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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-78

Filed 12 September 2023

Catawba County, Nos. 18 CRS 54145-47

STATE OF NORTH CAROLINA

v.

SCOTT ANTHONY PUTNAM, Defendant.

Appeal by Defendant from judgment entered 18 March 2022 by Judge J. Thomas Davis in Catawba County Superior Court. Heard in the Court of Appeals 29 August 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Alvin W. Keller, Jr., for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for defendant-appellant.

PER CURIAM.

Defendant Scott Anthony Putnam appeals from judgments of first-degree murder, attempted first degree murder, and assault with a deadly weapon inflicting serious injury offenses. During the State's concluding arguments to the jury, the State made remarks that "lawlessness" and "anarchy would ensue" if Defendant was

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not convicted. Defendant finds these remarks grossly improper and finds the trial court's failure to intervene as reversible error warranting a new trial.

If defense counsel fails to object to the State's closing argument, and the trial court also fails to intervene, the challenged argument is reviewed under a two-step inquiry: (1) whether the argument was improper; and (2) whether the argument was so grossly improper as to impede on the defendant's right to a fair trial. We consider whether statements made by the State in his closing argument were grossly improper, such that the trial court should have intervened *ex mero motu*. We find no error by the trial court.

BACKGROUND

On 24 July 2018, Defendant fatally shot Anthony Killian, shot and injured Anthony's mother, and tried to shoot Anthony's father. On 18 March 2022, Defendant was convicted of first-degree murder, attempted first degree murder, and assault with a deadly weapon inflicting serious injury. On 17 March 2022, Defendant testified to shooting Anthony and his mother and pulling the trigger in Anthony's father's face at trial. A few months prior to the shooting, Defendant's minor daughter revealed she was sexually assaulted by a then 19- or 20-year-old Anthony in 2013. Defendant was also sexually abused as a minor. At trial, Defendant testified that his own childhood sexual abuse, alcohol consumption, and refrain from taking prescribed medication affected his mental state and thought process. After all the evidence was presented, the State, in closing, argued:

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You know, this is not the first time someone's tried to avoid the consequences of their actions. You know, if we encourage individuals to make their own determinations as to which laws they will obey and which they will permit themselves, as a matter of conscious, to disobey invites chaos. No legal system can survive if it gave every individual the opportunity to disregard with impunity the law.

You know, tolerance of that kind of conduct is not democratic and it's lawlessness is what it is, or the big fancy word, it's anarchy.

{T pp. 697-698} (emphasis added). Defense counsel did not object to the State's comments, nor did the trial court intervene ex meru motu. Defendant appealed.

ANALYSIS

Defendant argues that the trial court erred by failing to intervene ex meru motu when the State made "grossly improper" "general deterrence arguments" during its closing remarks to the jury. Defendant contends the "grossly improper comments prejudiced [Defendant]" and "the trial court's failure to intervene is reversible error" that entitles him to a new trial. We disagree.

"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. Bowman*, 274 N.C. App. 214, 221 (2020) (citing *State v. Jones*, 355 N.C. 117, 131 (2002)). However, "when defense counsel fails to object to the prosecutor's improper argument and the trial court fails to intervene, the standard of review requires a two-step analytical inquiry: (1) whether

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the argument was improper; and, if so, (2) whether the argument was so grossly improper as to impede on the defendant's right to a fair trial." *State v. Huey*, 370 N.C. 174, 179 (2017). We review the State's remarks "in context and in light of the overall factual circumstances to which they refer" for gross improprieties. *State v. Madonna*, 256 N.C. App. 112, 118 (2017) (citing *Huey*, 370 N.C. at 179). "During [a] closing argument to the jury an attorney may not become abusive . . . or make arguments on the basis of matters outside the record[;]" however, he may, "on the basis of his analysis of the evidence, argue any . . . conclusion with respect to a matter in issue." N.C.G.S. § 15A-1230(a) (2022).

Considering the overall factual circumstances here, whereby Defendant did in fact pursue his own version of justice by engaging the Killians at their home on 24 July 2018 regarding a pending sexual abuse case involving Defendant's minor daughter, the State's closing remarks were not grossly improper but rather "a hyperbolic expression of [its] position that a not guilty verdict. . . would be an injustice." *State v. Pittman*, 332 N.C. 244, 262 (1992) (where the State argued "if defendant was found not guilty, 'justice in Halifax County will be dead[,] and the Court found nothing "so grossly improper that the trial court should have intervened ex mero motu"). Similarly, we conclude that the State's closing remarks, that "encourag[ing] individuals to make their own determinations as to which laws they will obey . . . invites chaos[,]" did not require ex meru meto intervention by the trial

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court. We hold the State's closing remarks, while potentially improper, were not so grossly improper as to impede the Defendant's right to a fair trial.

CONCLUSION

For the reasons stated above, we find no error in the trial court's failure to intervene ex mero motu.

NO ERROR.

Panel consisting of Judges DILLON, MURPHY, AND RIGGS.

Report per Rule 30(e).