IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-227

Filed: 7 January 2020

Carteret County, Nos. 12CRS52930, 12CRS52934

STATE OF NORTH CAROLINA

v.

JHADEN AUSTIN DAVIS, Defendant.

Appeal by Defendant from judgments entered 31 July 2017 by Judge W. Douglas Parsons in Carteret County Superior Court. Heard in the Court of Appeals 16 October 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Marc Bernstein, for the State.

Michael E. Casterline for Defendant-Appellant.

INMAN, Judge.

Jhaden Austin Davis ("Defendant") appeals his convictions following jury verdicts finding him guilty of two counts of first-degree murder. Defendant argues that he was prejudiced at trial because: (1) officers lacked the authority to search his bedroom; and (2) the prosecutor's remarks at closing argument were improper. After

thorough review of the record and applicable law, we hold that Defendant has failed to demonstrate prejudicial error.

I. FACTUAL AND PROCEDURAL HISTORY

The evidence introduced at trial tends to show the following:

Defendant, Joseph Pirrotta ("Joseph"), and Brandon Smallwood ("Brandon") shared an apartment in Beaufort, North Carolina. All three were military members; Defendant and Brandon were stationed at Camp Lejeune and Joseph was stationed at Cherry Point. Although Brandon had a room in Lejeune's barracks, he preferred sleeping at the apartment. Because Defendant did not have a vehicle, Brandon drove Defendant to and from Camp Lejeune in lieu of Brandon paying rent.

Another one of Defendant's friends, Kevin Wells ("Kevin"), lived in an apartment a few doors down from Defendant. Defendant, Joseph, and Kevin used and sold marijuana.

Problems arose within the group when Kevin's former girlfriend, Jade Quenga ("Jade"), ended their relationship and started publicly dating Kevin's friend Albert Correll ("Albert"), eventually living with him and Albert's father, Duane Correll ("Duane"), at the Corrells' home on Taylor Farm Road, a 10-minute drive from Defendant's apartment. Defendant also disliked Jade.

During May of 2012, Albert and Jade purposefully aggravated Defendant and Kevin by frequently driving by their apartments. Defendant threatened to hurt

Albert and Jade as a result. Defendant and Kevin drove to the Corrells' residence one night to "beat him up," but Albert was not home at the time.

On Friday, 1 June 2012, two women friends from Charlotte visited Defendant. Defendant sent a text message to Joseph and suggested that they use the Toyota Corolla belonging to one of the two women "to maybe commit a robbery." Defendant had previously asked Brandon if he could borrow his "car for a robbery," but Brandon refused. The following evening, on 2 June 2012, around 9:00-9:30 pm, while Joseph, Defendant, Brandon, and the visitors from Charlotte were at the apartment, Defendant told Joseph "[l]ets go for a ride." The two then changed into sweatpants and dark hooded sweatshirts. Defendant borrowed the Corolla and told the group that he and Joseph were going "to take care of something."

The two then headed toward Morehead City; Defendant was driving, and Joseph was in the front passenger's seat. While they were stopped at a traffic light, Defendant saw the Corrells traveling in the opposite direction in Albert's burgundy car. Defendant ran the red light, made an illegal turn across a lane of traffic, and proceeded to follow them back to the Corrells' residence.

After both cars arrived at the Corrells' mobile home, Defendant exited the Corolla and confronted Albert. Joseph remained in the passenger seat of the Corolla. From Joseph's line of sight, he could see Defendant and Albert talking to one another, but could not hear what was being said. Defendant's elbow was "cocked" in such a

way that indicated he had a gun. After a few moments, Joseph heard a "metallic thud-sound," and Albert then fell to the ground.

After Albert fell, Duane exited the burgundy car and said to Defendant, "You've already knocked him out. Leave him alone." Defendant responded by shooting Duane. Joseph then exited the Corolla and fled the scene on foot. As Joseph was running away, Defendant fired two more gunshots in quick succession into Albert's body.

Moments later, Defendant picked up Joseph in the Corolla and drove back to their apartment. During the drive, Defendant revealed that he had stolen Albert's wallet. Defendant removed all the cash from the wallet and tossed the wallet to Joseph, who then threw it out of the window.

Defendant and Joseph arrived at the apartment around 10:00 pm. Joseph entered first and went into his room and changed clothes. When Defendant entered, he told Brandon, "We gotta go." Joseph told the visitors and Brandon that if anyone asked, they should say that he was at the apartment all night and that Defendant was on base at Lejeune. Defendant and Brandon then drove to the base in Brandon's car while Joseph stayed behind at the apartment.

After Defendant and Brandon left the apartment, officers from the Carteret County Sherriff's Office knocked on the door inquiring about Kevin. Jade—who was not with the Corrells at the time of the shooting—told officers that Kevin was the

likely culprit and was probably at Defendant's apartment. Joseph told the officers that Kevin was not there, and the officers left.

Kevin spoke with investigators that night and was later eliminated as a suspect.

While they were driving from the apartment to Lejeune, Defendant told Brandon that he had shot people earlier that evening. Later that night, Defendant, Brandon, and the women visiting from Charlotte rented hotel rooms in Jacksonville near the base.

The next morning, on 3 June, Defendant told one of the visiting women "that he had shot someone, and things took a wrong turn," and that he threw the gun he used "in the ocean." The group stayed in another hotel that night, and the next day, Monday 4 June, Defendant and Brandon went to their jobs at Lejeune and the women drove back to Charlotte. Later that day, Defendant told Brandon that he had killed the Corrells.

That evening, Carteret County deputies interviewed Defendant and Joseph at the sheriff's office. With Defendant's and Joseph's consent, deputies searched their apartment but seized nothing.

The following morning, Detective Jason Wank dispatched two deputies to Defendant's apartment to conduct another search. Joseph was there alone and gave the deputies consent to search the apartment again. Because Defendant was absent,

one deputy called Detective Wank to determine if they had authority to search his bedroom. Detective Wank assured the officers that they could search the entire apartment, including Defendant's bedroom, because Defendant had not withdrawn or limited his generalized consent given the previous night. The officers then discovered a gun manual for a Ruger 40-caliber handgun in Defendant's dresser drawer. Officers photographed the manual but did not seize it.[1]

About two weeks later, on 15 June 2012, Defendant, Joseph, and Brandon were arrested and charged in connection with the shootings. Defendant was indicted on two counts of first-degree murder, one count of robbery with a dangerous weapon, and one count of conspiracy to commit robbery with a dangerous weapon.

Defendant's murder charges came on for trial in July 2017.[2] After a two-week trial, on 31 July 2017, the jury found Defendant guilty of two counts of first-degree murder on the theories of (1) premeditation and deliberation and (2) felony murder. The trial judge sentenced Defendant to two consecutive life sentences without parole, with credit for time spent in confinement pending trial.

Defendant gave oral notice of appeal.

II. ANALYSIS

A. Motion to Suppress

[1] The manual was never recovered.

[2] Neither the parties nor the record explain why Defendant was not tried on his robbery and conspiracy charges.

Before the trial, Defendant filed a motion to suppress photos of the handgun manual; the trial court did not hear the motion until mid-trial outside the presence of the jury. Following arguments of counsel, the trial court orally denied the motion and ruled that the photos were admissible. The photos were later submitted into evidence during testimony about the search.

Defendant argues on appeal that the trial court erroneously denied his motion to suppress because the officers' second search of his bedroom, which yielded the gun manual, exceeded the scope of his consent the night before. Defendant contends that he was prejudiced by the admission of the photos of the manual. We disagree.

"A warrantless search supported by consent is lawful only to the extent that it is conducted within the spatial and temporal scope of the consent." *State v. Baublitz*, 172 N.C. App. 801, 808, 616 S.E.2d 615, 620 (2005). For general grants of consent "without express limitations, the scope of a permissible search . . . . [i]s constrained by the bounds of reasonableness: what the reasonable person would expect." *State v. Stone*, 362 N.C. 50, 54, 653 S.E.2d 414, 418 (2007) (citations omitted); *see also State v. Williams*, 67 N.C. App. 519, 521, 313 S.E.2d 236, 237 (1984) ("The length of time a consent lasts depends upon the reasonableness of the lapse of time between the consent and the search in relation to the scope and breadth of the consent given." (quotations and citations omitted)).

We need not address whether the officers' search exceeded the scope of Defendant's prior consent. Any error by the trial court in denying the motion to suppress was harmless beyond a reasonable doubt. *See* N.C. Gen. Stat. § 15A-1443(b) (2017) (providing that the State has the burden to show that a violation of a defendant's rights under the United States Constitution "was harmless beyond a reasonable doubt").

Independent of photos of the gun manual, the State produced an abundance of evidence connecting Defendant to the Ruger handgun and the murders of the Corrells. Deputies at the crime scene recovered three spent 40-caliber gun casings fired from a 40-caliber gun, and the Corrells' bullet wounds were consistent with 40-caliber bullets. Defendant's uncle testified that in early 2012 he sold Defendant his 40-caliber Ruger handgun. The transfer included a plastic gun box bearing the gun's serial number, the gun manual, two magazines, and a test-fired casing called a "fingerprint cartridge." Joseph testified that at the behest of Defendant, Joseph hid the gun box immediately after the shooting, but Joseph later helped investigators locate it, as well as Albert's wallet that he had thrown out of the car window. When the gun box was presented at trial, Defendant's uncle testified that it "[appeared] to be the box" he had given to Defendant along with the gun. Moreover, the State's firearms expert concluded that the fingerprint cartridge and the three spent casings were fired from the same gun. The motion to suppress did not address the gun box.

Three years after the shooting, in May of 2015, the Ruger handgun was discovered submerged near the Emerald Isle Bridge. Authorities traced the serial number found on the gun to an initial point of sale in West Virginia, where Defendant's uncle testified he purchased the gun. The serial number on the gun matched the serial number on the gun box recovered by Joseph and acknowledged by Defendant's uncle.

Several witnesses testified that they had seen the Ruger handgun on Defendant's person and in his bedroom, and that Defendant had admitted he owned the Ruger handgun. Brandon, Joseph, and Defendant's friend from Charlotte who visited him and loaned him the Toyota Corolla on the night of the shooting each testified that Defendant confessed to committing the shootings.

Contrary to Defendant's argument, the photos of the gun manual did not "closely [tie] him to possession" of the Ruger handgun because more substantial evidence—including the gun box with the matching serial number and witness testimony—implicated him. Accordingly, any error in the photos' admittance at trial was harmless beyond a reasonable doubt.

B. Improper Closing Argument

Defendant next argues that the prosecutor's improper statements in closing argument likely deprived him of a fair trial. We disagree and address each of Defendant's arguments in turn.

Defendant first points to the prosecutor's following statements objected to by defense counsel:

> So I'm going to go over some things in this case that your common sense and your reason should tell you: Number one, if this defendant had an alibi, if this defendant had one person on God's Green Earth who could come in here and put him anywhere else . . . . but on Taylor Farm Road that night about 9:48, you'd have heard from him. And you know that. Nobody sits here facing two life sentences without parole and has a valid alibi and says, "Well, you know what, the law gives me these great rights. I don't have to present evidence and . . . . I'm just going to stand on that. I have got somebody who knows I didn't do it, but I'd rather just assert those rights."
>
> That's absurd. We have open-file discovery in this case, which means this defendant, and you've heard that, he's had—he's had all the evidence the State has, for five years. For five years. He could have pawed through it. Find out the holes, anything, craft a defense around it if he—if he wanted to.
>
> The reason he can't find an alibi witness, folks, is the four people who were with him that night told you they were with him, and they told you what he did. Nobody can put him on base. Nobody can put him in another state. They can't put him anywhere else. And the reason you haven't heard any evidence of an alibi is because there simply is no evidence of an alibi. . . .
>
> If you have an alibi, you do what Kevin Wells did. You come out with your hands up. You give details. "I couldn't have done this." Kevin Wells had a motive. Kevin Wells was the first suspect. Look how he acted. Look how he acted. That's someone with a true alibi, an air-tight alibi, who's willing to come forward and present it.

Defendant contends that the prosecutor improperly commented on his decision not to

testify and suggested that he had an obligation to produce an alibi.

Improper closing statements that are timely objected to are reviewed for abuse of discretion. *State v. Jones*, 355 N.C. 117, 131, 558 S.E.2d 97, 106 (2002). "The reviewing court examines the full context in which the statements were made." *State v. Martinez*, __ N.C. App. __, __, 795 S.E.2d 386, 391 (2016) (citation omitted).

While prosecutors may not directly comment on a defendant's failure to testify, *State v. Thompson*, 290 N.C. 431, 447-48, 226 S.E.2d 487, 496-97 (1976), prosecutors may "bring to the jury's attention 'a defendant's failure to produce exculpatory evidence or to contradict evidence presented by the State.' " *State v. Howard*, 320 N.C. 718, 728, 360 S.E.2d 790, 796 (1987) (quoting *State v. Mason*, 317 N.C. 283, 287, 345 S.E.2d 195, 197 (1986)). This includes remarks pertaining to a defendant's failure to present an alibi. *See State v. Young*, 317 N.C. 396, 415, 346 S.E.2d 626, 637 (1986) ("Our review of the prosecutor's argument . . . merely referred to [the defendant's] failure to contradict evidence presented by the State or to produce witnesses to corroborate the truth of an alibi."); *State v. Jordan*, 305 N.C. 274, 280, 287 S.E.2d 827, 831 (1982).

Here, the prosecutor explained to the jury that, if Defendant truly had an alibi and witnesses to support that alibi—like Kevin did—Defendant would have presented such exculpatory evidence at trial. Nothing in the prosecutor's statement suggests that Defendant had the burden to prove his innocence. *See, e.g.*, *State v.*

Williams, 341 N.C. 1, 14, 459 S.E.2d 208, 216 (1995). The prosecutor's comments were therefore not improper.

Defendant's remaining arguments concern statements that did not prompt an objection by defense counsel.

> The 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*. In other words, the reviewing court must determine whether the argument in question strayed far enough from the parameters of propriety that the trial court, in order to protect the rights of the parties and the sanctity of the proceedings, should have intervened on its own accord and: (1) precluded other similar remarks from the offending attorney; and/or (2) instructed the jury to disregard the improper comments already made.

Jones, 355 N.C. at 133, 558 S.E.2d at 107 (citation omitted).

Defendant contends that the trial court should have intervened after the prosecutor stated the following, in italicized part:

> *He traded the lives of Duane Correll and Albert Correll to enhance his persona. And instead of owning it, he fled like a coward and left his friends to peddle a fake alibi for him.*
>
> In this case you've heard his friends, his long-time friends, his roommates, his acquaintances, his girlfriends, people he slept with, all come in here, put their left hand on the Bible, raise their right, take an oath to tell the truth, and one by one, they have buried him with guilt. They have dumped a complete load of guilt all over his presumption of innocence.

> The State's evidence is completely uncontradicted. Uncontradicted.
>
> *Albert and Duane Correll never got to ask for a trial; they never got to ask for a jury; they never got to ask to confront their witnesses. They didn't get any of their rights that [Defendant] had.* [Defendant] was their judgment and their executioner, without a trial, without any evidence, without any due process.
>
> All they got was bullets from a .40 caliber Ruger. And they got no justice on 6/2/2012. But on July 31st, 2017, they're asking for justice.

(emphasis added). Defendant posits that the above comments suggested that he should have pled guilty and not have asserted his right to a criminal trial. We disagree.

Defendants have the constitutional right to a jury trial and assert their innocence. *State v. Larry*, 345 N.C. 497, 524, 481 S.E.2d 907, 923 (1997). References to a defendant's refusal to plead guilty "is a violation of the defendant's constitutional right to a jury trial." *State v. Kemmerlin*, 356 N.C. 446, 482, 573 S.E.2d 870, 894 (2002). However, such constitutional errors do not warrant automatic reversal if the State demonstrates "that the error is harmless beyond a reasonable doubt." *State v. Thompson*, 118 N.C. App. 33, 42, 454 S.E.2d 271, 276 (1995). Also, in order for a trial court to be required to intervene *ex mero motu* during a closing argument, the improper statements must be "so grossly improper as to impede the defendant's right to a fair trial." *State v. Huey*, 370 N.C. 174, 179, 804 S.E.2d 464, 469 (2017).

Reviewing the comments in context, *Martinez*, __ N.C. App. at __, 795 S.E.2d at 391, the prosecutor routinely stated that the State's evidence was uncontradicted and corroborated by multiple witnesses. The prosecutor's comment that Defendant murdered the Corrells without a trial or other due process does not indicate that Defendant should have waived any of his rights to trial by jury and therefore did not merit intervention by the trial court.

In any event, we hold that any error by the trial court in not *sua sponte* intervening in the prosecutor's comment was harmless. The State presented overwhelming evidence linking Defendant to the murders of the Corrells. *See Thompson*, 118 N.C. App. at 42, 454 S.E.2d at 276 ("Overwhelming evidence of guilt may render constitutional error harmless."). As recounted *supra*, definitive evidence showed that Defendant purchased and continually had possession of the Ruger handgun the day of the shootings. Several witnesses testified as to Defendant's whereabouts, his actions leading up to the incident in question, and that he was the one who committed the murders. We therefore hold that the prosecutor's statements were harmless and did not deprive Defendant of a fair trial.

Defendant also challenges the prosecutor's concluding comments before ending his closing argument:

> The fact that that gun was found is one of the most amazing things you will ever see. There was no idea where he threw that gun. In all the waters of Carteret County, of all the millions of acres of water of Carteret County and Onslow

County—and it's ironic that the ashes of Duane Correll and Albert Correll were dumped in the same waters of Carteret County as that gun was dumped in.

Has nothing to do with the law. Has nothing to do with the facts. Has nothing to do with anything we understand. *But there's something about finding this gun in the way it was found, the diver, scrounging around in the mud for crabs, that's unbelievable. There's something cosmic about that. There's something spiritual about that gun being found like that.*

You know, there's all kinds of theories about when people die. We've all heard them. When people die in situations like Duane Correll died, the turmoil that must have been in that man's mind when he breathed his final breath, he sees his son shot, he's been shot, he's aware of his own death, he's bleeding, he's trying to grab on to things, and he knows he's dying, and he knows his son is probably dead.

And he's lying there in the grass or the dirt of Taylor Farm Road, and as he loses consciousness, the last words that he hears are, "Sir, can you hear me? Sir, can you hear me? Sir, can you hear me? Sir, can you hear me?"

That has got to trouble a soul. And I don't think, until justice is done, that soul can rest. And I can almost imagine this gun laying there for three years, in the mud and the silt and barnacles, and all of a sudden there's someone near it: "Hey. Hey. Egerton. Psst. Egerton. It's Duane. Over here. Pick me up."

It's not hard to imagine, those voices.

It's been an honor and a privilege to be the voice for Albert Correll and Duane Correll who cannot speak. It's been an honor to present this case on behalf of the Carteret County Sheriff's Office. It's been an honor to have you thirteen people as jurors in this case.

(emphasis added). Defendant asserts that the prosecutor improperly appealed to the jury's emotions by suggesting that "supernatural forces" aided the discovery of the handgun and that they should convict Defendant "to ease Duane Correll's troubled soul."

Prosecutors are given wide latitude in their arguments to the jury. *State v. Richardson*, 342 N.C. 772, 792-93, 467 S.E.2d 685, 697 (1996). Although they can "ask[] the jury to imagine the fear and emotions of a victim," *State v. Roach*e, 358 N.C. 243, 298, 595 S.E.2d 381, 417 (2004), our courts "have expressed consistent disapproval" when prosecutors appeal to jurors' emotions or personal opinions or experiences, rather than to evidence or reason. *State v. Oakes*, 209 N.C. App. 18, 24, 703 S.E.2d 476, 481 (2011). Prosecutors are obligated to stay within the bounds of the evidence presented and may discuss any reasonable inferences that could be drawn therefrom. *State v. Wardrett*, __ N.C. App. __, __, 821 S.E.2d 188, 194 (2018) (citations omitted).

Here, while it may have been improper to suggest that supernatural influences played a role or were relevant in Defendant's case, the statement was not so grossly improper that it rendered Defendant's trial fundamentally unfair. The essence of the prosecutor's statement was the improbable likelihood of the handgun's recovery from a body of water three years after the murders. Musing on such a twist of fate does not warrant a new trial. Any improper remarks by the prosecutor pale in comparison

to the substantial evidence of the handgun and the plastic box found in Defendant's room, which bore the same serial number and were seen in Defendant's apartment or on his person.

To the extent Defendant insinuates that religion was employed to persuade the jury, North Carolina appellate courts have consistently held religious references and arguments are not *per se* prejudicial. *State v. Williams*, 350 N.C. 1, 26, 510 S.E.2d 626, 643 (1999). The prosecutor here did not quote scripture, *State v. Braxton*, 352 N.C. 158, 216-17, 531 S.E.2d 428, 462-63 (2000), remark that state law was divinely inspired, *State v. Oliver*, 309 N.C. 326, 359, 307 S.E.2d 304, 326 (1983), comment that law officers were ordained by God, *State v. Moose*, 310 N.C. 482, 501, 313 S.E.2d 507, 519-20 (1984), or refer to any religion at all. The prosecutor perpetually discussed the weight and credibility of the evidence and never advocated for non-evidentiary factors to influence the jury's decision-making. *Roache*, 358 N.C. at 322, 595 S.E.2d at 431. Even assuming members of the jury interpreted the prosecutor's comments as religious in nature and were improper, the comments were not so grossly improper that the trial court should have intervened *ex mero motu*.

Defendant finally argues that the cumulative effect of the prosecutor's closing argument deprived him of a fair trial. We disagree. In light of our preceding analysis and the overwhelming evidence against Defendant, we hold that the entirety of the prosecutor's improper comments during closing argument did not "so infect[] the trial

with unfairness as to make [his] resulting conviction[s] a denial of due process." *State v. Peterson*, 361 N.C. 587, 607, 652 S.E.2d 216, 230 (2007) (quotations and citations omitted).

III. CONCLUSION

Defendant has failed to demonstrate that the officers' discovery of the gun manual and the prosecutor's comments during closing argument prejudiced him such that he was entitled to a new trial.

NO ERROR.

Judges DIETZ and YOUNG concur.

Report per Rule 30(e).