NO. COA13-277
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

STATE OF NORTH CAROLINA

v. Mecklenburg County
Nos. 09 CRS 256093;
10 CRS 12648

TAHASHI MATTHEWS

Appeal by Defendant from judgment entered 12 July 2012 by Judge Eric L. Levinson in Superior Court, Mecklenburg County. Heard in the Court of Appeals 8 October 2013.

Attorney General Roy Cooper, by Special Deputy Attorney General I. Faison Hicks, for the State.

James N. Freeman, Jr. for Defendant.

McGEE, Judge.

Tahashi Matthews ("Defendant") was found guilty of felony murder of Jonathan Nelson ("Mr. Nelson") and possession of a firearm by a felon on 12 July 2012. The State presented testimony at trial from Quinton Osborne ("Mr. Osborne"), who was present when the shooting occurred. Mr. Osborne identified Defendant at trial as the perpetrator of the shooting. Defendant disputed Mr. Osborne's account of events by testifying

at trial. Defendant's testimony suggested that Mr. Osborne killed Mr. Nelson. Defendant appeals.

I. Verdict Sheet and Jury Instructions

Defendant argues that the trial court "erred or committed plain error in presenting the issues on the verdict sheet and charging and re-charging the jury on felony murder[.]"

Defendant does not challenge the initial jury charge, which Defendant says "tracked the pattern instruction[.]" However, Defendant contends that the "makeup of the verdict sheet and corresponding instructions seemed to begin the jury's confusion[.]" Defendant cites no authority for the argument that the verdict sheet's structure can constitute prejudicial error.

Defendant recites the events that occurred after the jury began deliberations. First, the jury requested a copy of the jury instructions. On the second day of deliberations, the jury requested clarification. The trial court read the jury's question into the record, as follows:

> Under the first-degree murder rule, you mentioned four elements. Pages 3 through 7 -- speaking of the jury instructions I sent back because they attached it to their note -- you instructed us that the State must prove four things beyond a reasonable doubt. On the verdict sheet, it appears that if any one or more -- if any one of three are met, the defendant would be guilty of the first-degree murder rule. Please clarify for us.

The trial court discussed with the State and Defendant instructions it would present to the jury in response to the question. Neither party objected. The trial court then instructed the jury on the felony murder rule. The trial court asked the foreperson if the instructions answered the question, and the foreperson responded in the affirmative.

After the jury was excused, Defendant stated:

> Notwithstanding the fact that the jury foreperson . . . indicated that -- that he understood and that your additional instruction or your clarification satisfied them, what I'm afraid of still is that they could be thinking that satisfying that first element under the felony murder rule would render him guilty of first-degree murder. And I -- of course, I heard and it's been recorded what you said. But, you know, respectfully, I would object[.]

Counsel for Defendant then drafted proposed instructions. The trial court stated that it "made a small adjustment to [Defendant's] proposal at the bottom[,]" to which Defendant did not object. The trial court gave the jury a third round of instructions regarding the felony murder rule. At the conclusion of those instructions, the trial court asked each member of the jury to demonstrate his or her understanding of the instructions by raising a hand. Each juror so responded. The trial court asked if there were any objections from the

State or Defendant to the instructions given, and Defendant said he had none.

Approximately two hours later, the jury sent another question to the court, as follows:

> On the verdict sheet for the first-degree felony murder rule, if we answer yes to either B-1 -- or B(i), the little "i" -- B2 or B3, does that imply a guilty verdict under the first-degree felony murder rule? Likewise, if we answer no to B1 or B2 or B3 -- that's exactly what it says -- does that imply a not guilty under the first-degree felony murder rule?

The trial court proposed a fourth round of instructions to Defendant and the State, and neither party objected. Defendant asked only that:

> Your Honor, I think that in light of the earlier question . . . I just think that it needs to be made clear that, you know, we're talking about unanimity with regards to each of those issues as well as the sub issues[.]

The trial court gave the jury a fourth round of instructions on the felony murder rule. After the jury resumed deliberations, Defendant stated:

> Your Honor -- I'm just concerned that -- that the jury instruction as well as just the way the verdict sheet is set up that -- that would inadvertently leave the impression that with regards to first-degree murder under the felony murder rule that if they find that [Defendant] was committing one or more of those three predicate felonies that the State would be -- again, inadvertently and basically, based on their

> misapprehension, which I think could be paramount in this situation, that the State would be relieved of those other three -- of having to prove those other three elements beyond a reasonable doubt. I just fear that just the way the verdict sheet is set up and the explanation of the Court -- and I think you tried to explain it as well as you could, but that that would -- that they could very well go back there and say, Well, if he's guilty -- if he committed the attempted armed robbery here or this one here or shot into an occupied vehicle here, then that means that he's guilty of felony murder.

Defendant contends that the "confusing re-instructions when coupled with the verdict sheet amounted to prejudicial error[.]" As noted above, Defendant cites no authority to support the proposition that the structure of a verdict sheet can constitute prejudicial error. Furthermore, Defendant does not identify any single instruction as erroneous. Rather, Defendant indicates that the repetition of instructions caused confusion. Defendant contends that the jury "asked two different questions, resulting in re-instruction in one way or another three different times regarding what exactly did the [S]tate have to prove[.]"

After the question on felony murder, Defendant did not object to the proposed instructions. The trial court asked the foreperson if the instruction answered the jury's question, and the foreperson responded affirmatively. After the second round of instructions, Defendant objected and submitted a proposed

third round of instructions. The trial court asked each juror to raise a hand to show understanding at the conclusion of the third set of instructions, and each juror did so. After the third round of instructions, Defendant said he had no objection.

The jury then sent a second question on felony murder. The trial court gave counsel an opportunity to propose instructions. Defendant suggested only that the trial court make clear that "we're talking about unanimity[.]" The trial court gave a fourth round of instructions, to which Defendant objected only after the jury was excused to continue deliberations.

Defendant contends that the repetition of instruction caused the jury confusion. However, Defendant requested certain rounds of the instructions and consented to the remaining rounds of instructions. "Where a defendant tells the trial court that he has no objection to an instruction, he will not be heard to complain on appeal." *State v. White*, 349 N.C. 535, 570, 508 S.E.2d 253, 275 (1998). Defendant argues the repeated instructions constitute error or plain error. However, the repetition is actually invited error as to certain rounds of instruction because Defendant requested the repetition. "The defendant will not be heard to complain on appeal when the trial court has instructed adequately on the law and in a manner requested by the defendant." *State v. Wilkinson*, 344 N.C. 198,

236, 474 S.E.2d 375, 396 (1996). The trial court did not err in its instructions to the jury.

II. Questions on Rebuttal

Defendant next argues that the trial court erred "in allowing the State to question [Mr. Osborne] on rebuttal as to the reason for live ammunition cartridges being in [Mr. Osborne's] vehicle[.]" We disagree.

A. Standard of Review

"It is within the trial judge's discretion to admit evidence on rebuttal which would have been otherwise admissible, and the appellate courts will not interfere absent a showing of gross abuse of discretion." *State v. Anthony*, 354 N.C. 372, 421, 555 S.E.2d 557, 588 (2001). "Abuse of discretion occurs only where the trial 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. Gray*, 337 N.C. 772, 776, 448 S.E.2d 794, 797 (1994) (internal quotation marks omitted).

B. Analysis

> (a) Each party has the right to introduce rebuttal evidence concerning matters elicited in the evidence in chief of another party. The judge may permit a party to offer new evidence during rebuttal which could have been offered in the party's case in chief or during a previous rebuttal, but if new evidence is allowed, the other party must be permitted further rebuttal.

> (b) The judge in his discretion may permit any party to introduce additional evidence at any time prior to verdict.

N.C. Gen. Stat. § 15A-1226 (2011).

Defendant testified during his case-in-chief, and his testimony suggested that Mr. Osborne, not Defendant, killed Mr. Nelson. Defendant testified that Mr. Osborne "had the gun in his left hand on [Defendant's] right side, and [Mr. Osborne] used his right hand and went in [Defendant's] right pocket and grabbed [Defendant's] weed -- [Defendant's] marijuana." Defendant further testified that he grabbed the gun, and Defendant and Mr. Osborne "struggled over the gun. And [Mr. Osborne] fired the gun two times." Defendant ended up with the gun, and he heard "maybe one shot coming from the car" as [Defendant] ran away.

Defendant objected to the State's offer into evidence of a transcript of an interview with Mr. Osborne, arguing that the transcript did not rebut evidence Defendant presented. The State responded that Defendant presented an account that was "completely different" from the account Mr. Osborne gave during the State's case-in-chief. The trial court admitted the transcript. However, Defendant did not object to the State's question of Mr. Osborne on rebuttal as to why Mr. Osborne had ammunition in his vehicle. However, assuming *arguendo*, without

deciding, that Defendant adequately preserved this argument for review, Defendant nevertheless fails to demonstrate error.

The State's question of Mr. Osborne regarding ammunition in his vehicle rebuts evidence presented by Defendant in Defendant's case-in-chief suggesting that Mr. Osborne, not Defendant, killed Mr. Nelson. Mr. Osborne testified that he had ammunition in his vehicle because "that summer [he] was going to the range a lot." He testified that, whenever he "had time, [he would] go over there and just take what [he] had left over to use it the next time [he would] go." The State was permitted, pursuant to N.C.G.S. § 15A-1226(a), to introduce this evidence in rebuttal of evidence in Defendant's case-in-chief. The trial court did not err in admitting this evidence.

No error.

Judges McCULLOUGH and DILLON concur.

Report per Rule 30(e).