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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-675

Filed: 6 June 2017

Craven County, No. 13 CRS 052419

STATE OF NORTH CAROLINA,

v.

DELGEN FOYE, Defendant.

Appeal by defendant from judgment entered 17 December 2015 by Judge Benjamin G. Alford in Craven County Superior Court. Heard in the Court of Appeals 8 February 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sandra Wallace-Smith, for the State.

Patterson Harkavy LLP, by Narendra K. Ghosh, for defendant-appellant.

ELMORE, Judge.

Defendant Delgen Foye appeals from a judgment entered after a jury found him guilty of first-degree murder of his brother, Britts Foye (Britts). Defendant contends the trial court erred by refusing to instruct the jury on self-defense, excluding evidence of Britts's criminal history and prior bad acts, admitting evidence

of defendant's prior assaults on Britts, and denying his speedy trial motion. We conclude defendant received a trial free from prejudicial error.

I. Background

Brothers defendant and Britts lived together with their elderly mother, Cora Foye ("Cora"), in a trailer in James City. According to the trial evidence, on 14 June 2013, Britts called 911 and told the dispatcher "he needed a police officer at [the Foye residence] because [defendant] ha[d] a knife and he [was] going crazy . . . trying to kill somebody." Dispatching officers responded quickly and discovered Britts lying in a pool of blood, struggling to breathe, his face beaten, his upper arms cut and stabbed repeatedly. When an officer asked Britts, "did [defendant] do this," Britts responded "yes—or yeah, [defendant]." A butcher knife was found behind Cora's bed. Britts was transported to the hospital but ultimately died of blood loss. Police later found defendant in a wooded area behind the residence, sitting with his legs crossed and head down. Defendant ran when police approached him but was later apprehended and placed under arrest.

Dispatching officers also discovered Cora covered in blood and sitting on the floor next to Britts. Cora was "talking but you couldn't quite understand what she was trying to say." Officers later determined Cora had been cut, and she was transported to the hospital. Cora was later interviewed by police about the incident but did not provide much helpful detail. Cora was about seventy-nine years old, soft-

STATE V. FOYE

Opinion of the Court

spoken, and suffered from dementia. One officer testified that Cora stated that she was unsure why Britts and defendant were fighting, but that “Britts kept saying stay off me, stay off me.” Cora also stated she saw neither Britts nor defendant with a knife.

Prior to trial, several relevant motions were heard. First, defendant moved to dismiss his case based on his right to a speedy trial, which the court later denied. Second, the State moved to introduce evidence of specific acts and prior convictions of defendant related to prior assaults against Britts and Cora to show defendant’s intent to assault Britts, preparation of a plan to assault Britts with a knife, and lack of accident with respect to the assault on Britts. Third, defendant, after giving notice of his intent to plead self-defense, moved to introduce evidence of Britts’s criminal history and prior bad acts to show that defendant had a reasonable apprehension of death and bodily harm. The trial court reserved its ruling on these motions until the appropriate time at trial, during which the court intended to conduct a *voir dire* hearing on the matters.

After those *voir dire* hearings, the trial court denied defendant’s request to introduce character evidence of Britts on the basis that no evidence was presented to support his self-defense claim but granted the State’s request to introduce evidence that defendant had assaulted Britts and Cora on two prior occasions.

STATE V. FOYE

Opinion of the Court

At trial, the State presented evidence of the two assaults. Officer Lawhorn testified that, in 2004, he responded to a domestic call at the Foye residence, and Britts reported that defendant attacked Britts and Cora with a sling blade. Officer O'Dell testified that, in 2012, he responded to a call from the Foye residence, and Britts reported that defendant had attacked him at a neighbor's house and attempted to stab him with a knife. That neighbor, Biron Howard, also testified to the incident, corroborating Officer O'Dell's testimony that defendant followed Britts to Howard's house and attacked Britts with a knife.

Defendant called four witnesses but did not testify himself. Relevant here, one witness was a DNA analyst. She testified that she was given a swab from the handle of the knife to test for DNA, which matched Britts's DNA profile but did not match defendant's. However, on cross-examination, the DNA analyst admitted that she was unaware whether the DNA sample she received to test was collected from blood or skin cells found on the knife.

During the jury charge conference, defendant requested a self-defense instruction but the trial court refused. After the court charged the jury on assault with a deadly weapon inflicting serious injury, first- and second-degree murder, and voluntary manslaughter, the jury returned a verdict finding defendant not guilty of assault with a deadly weapon inflicting serious injury and guilty of first-degree murder. Defendant gave oral notice of appeal.

II. Analysis

Defendant contends the trial court erred by (1) refusing to give a self-defense instruction, (2) excluding evidence of Britts's criminal history and prior bad acts, (3) admitting hearsay evidence of defendant's prior altercations with Britts, and (4) denying his speedy trial motion.

A. Self-Defense Instruction

Defendant first contends the trial court erred by refusing to give a self-defense instruction when the evidence warranted it. Specifically, defendant contends the evidence supported a reasonable inference that Britts introduced the knife into the fight, which supported an additional inference that defendant had a reasonable belief that killing Britts was necessary to save himself from great harm or death.

We review *de novo* whether trial evidence warranted a self-defense instruction. See *State v. Cruz*, 203 N.C. App. 230, 242, 691 S.E.2d 47, 54, *aff'd*, 364 N.C. 417, 700 S.E.2d 222 (2010). Generally, a defendant is entitled to a self-defense instruction "if there is any evidence in the record from which it can be determined that it was necessary or reasonably appeared to be necessary for [the defendant] to kill his adversary in order to protect himself from death or great bodily harm." *State v. Bush*, 307 N.C. 152, 160, 297 S.E.2d 563, 569 (1982) (citing *State v. Spaulding*, 298 N.C. 149, 156, 257 S.E.2d 391, 395 (1979)). In determining whether a self-defense instruction is warranted, "the evidence is to be viewed in the light most favorable to

STATE V. FOYE

Opinion of the Court

the defendant.” *State v. Moore*, 363 N.C. 793, 796, 688 S.E.2d 447, 449 (2010). However, such evidence must still raise an inference above mere speculation and conjecture that the defendant acted in self-defense. *See State v. Lyons*, 340 N.C. 646, 661, 459 S.E.2d 770, 778 (1995) (holding self-defense instruction unwarranted where evidence did “not *tend to indicate* that the defendant in fact formed a belief that it was necessary to kill the deceased” (emphasis added)); *State v. Revels*, 195 N.C. App. 546, 552, 673 S.E.2d 677, 682 (holding instruction unwarranted where alleged self-defense evidence failed to “rise[] above mere possibility and conjecture”), *disc. rev. denied*, 363 N.C. 379, 680 S.E.2d 204 (2009).

To support his argument that a self-defense instruction was warranted, defendant points to evidence that “(1) Britts and [defendant] were fighting that night, as they had often done in the past”; “(2) Cora did not see [defendant] with a knife during the fight”; “(3) Britts’[s] DNA was found on the [butcher knife handle]”; (4) “[defendant’s] DNA was not on the [butcher knife handle]”; and “(5) [defendant] had a cut on his left leg after the incident.” Defendant maintains that a reasonable interpretation of the DNA evidence is that “Britts wielded the knife and was holding the knife when he was stabbed with it.” “[S]uch a struggle with a dangerous weapon,” defendant argues, “when the weapon was introduced by the victim, is sufficient to show that [defendant] could have had a reasonable belief that it was necessary to kill Britts in order to save himself from death or great bodily harm.” Defendant’s logic

STATE V. FOYE

Opinion of the Court

fails, however, because he erroneously presumes the evidence showed Britts introduced the knife into the fight. *See Revels*, 195 N.C. App. at 552, 673 S.E.2d at 682 (rejecting similar argument and holding self-defense instruction unwarranted when trial evidence raised no more than an “inference that [the defendant believed it was necessary to use deadly force] above mere possibility and conjecture”).

In *Revels*, the defendant was convicted of second-degree murder after inflicting deadly stab wounds on the victim during a fight. *Id.* at 549, 673 S.E.2d at 680. The State’s evidence showed that the parties had animosity toward each other and had fought previously. *Id.* at 546–47, 673 S.E.2d at 679–80. No evidence was presented that either party had a knife when the deadly fight started. *Id.* at 547–48, 673 S.E.2d at 679. During the struggle, the victim pushed the defendant into the backseat of a car in which the victim had previously been sitting. *Id.* at 546, 673 S.E.2d at 679. The fight continued in the backseat, out of eyewitness sight. *Id.* at 547–48, 673 S.E.2d at 679. After the victim stumbled out of the vehicle with deadly stab wounds, the defendant emerged swinging a bloody knife, before being apprehended by spectators. *Id.* at 548, 673 S.E.2d at 679. The defendant did not testify but presented evidence tending to show that the knife had been given to the victim at some point before the fight. *Id.* at 549, 673 S.E.2d at 680. The trial court refused the defendant’s request to give a self-defense instruction. *Id.*

STATE V. FOYE

Opinion of the Court

On appeal, the defendant argued trial evidence that (1) the knife used was the victim's, (2) no one saw either woman with a knife when they started fighting, (3) the victim previously had been sitting in the back seat of the car, and (4) the defendant had a cut on her finger, warranted a self-defense instruction. *Id.* at 551, 673 S.E.2d at 681. Thus, the defendant argued, "it [was] reasonable to infer that [the victim] had left the knife in the back seat, pushed defendant into the back seat so that [the victim] could get the knife, and then [the victim] used the knife on defendant." *Id.* This Court rejected the defendant's argument and held that no self-defense instruction was warranted because there was "insufficient evidence to support the underlying premise: [T]hat [the victim] pulled out the knife and threatened defendant with it." *Id.* We reasoned:

It has long been the law that "[e]vidence which merely shows it possible for the fact in issue to be as alleged, or which raises a mere conjecture that it was so, is an insufficient foundation for a verdict, and should not be left to the jury." *State v. Clark*, 324 N.C. 146, 162, 377 S.E.2d 54, 64 (1989) (quoting *State v. Vinson*, 63 N.C. 335, 338 (1869)). Here, we cannot say that the inference that the knife might have been left in the back seat and might have been picked up and used by [the victim] rises above mere possibility and conjecture. *See State v. Wolfe*, 157 N.C. App. 22, 28, 577 S.E.2d 655, 660 (holding that mere fact victim had gun residue on his hand and, therefore, he possibly held gun was not sufficient to support self-defense instruction when defendant did not testify he saw gun, and no gun was found near victim), *appeal dismissed and disc. review denied*, 357 N.C. 255, 583 S.E.2d 289 (2003).

Id. at 552, 673 S.E.2d at 682.

Here, as in *Revels*, insufficient evidence was presented to support the underlying premise that Britts pulled out the knife and threatened defendant with it. Viewed in the light most favorable to defendant, the DNA evidence and scratches on defendant's leg, without more, do not raise an inference above "mere possibility and conjecture" that defendant reasonably believed it was necessary to kill Britts in self-defense. Therefore, the trial court properly refused to instruct on self-defense.

B. Exclusion of Britts's Criminal History and Prior Bad Acts

Defendant next contends that the trial court erred by twice excluding evidence of Britts's criminal history and prior bad acts.

"We review relevancy determinations by the trial court de novo . . . though we accord them great deference on appeal." *State v. Triplett*, 368 N.C. 172, 175, 775 S.E.2d 805, 807 (2015) (citing *State v. Beckelheimer*, 366 N.C. 127, 130, 726 S.E.2d 156, 159 (2012); *State v. Lane*, 365 N.C. 7, 27, 707 S.E.2d 210, 223, *cert. denied*, ___ U.S. ___ (2011)). "We review a trial court's decision to exclude evidence under Rule 403 for abuse of discretion." *State v. Whaley*, 362 N.C. 156, 160, 655 S.E.2d 388, 390 (2008). "Thus, 'a trial court's ruling will be reversed on appeal only upon a showing that the ruling was so arbitrary that it could not have been the result of a reasoned decision.'" *State v. Mitchell*, 240 N.C. App. 246, 251, 770 S.E.2d 740, 744 (2015) (quoting *State v. Kirby*, 206 N.C. App. 446, 457, 697 S.E.2d 496, 503 (2010)).

STATE V. FOYE

Opinion of the Court

“ ‘Rule 404(a) is a general rule of exclusion, prohibiting the introduction of character evidence to prove that a person acted in conformity with that evidence of character.’ ” *State v. McGrady*, 232 N.C. App. 95, 108, 753 S.E.2d 361, 371 (2014) (quoting *State v. Bogle*, 324 N.C. 190, 201, 376 S.E.2d 745, 751 (1989)), *aff’d*, 368 N.C. 880, 787 S.E.2d 1 (2016). Rule 404(a)(2), however, permits the admission of evidence of a victim’s pertinent character traits. N.C. Gen. Stat. § 8C-1, Rule 404(a)(2) (2015). “Pertinent” means “ ‘relevant in the context of the crime charged.’ ” *State v. Laws*, 345 N.C. 585, 596, 481 S.E.2d 641, 647 (1997) (quoting *State v. Sexton*, 336 N.C. 321, 359, 444 S.E.2d 879, 901, *cert. denied*, 513 U.S. 1006 (1994)). “In cases where self-defense *is at issue*, evidence of a victim’s violent or dangerous character may be admitted under Rule 404(a)(2)” *McGrady*, 232 N.C. App. at 108, 753 S.E.2d at 371 (emphasis added) (quoting *State v. Winfrey*, 298 N.C. 260, 262, 258 S.E.2d 346, 347 (1979)); *see also* *Sexton*, 336 N.C. at 360, 444 S.E.2d at 901 (“[I]f the defendant’s defense to murder is self-defense, character of the victim for violence is pertinent.”).

However, “[t]he admissibility of evidence is governed by a threshold inquiry into its relevance.” *State v. Griffin*, 136 N.C. App. 531, 550, 525 S.E.2d 793, 806 (citation and quotation marks omitted), *appeal dismissed and disc. rev. denied*, 351 N.C. 644, 543 S.E.2d 877 (2000). “ ‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is *of consequence* to the determination of the action more probable or less probable than it would be without the evidence.”

N.C. Gen. Stat. § 8C-1, Rule 401 (2015) (emphasis added). Evidence supporting inconsequential facts is irrelevant and inadmissible. N.C. Gen. Stat. § 8C-1, Rule 402 (2015) (“Evidence which is not relevant is not admissible.”). “[I]n the absence of evidence that the defendant [killed] the victim in self-defense, ‘evidence of the victim’s prior [violent act] . . . [is] not relevant to the killing of the victim.’” *State v. Lloyd*, 354 N.C. 76, 95, 552 S.E.2d 596, 612 (2001) (quoting *State v. Strickland*, 346 N.C. 443, 456, 488 S.E.2d 194, 201 (1997), *cert. denied*, 522 U.S. 1078 (1998)).

Here, because no evidence warranting a self-defense instruction was presented, self-defense was never at issue, and Britts’s allegedly violent character was inconsequential and irrelevant. Therefore, the trial court did not err—much less abuse its discretion—by excluding evidence of Britts’s criminal history and prior bad acts.

C. Admission of Defendant’s Prior Altercations with Britts

Defendant next contends that the trial court erred by admitting hearsay evidence of defendant’s prior altercations with Britts. Defendant does not argue evidence of his prior assaults on Britts was inadmissible under Rule 404(b); rather, he argues this evidence was founded upon inadmissible hearsay. The State does not address defendant’s hearsay argument but retorts that the evidence was admissible under Rule 404(b), relevant under Rule 401 to establish defendant’s intent, and, on a

STATE V. FOYE

Opinion of the Court

Rule 403 balance, the probative value of this evidence was not outweighed by its prejudicial effect.

Under Rule 404(b), “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith,” but such character evidence may “be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.” N.C. Gen. Stat. § 8C-1, Rule 404(b) (2015). “In applying Rule 404(b), this Court has repeatedly held that a defendant’s prior assaults on the victim, for whose murder defendant is presently being tried, are admissible for the purpose of showing malice, premeditation, deliberation, intent or ill will against the victim.” *State v. Alston*, 341 N.C. 198, 229, 461 S.E.2d 687, 703 (1995). Yet inadmissible hearsay statements may not be used to support grounds for admission of Rule 404(b) evidence. *See State v. Murillo*, 349 N.C. 573, 586, 509 S.E.2d 752, 759–60 (1998) (“Evidence of a defendant’s misconduct toward his wife during the marriage is admissible under Rule 404(b) to prove motive, opportunity, intent, preparation, or absence of mistake or accident with regard to the subsequent fatal attack upon her. However, if the evidence is used to prove the truth of the matter asserted, it must still be admissible under the rules against hearsay. If it is merely a recitation of facts, offered for the truth of the matter asserted, it is inadmissible.” (citations, quotation marks, and brackets omitted)); *see also State v.*

STATE V. FOYE

Opinion of the Court

Mitchell, 169 N.C. App. 417, 421, 610 S.E.2d 260, 264 (2005) (“These statements regarding defendant’s prior sexual misconduct are therefore inadmissible to show defendant’s intent, motive or plan to commit the crime *because they are hearsay statements.*” (emphasis added)).

“This Court reviews a trial court’s ruling on the admission of evidence over a party’s hearsay objection *de novo.*” *State v. Hicks*, __ N.C. App. __, __, 777 S.E.2d 341, 348 (2015) (citation omitted), *disc. rev. denied*, 368 N.C. 686, 781 S.E.2d 606 (2016). Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” N.C. Gen. Stat. § 8C-1, Rule 801(c) (2015). “[W]henver an extrajudicial statement is offered for a purpose other than proving the truth of the matter asserted, it is not hearsay.” *State v. Maynard*, 311 N.C. 1, 15, 316 S.E.2d 197, 205, *cert. denied*, 469 U.S. 963 (1984).

Defendant contends the trial court erred by admitting hearsay statements by Officer Lawhorn that Britts reported in 2004 that defendant attacked him and Cora with a sling blade, and by Officer O’Dell that Britts reported in 2012 that defendant had attacked him with a knife.

At trial, Officer Lawhorn testified that, in 2004, he was dispatched to the Foye residence in response to a domestic call. The following relevant exchange occurred between the prosecutor and Officer Lawhorn:

STATE V. FOYE

Opinion of the Court

Q. And what did [Britts and Cora] tell you had occurred?

[DEFENSE]: Objection.

THE COURT: Overruled.

A. That an argument had ensued between Britts . . . and [defendant] and Ms. Cora had tried to stop it or break it up.

Q. Okay. Did the argument escalate at some point in time?

A. Yes, ma'am, to where they told me that [defendant] had grabbed a sling blade and was swinging it at them, slashing it at them, stabbing at them, is what they described.

Q. So [defendant] was slinging it and slashing it at both Britts and at Ms. Cora?

A. That's what they told me, yes, ma'am.

Deputy O'Dell testified that, in 2012, he was dispatched to a residence near the Foye residence in response to a "stabbing" call. The following relevant exchange occurred between the prosecutor and Deputy O'Dell:

Q. And upon arrival did you speak to Britts Foye?

A. Yes, ma'am.

Q. And what did [Britts] tell you on that date?

A. He said that—

[DEFENSE:] Objection.

THE COURT: Overruled.

.....

A. [Britts] advised he had been home with his brother [defendant] and they had begun to argue about a cell phone. He said he didn't know, for some reason [defendant] had blamed [Britts] for something about a cell phone. [Britts] advised that [defendant] had been pushing [Britts] and taunting him and [Britts] tried to walk away. [Britts] stated he had gone to [Howard's] house to get away. And watched a football game. And that [defendant] had come through the backdoor with a knife and started trying to stab [Britts]. [Britts] advised that he managed to grab [defendant's] hand holding the knife and was eventually able to pen [sic] [defendant] until law enforcement arrived.

Although prior assault evidence may be admissible under Rule 404(b), it is still constrained by other rules of evidence and must not constitute inadmissible hearsay. The State does not argue these statements are nonhearsay or meet any statutory hearsay exception. "Hearsay statements that do not meet a statutory exception are presumptively unreliable and inadmissible." *State v. Wilkerson*, 363 N.C. 382, 420, 683 S.E.2d 174, 197 (2009) (citing N.C. Gen. Stat. § 8C-1, Rule 802 (2007)). Yet evidentiary error does not require a new trial unless it was prejudicial. *Id.* (citing *Alston*, 307 N.C. at 339–40, 298 S.E.2d at 644; *State v. Hickey*, 317 N.C. 457, 473, 346 S.E.2d 646, 657 (1986) ("[E]rroneous admission of hearsay is not always so prejudicial as to require a new trial.")).

As to the 2012 incident, Howard's testimony corroborated Deputy O'Dell's. Howard testified that defendant followed Britts to Howard's home, "[u]pset" and with a "sharp knife," causing "Britts . . . [to] defend[] his self" and "try[] to get the knife" from defendant. Accordingly, this evidence was properly before the jury through Howard's testimony. As to the 2004 incident, in light of the entire case presented by the State and overwhelming evidence of his guilt, defendant has not demonstrated "there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached" by the jury. N.C. Gen. Stat. § 15A-1443(a) (2015). Therefore, the trial court did not prejudicially err by admitting these hearsay statements.

D. Speedy Trial

Defendant contends the trial court erred by denying his speedy trial motion.

In determining whether a defendant's right to a speedy trial has been infringed, our Courts consider the four factors enumerated in *Barker v. Wingo*, 407 U.S. 514, 530–32, 92 S.Ct. 2182, 2191–93, 33 L.Ed.2d 101, 116–18 (1972): (1) the length of the delay, (2) the reason for the delay, (3) defendant's assertion of his right to a speedy trial, and (4) prejudice to defendant.

State v. Friend, 219 N.C. App. 338, 343, 724 S.E.2d 85, 90 (citation omitted), *writ denied, disc. rev. denied, appeal dismissed*, 366 N.C. 402, 735 S.E.2d 188 (2012).

First, "the relevant period of delay begins at indictment," *State v. Goins*, 232 N.C. App. 451, 452, 754 S.E.2d 195, 198 (2014) (citation omitted), and "ends upon

STATE V. FOYE

Opinion of the Court

trial,” *Friend*, 219 N.C. App. at 343, 724 S.E.2d at 90. The twenty-four-month period between defendant’s 9 December 2013 indictment and 14 December 2015 trial was lengthy enough to trigger review of the other *Barker* factors. *See State v. Webster*, 337 N.C. 674, 679, 447 S.E.2d 349, 351 (1994) (holding that a sixteen-month delay was sufficient). This factor weighs for defendant.

Second, defendant argues his showing of delay raises a presumption of prejudice requiring the State to offer evidence to justify the delay. However, the defendant bears the initial “burden of showing that the delay was caused by the neglect or willfulness of the prosecution.” *State v. Spivey*, 357 N.C. 114, 119, 579 S.E.2d 251, 255 (2003); *see also State v. Evans*, __ N.C. App. __, __, 795 S.E.2d. 444, 450 (Jan. 17, 2017) (No. COA16-629) (rejecting a similar argument and reiterating that defendant bears initial burden). “Only after the defendant has carried his burden ‘must the State offer evidence fully explaining the reasons for the delay and sufficient to rebut the *prima facie* evidence.’” *Goins*, 232 N.C. App. at 452, 754 S.E.2d at 198 (quoting *State v. Washington*, 192 N.C. App. 277, 283, 665 S.E.2d 799, 804 (2008)). Here, because defendant presented no evidence that the delay was caused by the neglect or willfulness of the State, the State was not required to produce evidence justifying the delay. Accordingly, defendant failed to satisfy his burden under the second prong, which weighs against him.

Third, defendant was indicted on 9 December 2013 and asserted his right to a speedy trial in a motion filed on 11 September 2014. Defendant's assertion came only nine months after his indictment, which weighs in favor of defendant. *See Goins*, 232 N.C. App. at 454, 754 S.E.2d at 199 (concluding that a twelve-month period between indictment and the defendant's assertion of speedy trial right weighed in the defendant's favor). However, in each delay following the indictment, the continuance was granted by written order agreed to by both parties, and defendant conceded that he did not object to each continuance. "A defendant who has himself caused the delay, or acquiesced in it, will not be allowed to convert the guarantee, designed for his protection, into a vehicle in which to escape justice." *State v. Johnson*, 275 N.C. 264, 269, 167 S.E.2d 274, 278 (1969). Accordingly, this factor does not weigh heavily for defendant.

Fourth, "[a] defendant must show actual, substantial prejudice." *Spivey*, 357 N.C. at 122, 579 S.E.2d at 257 (citation omitted). The right to a speedy trial serves three purposes: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." *State v. Grooms*, 353 N.C. 50, 63, 540 S.E.2d 713, 722 (2000) (citation and quotation marks omitted). " '[M]ost serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire

system.’ ” *Evans*, __ N.C. App. at __, 795 S.E.2d. at 451 (quoting *Barker*, 407 U.S. at 532).

At the hearing on defendant’s speedy trial motion, defendant argued he was prejudiced by being incarcerated for twenty-nine months, which caused him anxiety and concern. However, defendant presented no evidence supporting this assertion. Additionally, defendant contended his defense was impaired because Cora, the only eyewitness other than defendant and Britts, had passed away. But Cora died on 29 October 2013, four months after the incident, and about one month before defendant’s indictment. Accordingly, defendant failed to satisfy his burden to establish prejudice.

After weighing the *Barker* factors, we hold that the trial court did not err in denying defendant’s speedy trial motion.

III. Conclusion

Because the trial evidence failed to raise an inference above mere possibility and conjecture that defendant reasonably believed it was necessary to kill Britts in self-defense, the trial court properly refused to give such a jury instruction. Because self-defense was never at issue, the trial court properly excluded Britts’s criminal history and prior-bad-acts evidence. Although the court erred in admitting hearsay evidence of defendant’s prior assaults on Britts, this error was not prejudicial. The evidence arising from one of the challenged statements was properly before the jury by way of Howard’s testimony and, in light of the entire State’s case, defendant failed

STATE V. FOYE

Opinion of the Court

to satisfy his burden to demonstrate how he was prejudiced by the admission of the other hearsay statements. Finally, after weighing the *Barker* factors, we conclude the trial court properly denied defendant's speedy trial motion. Accordingly, we hold that defendant received a trial free from prejudicial error.

NO PREJUDICIAL ERROR.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e).