IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-131

Filed: 3 December 2019

Mecklenburg County, No. 15CRS207225-27

STATE OF NORTH CAROLINA

v.

EMMANUEL JESUS RANGEL, Defendant.

Appeal by Defendant from Judgments entered 25 May 2018 by Judge Nathaniel J. Poovey in Mecklenburg County Superior Court. Heard in the Court of Appeals 29 October 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Daniel P. O'Brien and Assistant Attorney General Teresa M. Postell, for the State.

Kimberly P. Hoppin for Defendant-Appellant.

INMAN, Judge.

Emmanuel Jesus Rangel ("Defendant") appeals his convictions following jury verdicts finding him guilty of three counts of first-degree murder. Defendant argues: (1) the trial court erred in consolidating for one trial charges arising from two separate incidents; (2) he was denied effective assistance of counsel because his attorney did not motion to sever during trial; and (3) the prosecutor's improper

remarks during closing argument deprived him of a fair trial. After thorough review of the record and applicable law, we hold that the trial court did not err in joining Defendant's charges for trial. We further hold that Defendant has failed to demonstrate error resulting from the prosecutor's statements at closing argument. We dismiss Defendant's ineffective assistance of counsel claim without prejudice so he can file a motion for appropriate relief.

I. FACTUAL AND PROCEDURAL HISTORY

The evidence introduced at trial tends to show the following timeline and events:

On 15 February 2015, Emily Isaacs ("Emily") met Edward Sanchez ("Edward") during a gathering at her friend's house in Charlotte and entered into a romantic relationship. Emily met Defendant, a friend of Edward's, at Edward's father's home in Charlotte.

Emily and Edward frequently smoked marijuana and ingested prescription Xanax pills together. Emily usually took one to two Xanax per day, but she increased her consumption to around six per day after she met Edward, who was a heavier consumer. Edward became Emily's Xanax supplier once they started dating. After Edward could not get any Xanax from his own supplier anymore, Emily got the phone number of a known dealer, Rasool Harrell ("Rasool"), from a friend. Edward and Emily then started purchasing Xanax from Rasool. Emily would drive Edward in her

white Camry sedan to the different destinations chosen by Rasool to conduct the purchases.

A. 22 February 2015 Robbery

After about three or four transactions, Edward suspected that Rasool was selling him fake drugs. Around midnight on 22 February 2015, about 30 minutes before a planned purchase, Edward, Emily, and Defendant were at Edward's father's house. Edward told Emily that he and Defendant were going to rob Rasool of "whatever he had." About an hour later, Emily drove Edward and Defendant to a nearby motel and waited for Rasool in the parking lot. Edward brought along a small black handgun and ammunition he had bought from Wal-Mart the previous day. Defendant and Emily were unarmed. Rasool and Zakee Avent ("Zakee"), who was riding in the front passenger's seat of Rasool's car, arrived about five minutes later and backed into the parking spot next to Emily's car.

Rasool got out of the car, went to one of the motel rooms for about five minutes, and returned to the driver's seat of his car. Edward then got out of Emily's car and moved to the backseat of Rasool's car on the driver's side. After they talked for a few moments, Edward fired multiple gunshots at Rasool and Zakee. Edward then dragged Rasool out of the car and onto the ground, where he proceeded to strike Rasool multiple times. As Edward was assaulting Rasool, Defendant got out of Emily's car and into the back passenger side seat of Rasool's car and started hitting

Zakee until he fell unconscious. Defendant then went over to Edward—who was holding Rasool up at the time—and grabbed a silver and black handgun that Rasool had on his person. Edward then threw Rasool to the ground, and Defendant fired two gunshots into Rasool's body.

After killing Rasool and knocking out Zakee, Edward and Defendant stole from them Xanax and two handguns—the silver and black handgun that Defendant fired and another small black handgun. Defendant and Edward then returned to their respective seats in Emily's car. Defendant and Edward then traded guns; Defendant took the two small black guns and Edward took the silver and black one. Before leaving the scene, Edward reached across Emily and fired the silver and black gun approximately three times into the front passenger window of Rasool's car. Not long after Emily drove away, Edward realized that he had dropped his wallet with his identification in the parking lot of the motel; however, they never turned around.

Emily drove Edward and Defendant back to Edward's father's house. After speaking with his father for about 15 minutes, Edward told Emily that they were going to his uncle's house in Boone. Defendant stayed behind at Edward's father's house. Edward and Emily stayed at his uncle's house for an unknown number of hours and then decided to return to Edward's father's house. On the return trip, Emily received various text messages inquiring about Rasool. Edward appeared highly nervous because of the text messages and broke Emily's phone, then bought

her a new phone and registered it in a different name just before 4:00 pm on 23 February, about 40 hours after the shooting. When Edward and Emily arrived at Edward's father's house later that day, Defendant was there.

Edward and Defendant spoke for a short time, and then around 7:00 pm drove to the Concord Mills Mall, taking Emily as a passenger. Edward and Defendant purchased ammunition for the firearms taken from Rasool. Edward also stole a box of ammunition. When the trio returned to Edward's father's house, Defendant left and, after about 30 minutes, Edward asked Emily for a ride to a gas station. When they arrived, Emily saw that Defendant was sitting in Edward's father's black Dodge truck. Edward told Emily that he and Defendant were going to see a friend and drug dealer named Jonathan Alvarado ("Jonathan") and that he would come back shortly. Emily then drove back to Edward's father's house and waited for Edward to return.

B. 24 February 2015 Robbery

Between the time Defendant and Edward returned to Edward's father's house from the mall and when Edward asked Emily for a ride to the gas station, Defendant's friend David Lopez ("David") sent Defendant a text message and invited him over to his house to smoke marijuana.[1] After picking up Edward at the gas station,

[1] Although Emily's testimony did not show what time she drove Edward to the gas station, David testified that he sent a text message to Defendant around 10:00-10:30 pm. It is unknown how long Edward, Defendant, and Emily were at the mall, but Emily testified that when Edward requested a ride "[i]t was already dark at that time." David's and Emily's testimonies, and other evidence introduced at trial, ultimately reflect that Edward and Defendant went to David's house the night they returned from obtaining ammunition from the Concord Mills Mall.

Defendant drove to David's house with Edward in the passenger seat. While the three men were smoking marijuana in the truck, Edward mentioned the idea of robbing Jonathan, saying that he had large quantities of heroin and money they could steal. They planned for Defendant and Edward to commit the robbery and to have David be the getaway driver.

At around 1:00 am on 24 February, approximately 48 hours after Rasool was robbed and killed, Defendant drove himself, Edward, and David in the Dodge truck to Jonathan's residence and parked on the side of the road. Edward and Defendant then got out of the truck, walked to the house, and knocked on the door. Someone opened the door and Defendant and Edward entered. After about two to three minutes, David heard multiple gunshots echoing from Jonathan's house. Minutes after the last gunshot, Defendant opened the front door and called for David to come inside. When David reached the threshold, Defendant handed him a television and an Xbox to put in the truck. When David finally entered Jonathan's house, he found three dead bodies scattered throughout the residence; Mirjana Puhar ("Mirjana") was lying on the floor in a pool of blood near the front door, Jonathan was lying in the kitchen, and Jusmar Garcia ("Jusmar") was lying face down in a bedroom with a bullet wound in the back of his head. As Defendant and Edward continued searching the residence, David was given multiple items to take back to the truck.

After about 10 minutes, all three men returned to the truck and drove toward David's house. During the drive, Edward struck Defendant and threatened to shoot him because he "didn't finish the job." The items stolen from Jonathan's house included cash, roughly eight boxes of Nike Jordan brand athletic shoes, jewelry, an iPad, a television, various video game consoles, and a package of heroin. David received $300 cash, while Edward and Defendant kept the remaining stolen items.

Edward and Defendant arrived back at Edward's father's house about two to three hours after Emily left them at the gas station. Edward woke Emily up and told her that it was "hot in Charlotte" and that they were going to drive to Texas. As Emily was getting ready, she saw Edward and Defendant putting some of the boxes of shoes in her car. Defendant stayed behind while Edward and Emily fled to Texas.

While en route to Texas, Edward and Emily stopped at a Wal-Mart and received an $800 MoneyGram from Defendant. After hours of driving, Edward replaced Emily as the driver. A few minutes after Edward started driving, at about 8:22 pm on 24 February 2015, a Texas state trooper pulled Edward over for going over 100 miles per hour. The trooper placed them under arrest after learning that Emily's car was connected to a criminal investigation.[2] Items retrieved from Edward and the car included the silver and black handgun taken from Rasool, ammunition, a bottle of pills prescribed to Mirjana's mother, heroin and other drug paraphernalia,

[2] After Edward's father spoke to investigators regarding the two crimes, authorities started looking for Emily's white Camry and the black Dodge truck.

the MoneyGram receipt, over $800 in cash, boxes of shoes, and Edward's pants and a pair of boots stained with blood.

The next morning, police arrested Defendant in Charlotte. The black Dodge truck was also at the address where officers found Defendant. A search of the truck revealed a plastic tag bearing the Nike Jordan brand logo, the 24 February MoneyGram with Emily's name listed as the recipient and Defendant as the sender, and a discharged gun shell casing. A search of Defendant's room in his mother's house also yielded an unplugged Xbox, a television with a damaged wire port, and multiple pairs of Nike Jordan brand athletic shoes.

C. Procedural History & Trial Proceedings

On 9 March 2015, Defendant was indicted for the first-degree murder of Rasool and attempted first-degree murder of Zakee committed on 22 February, and three counts of first-degree murder of Jonathan, Mirjana, and Jusmar committed on 24 February.[3]

On 26 April 2015, the State filed a motion for joinder seeking to consolidate all of Defendant's charges for one trial. Defendant's counsel argued that the two sets of alleged offenses were not related to one another, but the trial court granted the

[3] A superseding indictment was issued on 30 March 2015, providing Jonathan's full name and adding the charge of robbery with a dangerous weapon. However, the State later dismissed the robbery charge pre-trial.

motion. Defendant's counsel did not object to the joinder during the trial or ask the trial court to reconsider its decision to join Defendant's charges.

On 25 May 2018, the jury found Defendant not guilty of the murder of Rasool and attempted murder of Zakee, but found him guilty of three counts of first-degree murder of Jonathan, Jusmar, and Mirjana on the basis of premeditation and deliberation and felony-murder. The trial court then sentenced Defendant to three consecutive life sentences without parole, with credit of 1784 days given for time spent in confinement.

Defendant gave oral notice of appeal.

II. ANALYSIS

A. Joinder of Offenses

Defendant first argues that the trial court erred in joining his charges for trial, contending that the two robberies were distinguished by distinct dates and facts.

Section 15A-926(a) of our General Statutes allows multiple offenses to be joined for trial if those offenses, "whether felonies or misdemeanors or both, are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan." In considering whether consolidation was proper, this Court employs a two-step inquiry: (1) whether there was a transactional connection among the offenses; and (2) if so, "the decision to consolidate the charges is left to the sound discretion of the trial judge and that ruling

will not be disturbed on appeal absent an abuse of discretion." *State v. Weathers*, 339 N.C. 441, 447, 451 S.E.2d 266, 269 (1994) (quotation marks and citation omitted). If there is no transactional connection, then the consolidation is improper as a matter of law. *State v. Jenrette*, 236 N.C. App. 616, 621, 763 S.E.2d 404, 408 (2014) (quotation marks and citation omitted).

Factors to consider in reviewing whether a transactional connection exists include: "(1) the nature of the offenses charged; (2) any commonality of facts between the offenses; (3) the lapse of time between the offenses; and (4) the unique circumstances of each case." *State v. Simmons*, 167 N.C. App. 512, 516, 606 S.E.2d 133, 136 (2004) (quoting *State v. Montford*, 137 N.C. App. 495, 498, 529 S.E.2d 247, 250, *cert. denied*, 353 N.C. 275, 546 S.E.2d 386 (2000)). However, no single factor is dispositive, *id.*, and our Courts have also considered a defendant's *modus operandi*, *State v. Williams*, 355 N.C. 501, 530-31, 565 S.E.2d 609, 627 (2002), whether it was a single scheme or plan, *State v. Moses*, 350 N.C. 741, 751, 517 S.E.2d 853, 860 (1999), similarities among the victims and the localities or times of the crimes, *State v. Bracey*, 303 N.C. 112, 118, 277 S.E.2d 390, 394 (1981), and the use of the same or similar tools to effectuate the crimes. *State v. Anderson*, 194 N.C. App. 292, 297, 669 S.E.2d 793, 796 (2008).

Here, the offenses occurred approximately 48 hours apart, were about thirteen miles from each other in the same county, and involved common witnesses. *See*

Moses, 350 N.C. at 751-52, 517 S.E.2d at 861 (holding that two murders two months apart in Winston-Salem, combined with other factors, were sufficiently transactionally related). Additionally, the similarities between the crimes, victims, and weapons used displayed a cognizable *modus operandi*. Defendant and Edward were suspected of committing both sets of crimes together, they utilized a driver to help facilitate both crimes, the crimes occurred late at night with the intent to rob known drug dealers for drugs and other valuables, and the same two guns were used at each location.[4] The associates of the targeted drug dealers who were present were confronted with deadly force and all the victims were shot by the same guns from both crimes and nearly all were physically assaulted.

Another factor weighing in favor of consolidation is an overlap in the evidence the State sought to introduce. Multiple police officers investigated both crimes and were prepared to testify as to both instances. The evidence recovered from Emily's car related to the second robbery, such as the stolen shoes, the pill bottle prescribed to Mirjana's mother, and the heroin. Also, the gun shell casing found in Edward's father's truck the day of Defendant's arrest came from the gun that was also used in the first robbery.

[4] The State's firearms expert concluded that various casings, cartridges, and bullet projectiles recovered from both robbery sites came from two of at least three guns, including the silver and black one stolen from Rasool.

Based on all these factors, the State established the requisite transactional connection allowing the trial court to join Defendant's charged offenses for trial. We next consider whether the trial court abused its discretion in consolidating the charges.

In determining whether the trial court abused its discretion, we must consider whether Defendant could have received a fair hearing, "*i.e.*, whether consolidation hinders or deprives the accused of his ability to present his defense." *Montford*, 137 N.C. App. at 498, 529 S.E.2d at 250. Our Supreme Court has held that "[p]ublic policy favors consolidation because it expedites the administration of justice, reduces congestion of trial dockets, conserves judicial time, lessens the burden upon citizens who must sacrifice both time and money to serve upon juries[,] and avoids the necessity of recalling witnesses who will be called upon to testify only once if the cases are consolidated." *State v. Chandler*, 324 N.C. 172, 187, 376 S.E.2d 728, 737 (1989).

Defendant fails to show any prejudice or abuse of discretion by the trial court in consolidating his cases. In granting the State's motion for joinder, the trial court stated the following in support of its decision:

> Based upon the overlapping evidence in this case, the similar *modus operandi* by the similar witnesses, the same witnesses, overlapping evidence in the form of the same weapons, same co-defendants, temporal proximity, geographic proximity, and matters of judicial economy, and considering [the] arguments and things contained within the state's memorandum of law, in my discretion the motion for joinder is allowed.

(emphasis added). In light of the evidence and the trial court's rationale, we hold that the trial court did not abuse its discretion, as the "offenses were not so separate in time and place and so distinct in circumstance that consolidation was rendered unjust and prejudicial" to Defendant. *Bracey*, 303 N.C. at 118, 277 S.E.2d at 394.

Defendant asserts that, but for the joining of the offenses, the jury would not have heard and relied on prejudicial information surrounding the first robbery in finding him guilty for the murders of Jonathan, Mirjana, and Jusmar. As both the State and Defendant concede, however, "[j]oinder is a decision which is made prior to trial; the nature of the decision and its timing indicate that the correctness of the joinder must be determined as of the time of the trial court's decision and not with the benefit of hindsight." *State v. Silva*, 304 N.C. 122, 127, 282 S.E.2d 449, 453 (1981). Because our review is constrained to the "time [the trial court] entered the order for joinder of the offenses," the evidence produced at trial is "irrelevant in analyzing whether the trial court abused its discretion" in this case, as joinder was decided before trial commenced. *State v. McCanless*, 234 N.C. App. 260, 264, 758 S.E.2d 474, 478 (2014).

Defendant also argues that he received ineffective assistance of counsel ("IAC") because his attorney "failed to renew a motion to sever at the close of the evidence." Pursuant to N.C. Gen. Stat. § 15A-927, a defendant must motion to sever pre-trial, but may do so during trial if it is "based upon a ground not previously known" and

raised before "the close of the State's evidence." *Id.* § 15A-927(a)(1). "If a defendant's pretrial motion for severance is overruled, he may renew the motion on the same grounds before or at the close of all the evidence." *Id.* § 15A-927(a)(2). Failure to motion to sever at the appropriate time results in waiver of the defendant's right to severance, *id.* §§ 15A-927(a)(1)-(2), and this Court's review is therefore limited to whether the trial court abused its discretion at the time it joined the offenses. *Silva*, 304 N.C. at 127, 282 S.E.2d at 453. Defendant's trial counsel never filed a motion for severance, but merely objected to the State's pre-trial motion for joinder, and never throughout the trial motioned for the trial court to reconsider its decision to join the offenses.

Although this would normally end our inquiry, *Silva*, 304 N.C. at 127, 282 S.E.2d at 453, Defendant's IAC claim adds the additional question of whether the trial court would have severed the offenses during trial. *See* N.C. Gen. Stat. § 15A-927(b)(2) (2017) (mandating that the trial court grant severance when "during trial, upon motion of the defendant . . . it is found necessary to achieve a fair determination of the defendant's guilt or innocence of each offense"). Defendant suggests that he was denied effective counsel because, as the trial progressed, evidence was submitted that prejudiced his right to a fair trial, and had his attorney properly motioned during trial, the trial court would have severed his offenses.

We decline to address this issue on direct appeal. To prevail on an IAC claim

on direct appeal, not only must a defendant overcome a steep burden of production, *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 693 (1984), the cold record before us must show "that no further investigation is required." *State v. Thompson*, 359 N.C. 77, 122-23, 604 S.E.2d 850, 881 (2004). "Where the claim raises 'potential questions of trial strategy and counsel's impressions, an evidentiary hearing available through a motion for appropriate relief is the procedure to conclusively determine these issues.' " *State v. Friend*, __ N.C. App. __, __, 809 S.E.2d 902, 906 (2018) (quoting *State v. Stroud*, 147 N.C. App. 549, 556, 557 S.E.2d 544, 548 (2001)).

Our Supreme Court has emphasized that whether defense counsel "made a particular strategic decision remains a question of fact, and is not something which can be hypothesized" on appeal. *State v. Todd*, 369 N.C. 707, 712, 799 S.E.2d 834, 838 (2017). Here, it is entirely possible that trial counsel intended to keep Defendant's offenses combined for one trial, thinking that it would be more beneficial for him. *See Stroud*, 147 N.C. App. at 556, 557 S.E.2d at 548 (dismissing the defendant's IAC claim because "counsel for [the defendant] could have reasonably determined that [his] position juxtaposed against [his co-defendant's] position was advantageous"). Because nothing in the record can assist us in gleaning trial counsel's rationale in failing to motion to sever during trial, Defendant has "prematurely asserted" this argument, as he "is not in a position to adequately

develop" it on appeal. *State v. Fair*, 354 N.C. 131, 167, 557 S.E.2d 500, 525 (2001). As such, we dismiss Defendant's IAC claim without prejudice to allow him to file a motion for appropriate relief.

B. Improper Remarks at Closing Argument

Defendant also argues that the trial court erred in failing to intervene *ex mero motu* because portions of the prosecutor's closing argument were grossly improper. In overruling Defendant, we dispense with each of his arguments in turn.

Our 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*." *State v. Jones*, 355 N.C. 117, 133, 558 S.E.2d 97, 107 (2002). Reversible error is shown only when the trial court failed to intervene in an argument "so grossly improper as to impede the defendant's right to a fair trial." *State v. Huey*, 370 N.C. 179, 175, 804 S.E.2d 464, 469 (2017). In determining "whether a prosecutor's remarks are grossly improper, the remarks must be viewed in context and in light of the overall factual circumstances to which they refer." *State v. Madonna*, __ N.C. App. __, __, 806 S.E.2d 356, 362 (2017). The defendant bears "the burden to show a reasonable possibility that, had the [improper remark] in question not been committed, a different result would have been reached at the trial." *Huey*, 370 N.C. at 185, 804 S.E.2d at 473.

Defendant first focuses on the following remarks, in italicized part:

> I have to go first, so I'm in the position of trying to guess for you what the defense is going to argue. *I don't get to come back up here after they're done and answer your questions, but I'm going to do my best to anticipate some of the issues they will raise for you and go ahead and address those with you now. Guaranteed I'm not going to get all of them, but I don't get to come back up here and speak. I also guarantee I will have a response to every argument that they make. Like I said, I don't get to get up and answer those for you, so you guys are going to need to do that for me. When you go back there in the deliberation room, you're going to need to figure out what my response would have been to that argument, because I guarantee you they did talk to him, I just don't get to tell. . . .*
>
> Are they going to argue this was some kind of elaborate plot by Emily and David to frame Rangel to get themselves out of trouble? That's preposterous. . . .
>
> *Folks, if this is all a frame job, this is the luckiest frame job ever, ever. I don't know what else they're going to argue. I have to go first. I don't get to respond, but you guys are going to have to speak for me about that.*

Defendant contends that the prosecutor impermissibly insinuated that the jury "speak for the State or fill in gaps for the State or answer questions the State has left unanswered." Our Supreme Court has "stressed that a jury's decision 'must be based solely on the evidence presented at trial and the law with respect thereto, and not upon the jury's perceived accountability to the witnesses, to the victim, to the community, or to society in general.' " *State v. Brown*, 320 N.C. 179, 195-96, 358 S.E.2d 1, 13 (1987) (quoting *State v. Boyd*, 311 N.C. 408, 418, 319 S.E.2d 189, 197

(1984)).

We disagree with Defendant's argument. The prosecutor did not appeal to any juror accountability, but rather reminded them that he could not address the jury again after defense counsel argued. The prosecutor urged the jury to consider counterpoints based on the evidence.

Defendant further challenges the prosecutor's statement: "I guarantee you they did talk to him, I just don't get to tell." Defendant argues that the prosecutor was commenting on Defendant's decision not to testify by possibly "referring to an un-*Mirandized* custodial statement or a statement in which [Defendant] invoked his right to remain silent" that was not presented as evidence. (emphasis added). Defendant argues that this comment improperly "suggested that [Defendant] had made a prior statement but was now hiding something by not testifying." Prosecutors are prohibited from mentioning that a defendant failed to testify, *State v. Reid*, 334 N.C. 551, 556, 434 S.E.2d 193, 196-97 (1993), and cannot comment on matters outside the record. *Madonna*, __ N.C. App. at __, 806 S.E.2d at 362. But even assuming *arguendo* the statement was improper, it was not grossly improper, and Defendant cannot show prejudice, as the transcript indicates this comment was "so brief and indirect as to make improbable any contention that the jury inferred guilt" from Defendant's failure to testify. *State v. Randolph*, 312 N.C. 198, 206, 321 S.E.2d 864, 870-71 (1984).

Defendant also challenges the following statement by the prosecutor:

> [Y]ou've got the Blue Star reaction in the car, where he was sitting in the passenger seat.
>
> Remember, [Edward] drove away from the scene [of the second robbery] at Norris [Avenue]. He got in the passenger seat. David Lopez was sitting in the backseat next to all the loot. The picture to the left is before Blue Star, the picture to the right is after Blue Star. Look at the side rail right there. It's not a significant reaction, no, because nobody got shot in the truck. You wouldn't expect to see a pool of blood in the truck. You'd expect to see spots of blood in the truck. As these footprints will show you, as they walked around there the blood faded off their shoes, so you wouldn't expect to see a significant reaction in the truck, but there was a reaction to it where he was sitting. . . .
>
> Edward Lopez can be corroborated. He said this defendant got into the passenger side of the car. There's the reaction to the passenger side of the car.

The State's medical examiner testified that "Blue Star is a material that when it comes in contact with certain substances such as blood, it will cause a luminescence for you to see if blood was ever present." When the Blue Star test was run on the front passenger's side of Edward's father's truck, the medical examiner testified "[t]here was some minimal reactions" that were labeled in his report as a "slight insignificant reaction." The medical examiner further testified that, though "the Blue Star reacte[ed] with substances," it was not immediate, in contrast to "situations of blood, [where] it's a more immediate reaction."

Defendant contends that the prosecutor's statement that the Blue Star test

revealed traces of blood in the front passenger's side was an improperly drawn inference not supported by the evidence. Defendant relies on the medical examiner's testimony and points out that there was no definitive evidence presented that the "substances" found in the front passenger's side were in fact blood. We hold that the prosecutor's argument was not grossly improper.

Trial counsel is granted "wide latitude" in arguments to the jury, and "may properly argue all the facts in evidence as well as any reasonable inferences drawn therefrom." *State v. Worthy*, 341 N.C. 707, 709, 462 S.E.2d 482, 483 (1995). "So long as the argument is consistent with the record and does not travel into the fields of conjecture or personal opinion, the argument is not improper." *State v. Wardrett*, __ N.C. App. __, __, 821 S.E.2d 188, 194 (2018) (quotation marks and citation omitted). David testified that, after the second robbery, Edward was in the driver's seat and Defendant got into the front passenger's side. Accordingly, while the Blue Star reactions may have been "minimal," it was not unreasonable for the prosecutor to infer from additional evidence presented and argue to the jury that the "substances" found in the truck were blood. Additionally, Defendant cannot show prejudice in light of the overwhelming evidence presented through witness testimony and multiple blood-stained shoe prints found at Jonathan's house and front yard tending to match the shoes Defendant wore at the time of his arrest.

Defendant also argues, in the event he "is subjected to a less favorable

standard of review" in challenging the trial court's failure to intervene, that he was deprived of effective assistance of counsel because his attorney failed to object during closing argument. As explained above, Defendant cannot meet the standard required to show even that any of the comments likely affected the jury's verdict. *See, e.g.*, *State v. Allen*, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (2006).

III. CONCLUSION

We hold that the trial court did not err in joining Defendant's offenses for trial and dismiss without prejudice Defendant's ineffective assistance of counsel claim. We further hold Defendant has failed to demonstrate that he was prejudiced by any of the prosecutor's statements during closing argument.

NO ERROR IN PART; DISMISSED WITHOUT PREJUDICE IN PART.

Judges BERGER and HAMPSON concur.

Report per Rule 30(e).