IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-550

No. COA20-155

Filed 5 October 2021

New Hanover County, No. 17 CRS 52176

STATE OF NORTH CAROLINA

v.

JOSEPH CORNELL CORBETT, III

Appeal by defendant from judgment entered 31 July 2019 by Judge Phyllis M. Gorham in New Hanover County Superior Court. Heard in the Court of Appeals 10 August 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General John P. Barkley, for the State.

Kimberly P. Hoppin for defendant.

DIETZ, Judge.

¶ 1 Defendant Joseph Corbett appeals his conviction for second degree murder in the fatal shooting of his girlfriend. Corbett argues that the trial court erred by allowing the State to question him about alleged assaults he committed against other women, by denying his motion to dismiss for insufficient evidence, and by allowing the State to make an improper closing argument.

¶ 2 We reject these arguments. The trial court did not err by admitting the challenged evidence under Rule 404(b) of the Rules of Evidence because the State provided sufficient documentation of the alleged prior assaults and the trial court properly found that evidence of the prior assaults was probative of Corbett's intent to commit murder.

¶ 3 Likewise, the trial court did not err in denying Corbett's motion to dismiss the murder charge because the State presented substantial evidence that Corbett acted with malice, including evidence that Corbett had threatened to kill the victim before the shooting, shot her in the back as she was trying to run away, and stated immediately after the shooting that he told her he would do so.

¶ 4 Finally, the trial court properly overruled Corbett's objection at closing argument because the challenged statement was not a call for the jury to put themselves in the shoes of the victim but was instead an argument about the victim's emotional state. Accordingly, we find no error in the trial court's judgment.

Facts and Procedural History

¶ 5 In March 2017, Detective Brothers and Corporal Griswold of the New Hanover County Sheriff's Office were on patrol in Wilmington when they responded to a report of shots fired at the intersection of Dock and 17th Streets. As the officers approached, they received a notification of more shots fired.

¶ 6 When the officers arrived at the scene, Detective Brothers saw a woman, later

identified as Shantell Williams, run across the street and fall to the ground. The detective got out of his vehicle to assist Williams and observed what appeared to be gunshot wounds to her chest and leg.

¶ 7 At the scene, a bystander gave the officers the tag number and a description of a vehicle that the shooter used to flee the scene and Corporal Griswold left in pursuit of the vehicle. Detective Brothers remained with Williams, who, while severely wounded, told him that Joseph Corbett shot her. Her statement was recorded by the detective's body camera. Emergency services arrived and provided aid to Williams, but she died shortly after arriving at the hospital.

¶ 8 Law enforcement traced the tag number to Corbett and later arrested him at an apartment in Carolina Beach. The arresting officers found a Lexus matching the witness's description at the apartment. The State charged Corbett with first degree murder.

¶ 9 The case went to trial in 2019. Several witnesses testified. Wanda Richmond testified that she was in a nearby thrift store when she heard two shots fired. She started to run across the street when she saw Williams running to the back of a building and banging on the door to get in. Richmond then saw a man in a Lexus parked behind the building speed up to where Williams was, roll down his window, and pull out a gun. Richmond was looking at the man and heard him say to Williams, "Bitch, I'm going to kill you," before he pulled the trigger. Richmond identified Corbett

as the shooter.

¶ 10 Nicole Jacobs testified that she also saw Williams running away, with Corbett pursuing her in his car. Jacobs then saw Corbett get out of his car, walk towards Williams, and shoot her. Jacobs testified that, after the shooting, Corbett "just walked nonchalantly back to his car, got in, and drove away."

¶ 11 Anita Garst testified that she was in a nearby building and heard shots fired outside. After the initial shots, she heard a car drive by, then more shots, and a man's voice saying "I told you, I told you," followed by more shots.

¶ 12 Katheryn Jeffreys and Christopher Maher lived nearby. Jeffreys testified she was about to walk her dog when she heard gunshots. She saw Williams running down the street and heard more shots. Jeffreys then saw a man get out of a car, stand over Williams with a gun, and hit her. The man then sped away in his car. Jeffreys identified Corbett as the man with the gun. Maher provided the man's license tag number to police. Jeffreys and Maher both identified Corbett out of a police photo lineup.

¶ 13 The State presented surveillance footage from the area that showed Williams and Corbett in the parking lot, having an altercation in and out of Corbett's car, and then Corbett firing a gun at Williams. The medical examiner testified that Williams died from two gunshot wounds, one to her upper right back and one to her right thigh. Both shots entered from the back.

¶ 14 Tina Wells, a friend of Williams and Corbett, testified that Corbett called her a few days prior to the shooting. Corbett sounded upset and told Wells to tell Williams that their relationship "wasn't over until he said it was over," and that "he was going to kill her" when he saw her again.

¶ 15 Corbett testified in his defense. He admitted that he shot Williams but asserted that he did so in self-defense after she attacked him. Corbett testified that Williams and her family had a history of violence toward him and that Williams attacked him shortly before he shot her. According to Corbett, he fired his gun to protect himself, causing Williams to run. He then realized Williams had been hit by the shots and followed her in his car. Corbett testified that he intended to take her to the hospital but left when he heard police approaching. Corbett admitted that he fled the scene, changed the tags on his car, and threw his gun in the river.

¶ 16 At the close of the State's evidence and again at the close of all evidence, Corbett moved to dismiss the murder charge. The trial court denied both motions.

¶ 17 On 31 July 2019, the jury convicted Corbett of second degree murder. The trial court sentenced Corbett to a term of 420 to 516 months in prison. Corbett appealed.

Analysis

I. Admission of Rule 404(b) evidence of alleged prior assaults

¶ 18 Corbett first argues that the trial court erred in allowing the State to cross-examine him about several alleged domestic assaults he committed against women

he had dated. Corbett asserts that the State did not present sufficient evidence to establish that Corbett committed these prior assaults and that the challenged evidence did not fall within any permissible category of Rule 404(b) evidence. We address these arguments in turn below.

¶ 19 Corbett first argues that the State "did not present sufficient evidence" that he committed the prior alleged assaults, and the trial court's "findings regarding the alleged assaults were not supported by competent record evidence."

¶ 20 Evidence "is admissible under Rule 404(b) of the North Carolina Rules of Evidence if it is substantial evidence tending to support a reasonable finding by the jury that the defendant committed a similar act or crime." *State v. Stager*, 329 N.C. 278, 303, 406 S.E.2d 876, 890 (1991). "In this regard, the trial court is required to make an initial determination pursuant to Rule 104(b) of whether there is sufficient evidence that the defendant in fact committed the extrinsic act. The judge is not required to be convinced beyond a reasonable doubt, by clear and convincing evidence, or by a preponderance of the evidence, that defendant committed the extrinsic act. Rather, as a prerequisite to admitting the evidence, the trial court must find the evidence to be substantial." *State v. Haskins*, 104 N.C. App. 675, 679–80, 411 S.E.2d 376, 380 (1991) (citations omitted). "The prosecution can present either direct or circumstantial evidence so long as it tends to support a *reasonable* inference that the same person committed both the earlier and later acts." *State v. Adams*, 220 N.C.

App. 319, 323, 727 S.E.2d 577, 580 (2012).

¶ 21 Here, the trial transcript indicates that, during the trial court's hearing on the admissibility of the State's proffered Rule 404(b) evidence, Corbett's counsel argued that there was insufficient evidence to support the alleged prior assaults. The State countered that "all of this came out of either warrants, statements made under oath, everything that has previously been provided to defense counsel, and it includes domestic violence protective orders. There is more than a reasonable basis for the questioning of all of these instances. . . . All of the information that I would want to put before this Defendant and before the jury and before the Court is documented with statements under oath, including warrants, police reports that led to warrants, and domestic violence protected orders."

¶ 22 The State then submitted a "stack" of "reports" and "domestic violence orders" to the trial court and the court reviewed those documents before ruling on the objection. The documents were not entered into evidence as exhibits and are not included in the record on appeal.

¶ 23 The trial court found that, based on its review of these documents, "the State has produced sufficient credible and competent evidence of particular similar acts and circumstances to the shooting of Ms. Williams." The court then read out the details of each of the alleged prior assaults it found to be admissible, including the victims' names, the dates of the alleged acts, and detailed descriptions of each alleged

assault. On cross-examination, the State briefly questioned Corbett about whether he committed each of the alleged prior assaults. Corbett denied all of the allegations.

¶ 24 We hold that the trial court had sufficient evidence before it to support its decision to admit the evidence of the prior assaults. *Haskins*, 104 N.C. App. at 679–80, 411 S.E.2d at 380; *Adams*, 220 N.C. App. at 323, 727 S.E.2d at 580. From the available appellate record, the information the trial court announced in open court after reviewing the warrants, reports, and domestic violence protective orders submitted by the State constituted sufficient evidence.

¶ 25 To be sure, the underlying documents on which the trial court relied are not in the record on appeal. But it is the appellant's duty to ensure that information necessary to review the arguments on appeal is contained in the record on appeal. *State v. Reaves*, 132 N.C. App. 615, 620, 513 S.E.2d 562, 565 (1999). "To raise the issue of the sufficiency of the evidence" supporting a trial court's finding on appeal, the defendant "must preserve the record for appeal." *Id.* "Where the record is silent we will presume the trial court acted correctly." *Id.*

¶ 26 In *Reaves*, for example, this Court held that in "this case, the record is not completely silent because the transcript of the proceeding indicates that the trial judge read the report before ruling." *Id.* The Court reasoned that in "the absence of the report, and with evidence from the transcript that the court did review the report, weigh its contents, and consider the applicable evidentiary rule, we presume the

correctness of the trial court's decision." *Id.*

¶ 27 The same is true here. The transcript indicates that the trial court received warrants, police reports, and domestic violence protective orders to review in its determination and, after considering those materials, determined that the State had presented sufficient evidence. The trial court recited details that necessarily came from those records, such as the victims' names, the dates of the alleged acts, and detailed descriptions of the events. Accordingly, we reject Corbett's argument and find no error in the trial court's determination.

¶ 28 Corbett next argues that the State's cross-examination concerning these alleged bad acts "served no proper purpose" under Rule 404(b) because the alleged altercations with other women were not relevant to whether he acted in self-defense or under adequate provocation in this case and served only to suggest to that he had a "propensity for violence . . . against women."

¶ 29 "We review de novo the legal conclusion that the evidence is, or is not, within the coverage of Rule 404(b). We then review the trial court's Rule 403 determination for abuse of discretion." *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 158–59 (2012). Rule 404(b) is a "general rule of *inclusion* of relevant evidence of other crimes, wrongs or acts by a defendant, subject to but *one exception* requiring its exclusion if its *only* probative value is to show that the defendant has the propensity or disposition to commit an offense of the nature of the crime charged." *State v. Coffey*,

326 N.C. 268, 278–79, 389 S.E.2d 48, 54 (1990). Under Rule 404(b), permissible purposes for the admission of evidence of prior bad acts include "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident." N.C. R. Evid. 404(b). Rule 403 provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." N.C. R. Evid. 403.

¶ 30 Our Supreme Court has held that evidence of prior violent acts by a defendant is not admissible under Rule 404(b) where the evidence only is relevant to show the defendant "could not have been acting in self-defense" because he had "a propensity for violence." *State v. Morgan*, 315 N.C. 626, 638, 340 S.E.2d 84, 92 (1986). But evidence that a defendant committed prior acts of domestic violence is admissible under Rule 404(b) to prove disputed issues regarding the requisite intent for murder charges, including "lack of accident, intent, malice, premeditation and deliberation." *State v. Syriani*, 333 N.C. 350, 378, 428 S.E.2d 118, 132 (1993).

¶ 31 Here, the trial court ruled that "[t]he purpose for which the Court will allow the admissibility of the 404(b) evidence will be to show motive, intent, lack of accident, modus operandi, common place or scheme, or purpose and design." The court further ruled that "the probative value of the admission of this evidence substantially outweighs any danger of unfair prejudice to the Defendant."

¶ 32 We agree with the trial court's determination that the evidence of the prior

assaults in this case was relevant to Corbett's intent, or whether he acted with malice in shooting Williams, the key contested issue in this case. *Syriani*, 333 N.C. at 378, 428 S.E.2d at 132. At trial, Corbett contended that he was not guilty of murder because, although he admitted that he shot Williams, he claimed he was either acting in self-defense or in the heat of passion when he did it.

¶ 33 In response, the State presented evidence of a pattern of prior similar domestic assaults Corbett committed against other women he was dating, including incidents where he pointed guns at them and threatened their lives when they attempted to leave him. This evidence was relevant because it showed a longstanding pattern of intentional acts of violence or threats of violence toward women with whom he was involved, which supported the State's theory that Corbett acted with malice when he threatened Williams's life after she tried to leave him and then shot her in the back as she tried to run away from him. *Id.*

¶ 34 Moreover, because this evidence was highly probative of the key disputed issue of Corbett's intent, we cannot say that the trial court's decision to admit the evidence of the alleged prior assaults amounted to an abuse of discretion under Rule 403. *Beckelheimer*, 366 N.C. at 130, 726 S.E.2d at 158–59. Not only was the challenged evidence highly probative of a key issue, but the evidence also was unlikely to cause unfair prejudice in light of the other evidence of Corbett's guilt, including multiple eyewitness accounts of the shooting, evidence that Corbett threatened Williams's life

before the shooting, video footage of the shooting, and evidence that Corbett pursued Williams and shot her in the back as she tried to run away.

¶ 35 Finally, even assuming error in the admission of the challenged Rule 404(b) evidence, Corbett has not met his burden to show that the admission of the evidence was prejudicial. *State v. Babich*, 252 N.C. App. 165, 172, 797 S.E.2d 359, 364 (2017). As discussed below, the State presented substantial other evidence that Corbett acted with the requisite intent for second degree murder and not in self-defense. In light of this other evidence, there is no reasonable possibility that, had the State's evidence of the other alleged assaults been excluded, the jury would have acquitted Corbett or convicted him of a lesser charge. *Id.* We therefore find no error in the trial court's admission of this evidence.

II. Denial of motion to dismiss

¶ 36 Corbett next argues that the trial court erred in denying his motion to dismiss the murder charge because the State presented insufficient evidence of malice. Corbett contends that his evidence that he acted under adequate provocation negated the malice required for second degree murder. We reject this argument.

¶ 37 "This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense

included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78–79, 265 S.E.2d 164, 169 (1980). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994).

¶ 38 "Murder in the second degree is the unlawful killing of a human being with malice but without premeditation and deliberation. Voluntary manslaughter is the unlawful killing of a human being without malice and without premeditation and deliberation." *State v. Wilkerson*, 295 N.C. 559, 577–78, 247 S.E.2d 905, 915 (1978) (citations omitted). There are three types of malice: (1) "express hatred, ill-will or spite"; (2) malice that "arises when an act which is inherently dangerous to human life is done so recklessly and wantonly as to manifest a mind utterly without regard for human life"; and (3) the "condition of mind which prompts a person to take the life of another intentionally without just cause, excuse, or justification." *State v. Reynolds*, 307 N.C. 184, 191, 297 S.E.2d 532, 536 (1982). "The intentional use of a deadly weapon which causes death gives rise to an inference that the killing was done

with malice and is sufficient to establish murder in the second degree." *State v. Brewington*, 179 N.C. App. 772, 776, 635 S.E.2d 512, 516 (2006).

¶ 39 In contrast, "voluntary manslaughter occurs when one kills intentionally but does so in the heat of passion suddenly aroused by adequate provocation." *State v. Jackson*, 145 N.C. App. 86, 91, 550 S.E.2d 225, 229 (2001). "In order for a homicide to be reduced from second-degree murder to voluntary manslaughter on the theory that a defendant acted under the influence of sudden passion, the heat of passion suddenly aroused by provocation must be of such nature as the law would deem adequate to temporarily dethrone reason and displace malice." *State v. Montague*, 298 N.C. 752, 756–57, 259 S.E.2d 899, 903 (1979). "Mere words however abusive are not sufficient provocation to reduce second-degree murder to manslaughter. Legal provocation must be under circumstances amounting to an assault or threatened assault." *Id.* at 757, 259 S.E.2d at 903. "If one kills another with a deadly weapon by reason of provocation such as would naturally and reasonably arouse the passions of an ordinary man beyond his power of control, this sudden passion will rebut the presumption of malice." *State v. McLawhorn*, 270 N.C. 622, 628, 155 S.E.2d 198, 203 (1967).

¶ 40 Here, the evidence showed that witnesses saw Corbett pursue Williams as she tried to run away from him and that Corbett said, "Bitch, I'm going to kill you," before he shot her. After Corbett chased Williams down and shot her, a witness described

that Corbett "just walked nonchalantly back to his car, got in, and drove away." Another witness testified that she heard a man say, "I told you, I told you," when the shots were fired. The medical examiner testified that both of the fatal gunshot wounds entered through Williams's back. And a friend of Corbett and Williams testified that, a couple of days before the shooting, Corbett told her he was going to kill Williams when he saw her again because he was upset she was trying to end their relationship.

¶ 41 In addition, Corbett admitted at trial that he intentionally shot at Williams, that he fled the scene without rendering any aid to Williams, and that he took steps to avoid apprehension, including throwing away the gun he used and switching the license plates on his car.

¶ 42 This is substantial evidence that Corbett expressed his anger and desire to kill Williams well in advance of the shooting, that he shot her in the back as she was trying to run away from him, that Corbett shot her intentionally with a deadly weapon while verbally expressing his intent to do so, and that Corbett did nothing to try and help Williams after he shot her. *Brewington*, 179 N.C. App. at 776, 635 S.E.2d at 516. The evidence also showed that Corbett acted with a cool and rational state of mind because he walked away "nonchalantly" after the shooting and took multiple steps to cover up what he had done and avoid apprehension. *Cf. Montague*, 298 N.C. at 756–57, 259 S.E.2d at 903. Taking this evidence in the light most favorable to the

State, this was ample evidence from which a reasonable jury could find that Corbett acted with malice when he shot Williams. *Rose*, 339 N.C. at 192, 451 S.E.2d at 223; *Brewington*, 179 N.C. App. at 776, 635 S.E.2d at 516. Accordingly, the trial court did not err by denying Corbett's motion to dismiss.

III. Improper closing arguments

¶ 43 Finally, Corbett argues that the trial court erred by allowing or failing to strike a portion of the State's closing arguments where the State improperly asked the jury to imagine their reactions to having a gun pointed at them.

¶ 44 "The standard of review for improper closing arguments that provoke timely objection from opposing counsel is whether the trial court abused its discretion by failing to sustain the objection." *State v. Jones*, 355 N.C. 117, 131, 558 S.E.2d 97, 106 (2002). Under this narrow standard of review, we can reverse the trial court's discretionary decision only if "the ruling could not have been the result of a reasoned decision." *Id.*

¶ 45 In general, "counsel are given wide latitude in arguments to the jury and are permitted to argue the evidence that has been presented and all reasonable inferences that can be drawn from that evidence." *Id.* at 128, 558 S.E.2d at 105. "Arguments of counsel are left largely to the control and discretion of the trial judge, and counsel is allowed wide latitude in the argument of hotly contested cases. Further, the remarks are to be viewed in the context in which they are made and the

overall factual circumstances to which they refer." *State v. Davis*, 349 N.C. 1, 22, 506 S.E.2d 455, 466–67 (1998) (citation omitted).

¶ 46 "When applying the abuse of discretion standard to closing arguments, this Court first determines if the remarks were improper." *Jones*, 355 N.C. at 131, 558 S.E.2d at 106. "Next, we determine if the remarks were of such a magnitude that their inclusion prejudiced defendant, and thus should have been excluded by the trial court." *Id.*

¶ 47 In the challenged portion of the State's closing arguments, the prosecutor asked the jurors to consider how they would react to someone pointing a gun at them, to highlight that Williams did not react when Corbett pointed the gun at her:

> What is striking is when he pulls that gun out, she does not flinch, which is horrifying. If there was a gun in this courtroom and it was, say, a revolver with only five shots in it and I allowed each one of you to look down the barrel of that gun and open it up yourself without anybody else touching it, look down the barrel, make sure there's absolutely no ammunition in that weapon and then you handed it to someone and if they lifted it and pointed it at you, you would flinch, knowing that it was not loaded. How many times do you have to have a gun put in your face before you treat it like that?

Corbett objected, and the trial court overruled his objection. Corbett contends that this portion of the State's argument was improper because it asked the "jurors to put themselves in the place of the victims" and constituted an "emotional appeal to jurors' fears." *State v. Warren*, 348 N.C. 80, 109, 499 S.E.2d 431, 447 (1998); *State v. Payne*,

328 N.C. 377, 406, 402 S.E.2d 582, 599 (1991).

¶ 48 We recognize that juries "should be urged to convict on the basis of the evidence tending to show guilt, not on the basis of emotional appeals to jurors' fears." *Payne*, 328 N.C. at 406, 402 S.E.2d at 599. For this reason, courts "will not condone an argument asking jurors to put themselves in place of the victims." *Warren*, 348 N.C. at 109, 499 S.E.2d at 447. But this Court "has repeatedly found no impropriety when the prosecutor asks the jury to imagine the fear and emotions of a victim." *Id.*

¶ 49 We find that the statements at issue in this case, "viewed in the context in which they are made and the overall factual circumstances to which they refer," were simply a request for the jury to consider Williams's emotional state when Corbett pointed the gun at her and the factual circumstances that led her to have that response. *Davis*, 349 N.C. at 22, 506 S.E.2d at 466–67. The State was highlighting the fact that Williams's response to the gun—not flinching—was abnormal and implied that it was not the first time this had happened to her. The argument was based on Corbett's own testimony about Williams's response to him pointing the gun at her and the State's evidence that Corbett had pointed a gun at Williams in a prior incident. Thus, the argument was not improper because it "was based on the evidence and did not misstate or manipulate the evidence" and was not an improper appeal for the jury to put themselves in Williams's shoes. *Warren*, 348 N.C. at 109, 499 S.E.2d at 447.

¶ 50 In any event, even assuming the prosecutor's challenged statements were improper, they were not "of such a magnitude that their inclusion prejudiced defendant, and thus should have been excluded by the trial court." *Jones*, 355 N.C. at 131, 558 S.E.2d at 106. In light of the State's lengthy closing arguments highlighting the substantial evidence of Corbett's guilt, it is unlikely that the prosecutor's passing reference to the jurors imagining a gun pointed at them impacted the jury's verdict. *Id.* We thus find no error in the trial court's decision to overrule Corbett's objection to this portion of the closing argument.

Conclusion

¶ 51 We find no error in the trial court's judgment.

NO ERROR.

Judges COLLINS and GORE concur.

Report per Rule 30(e).