. Although Defendant claimed that the shooting of Mr. Pierce was an accident, the record contained overwhelming evidence tending to show the existence of malice. For example, Defendant admitted

to investigating officers that he had pulled the trigger four times before the shotgun discharged the fifth time he repeated the action. Similarly, although Defendant claimed to have been "playing" with the gun, he did so in a confined space in the presence of other persons. Although Defendant presented expert testimony tending to show that the shotgun in question was capable of malfunctioning, the simple fact of the matter is that defendant admitted having cocked the shotgun and pulled the trigger five times while pointing the shotgun at another person. Although simply "playing" with a firearm in a confined space in the presence of another person might support a finding of culpable negligence, cocking a firearm and pulling the trigger five times while pointing it at another person involves such a degree of recklessness "'as to manifest depravity of mind and disregard of human life.'" *Wilkerson*, 295 N.C. at 578, 247 S.E.2d at 916 (quoting *Wrenn*, 279 N.C. at 687, 185 S.E.2d at 135 (Sharp, J., dissenting)). Thus, we conclude that the evidence, taken in the light most favorable to Defendant, tends to show that he killed Mr. Pierce with malice, obviating the necessity for an involuntary manslaughter instruction.

In seeking to persuade us to reach a contrary conclusion, Defendant places principal reliance on two decisions of this Court. *See State v. Lowe*, 150 N.C. App. 682, 564 S.E.2d 313 (2002); *State v. Bell*, 87 N.C. App. 624, 362 S.E.2d 288 (1987).

We do not believe that either of these cases requires an award of appellate relief in this case, since the evidence before the trial court in those cases would have clearly supported a verdict finding the defendant guilty of having committed a lesser included offense. *Lowe*, 150 N.C. App. at 685-86, 564 S.E.2d at 315-16; *Bell*, 87 N.C. App. at 634-35, 362 S.E.2d at 293-94. In *Lowe*, in which the defendant successfully challenged his conviction for assault with a deadly weapon inflicting serious injury on the grounds that the trial court should have submitted the issue of his guilt of assault inflicting serious injury, the defendant presented evidence from which the jury could have found that the fists and commode lid used to assault the victim were not deadly weapons *per se*. *Lowe*, 150 N.C. App. at 686-87, 564 S.E.2d at 316. Similarly, in *Bell*, in which the defendant successfully challenged his conviction for assault with a deadly weapon inflicting serious injury on the grounds that the trial court should have submitted the issue of the defendant's guilt of assault inflicting serious injury or simple assault, the defendant elicited evidence from which the jury could have found that the defendant did not use a deadly weapon to assault the victim. *Bell*, 87 N.C. App. at 635, 362 S.E.2d at 293. In this case, however, the undisputed evidence, which tended to show that Defendant killed the victim with a shotgun after pointing the weapon at the victim and repeatedly pulling

the trigger, established that Defendant acted with malice rather than the culpable negligence sufficient to support a conviction for involuntary manslaughter. As a result, since the record in this case was devoid of any evidence tending to show that Defendant did not act with malice, the trial court did not err, much less commit plain error, by failing to instruct the jury on the issue of Defendant's guilt of the lesser included offense of involuntary manslaughter.

B. Exclusion of the Video Recording

Secondly, Defendant contends that the trial court erred by sustaining the State's objection to the introduction of a video recording depicting the testing that Mr. Duncan performed on the shotgun with which Mr. Pierce was killed because the State "opened the door" to presentation of that evidence. Once again, Defendant's argument lacks merit.

1. Standard of Review

According to N.C. Gen. Stat. § 8C-1, Rule 403, otherwise relevant "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." "Whether to exclude expert testimony under Rule 403 is within the sound discretion of the trial court and will only be reversed on appeal for abuse

of discretion." *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 463, 597 S.E.2d 674, 689 (2004) (citing *State v. Anderson*, 322 N.C. 22, 28, 366 S.E.2d 459, 463, *cert. denied*, 488 U.S. 975, 102 L. Ed. 2d 548, 109 S. Ct. 513 (1988)). An abuse of discretion occurs when "the court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision." *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988) (citing *State v. Parker,* 315 N.C. 249, 258-59, 337 S.E.2d 497, 502-03 (1985)). We conclude that no abuse of discretion occurred in connection with the trial court's decision to preclude presentation of the video recording of a portion of the testing that Mr. Duncan performed on the shotgun from which the shot that killed Mr. Pierce was discharged.

2. Analysis

At the time of his testimony on behalf of Defendant, Mr. Duncan described at length his qualifications and the testing that he performed on the shotgun from which the shot that killed Mr. Pierce was fired. Mr. Duncan testified that, if the gun had been working properly, he should have been able to load a shell into the shotgun and to have the shell ejected from the shotgun as part of the loading and firing cycle. At the time that he tested the shotgun outside the courtroom on 6 March 2008, Mr. Duncan was unable to get the gun to function properly with any

degree of consistency because shells would not load properly. However, the shotgun worked correctly when Mr. Duncan tested it in front of the jury.

The fact that Mr. Duncan's testing of the weapon had been the subject of a video recording was elicited by the State on cross-examination. At that time, however, Mr. Duncan stated that, "even if I had videotape of it, it would--really wouldn't have proved much because what Dave didn't do is he-- he shows me cycling the gun, but the videotape never showed me loading it. So it would have been probably very little of use." According to Mr. Duncan, the video footage of his testing of the shotgun was lost in a computer crash. In addition, Mr. Duncan acknowledged that he might have mislabeled the video recording after e-mailing it to Defendant's trial counsel, depriving Defendant's trial counsel of any knowledge that the recording existed.

After searching through his sent e-mail messages over the weekend, Mr. Duncan located the video file and forwarded it to Defendant's trial counsel. Defendant's trial counsel converted the video footage into DVD form and brought the DVD to court on the next day of the trial. At that time, the trial court had understood that Defendant was about to rest and that it would be time for the final arguments of counsel and the trial court's instructions to the jury. The trial court reviewed the video

recording and questioned Mr. Duncan about the events which led to its discovery in absence of the jury, leading to the following colloquy between the trial court and Mr. Duncan:

> THE COURT: Mr. Duncan, for my clarification, everything shown on this video, did you not show that for the jury last Friday?
>
> [MR. DUNCAN]: Did I not show it?
>
> THE COURT: The same thing that's on the video.
>
> [MR. DUNCAN]: Well, the difference on the video, you can actually see the gun malfunction there, like I was saying it did when I tested it, but I could not get the gun to malfunction in front of the jury.
>
> . . . .
>
> THE COURT: We can get the court reporter to go type it up. My question to you, last Friday, didn't you take that shotgun and show the jury what you had examined and said it malfunctioned when you tested it?
>
> [MR. DUNCAN]: Yes, sir.

When Defendant attempted to introduce the video footage into evidence, the State objected in reliance on N.C. Gen. Stat. § 15A-903(a)(2). Based upon evidence concerning the circumstances surrounding the discovery of the video recording and the arguments of counsel, the trial court sustained the State's objection on the grounds that Defendant had committed a discovery violation and on the grounds that the probative value

of the evidence was outweighed by the prejudice to the State from its admission.[1]

At the time that it announced its decision, the trial court found that Mr. Duncan had already been questioned at length regarding the extent to which the shotgun malfunctioned and that he had tested the shotgun in the presence of the jury, where it worked properly. In addition, the trial court noted that sufficient time had already been devoted to Mr. Duncan's testimony regarding the contents of the video recording and that showing the events depicted on the video recording to the jury would have had no effect other than to illustrate information to which Mr. Duncan had already testified. *See State v. Coffey*, 326 N.C. 268, 281, 389 S.E.2d 48, 56 (1990) (holding that the trial court did not abuse its discretion by excluding evidence as "needlessly cumulative"). The trial court also expressed concern that the State would suffer prejudice due to the delay that would result from the admission of the video recording. After carefully reviewing the record, we conclude that the trial court's decision to sustain the State's objection to the

[1] Although Defendant appears to suggest that the trial court's decision to sustain the State's objection was part and parcel of its discovery-related decision, we read the record to indicate that the trial court's decision to sustain the State's objection rested on two separate and independent grounds, with the first being an alleged violation of the discovery statutes and the second based on an application of the balancing test set out in N.C. Gen. Stat. § 8C-1, Rule 403.

admission of the video recording was not "so arbitrary that it could not have been the result of a reasoned decision[,]" *State v. Banks*, 322 N.C. 753, 761, 370 S.E.2d 398, 404 (1988) (citing *State v. Hayes*, 314 N.C. 460, 471, 334 S.E.2d 741, 747 (1985)), given the fact that the video recording was discovered during the very last stages of Defendant's trial, Mr. Duncan's testimony that the video recording did not have significant probative value, and the fact that the information shown on the video recording had already been conveyed to the jury through Mr. Duncan's testimony.

In his brief, Defendant contends that the State "opened the door" to the admission of the video recording, thereby waiving any right to object to its admission into evidence. Admittedly, "the party who opens up an improper subject is held to be estopped to object to its further development or to have waived his right to do so." *State v. Reavis*, __ N.C. App. __, __, 700 S.E.2d 33, 38 (citing *State v. Brown*, 64 N.C. App. 637, 644, 308 S.E.2d 346, 350-51 (1983), *aff'd*, 310 N.C. 563, 313 S.E.2d 585 (1984)), *disc. rev. denied*, __ N.C. __, 705 S.E.2d 369 (2010). However, the "opening the door" doctrine does not trump the trial court's discretionary authority to exclude evidence pursuant to N.C. Gen. Stat. § 8C-1, Rule 403. *See State v. Campbell*, 359 N.C. 644, 671-73, 617 S.E.2d 1, 18 (2005) *cert. denied*, 547 U.S. 1073, 164 L. Ed. 2d 523, 126 S. Ct. 1173,

(2006). In *Campbell,* the defendant argued that the State had elicited evidence concerning objects found in the victim's home, thereby "opening the door" to the admission of other objects found at that location, including sexual paraphernalia. *Id.* In response, the trial court concluded that the prejudice to which the State would be exposed in the event that the defendant was allowed to freely inquire into the presence of highly sensitive items in the victim's house outweighed the probative value of the evidence in question and sustained the State's objection pursuant to N.C. Gen. Stat. § 8C-1, Rule 403. *Id. at* 673, 617 S.E.2d at 19. On appeal, the Supreme Court held that the trial court did not abuse its discretion by ruling in this manner. *Id.* at 674, 617 S.E.2d at 19. As a result, even if the State opened the door to the admission of the video recording at issue here, the trial court still had the authority to exclude it under N.C. Gen. Stat. § 8C-1, Rule 403.[2] Thus, the trial court did not err by sustaining the State's objection to the admission of the video recording of a portion of the tests that Mr. Duncan

[2] In addition, Defendant argues that the trial court erred by excluding the video recording as a sanction for an alleged discovery violation. Having already determined that the trial court did not err by excluding the video recording pursuant to N.C. Gen. Stat. § 8C-1, Rule 403, we need not address Defendant's discovery-related challenge to the trial court's ruling.

performed on the shotgun from which the bullet that killed Mr. Pierce was discharged.

III. Conclusion

Thus, for the reasons set forth above, we conclude that Defendant received a fair trial that was free from prejudicial error and that Defendant's challenges to the trial court's judgment lacks merit. As a result, we further conclude that Defendant is not entitled to any relief on appeal and that the trial court's judgment should remain undisturbed.

NO ERROR.

Judges CALABRIA and THIGPEN concur.

Report per Rule 30(e).