IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-574

No. COA20-836

Filed 19 October 2021

Lee County, No. 14 CRS 50705

STATE OF NORTH CAROLINA

v.

PIERRE ALEXANDER AMERSON

Appeal by defendant from judgment entered 11 October 2019 by Judge Charles W. Gilchrist in Lee County Superior Court. Heard in the Court of Appeals 24 August 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Joseph L. Hyde, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katy Dickinson-Schultz, for defendant-appellant.

ZACHARY, Judge.

¶ 1 Defendant Pierre Alexander Amerson appeals from a judgment entered upon a jury's verdict finding him guilty of first-degree murder. On appeal, Defendant contends that the trial court abused its discretion by (1) denying Defendant's motion for a mistrial, and (2) overruling certain objections raised by Defendant during the State's closing argument. Defendant further argues that the State's closing argument

was so improper as to warrant a new trial. After careful review, we conclude that Defendant received a trial free from prejudicial error.

I. Background

¶ 2 On the evening of 10 March 2014, Defendant was sitting on Ciola Tysor's porch in Sanford, North Carolina, with Manquell Tysor. Kentreal Quick joined them on the porch for approximately 15 minutes, and then Mr. Quick and Defendant walked down the street to meet Dante Berryman. As they stood on the street, 15-year-old Thomas Dolby, Jr., walked by them; Defendant later described Mr. Dolby as "walking tough, like musclebound stiff, like mean walking." Defendant "made a joke" to Mr. Quick, saying, "That kid could beat you up." Mr. Quick and Mr. Berryman then left the area.

¶ 3 Mr. Dolby passed Defendant again while walking back, and he bumped into Defendant. Defendant said something like, "Oh, f***," or "F*** you." Mr. Dolby turned back to face Defendant and said, "That's your problem. You talk too much." Defendant then pulled a gun from his right side and shot Mr. Dolby three times. Defendant immediately fled the scene.

¶ 4 An ambulance transported Mr. Dolby to Central Carolina Hospital; he was later transported by helicopter to the University of North Carolina Hospital, where he died. An autopsy subsequently revealed that Mr. Dolby sustained three gunshot wounds: one to the inside of his right heel, one to his left upper arm, and a fatal wound to the face.

¶ 5 On 13 March 2014, an arrest warrant for murder was issued for Defendant, and law enforcement officers arrested him the same day. On 31 March 2014, a Lee County grand jury returned an indictment formally charging Defendant with first-degree murder. On 8 May 2014, the State gave notice of its intent to proceed capitally.

¶ 6 The matter came on for trial on 3 September 2019 in Lee County Superior Court before the Honorable Charles W. Gilchrist. In his opening statement, defense counsel admitted that Defendant shot and killed Mr. Dolby, but he challenged the State's assertion that Defendant had acted with premeditation and deliberation. Counsel argued that Defendant suffers from post-traumatic stress disorder ("PTSD"), and that his mental condition caused him to be hypervigilant and react disproportionately to Mr. Dolby's statements to him on the street.

¶ 7 In support of this theory, Defendant presented the testimony of Dr. George Corvin, M.D., an expert in general and forensic psychiatry, and Dr. Jennifer Sapia, Ph.D., a licensed psychologist, both of whom conducted psychological assessments of Defendant and diagnosed him with PTSD. At trial, Dr. Sapia recounted Defendant's "extensive history of adverse childhood experiences, including abuse, trauma, neglect, exposure to domestic violence, exposure to parental substance abuse, and incarceration." The defense experts' testimony revealed that Defendant was first diagnosed with PTSD at age 8, when he was involuntarily committed to John Umstead Hospital after experiencing hallucinations and expressing suicidal

ideations. After his first hospitalization and throughout his childhood, Defendant was repeatedly returned to his "dysfunctional, abusive home environment." Dr. Sapia testified that due to Defendant's traumatic childhood experiences and home environment, he regularly suffers from a number of PTSD symptoms, including nightmares, hypervigilance, depression, and paranoia. Dr. Corvin testified that Defendant "continues to experience the psychological aftermath of being raised in a way that most of us can[ ] hardly imagine."

¶ 8 Dr. Sapia further testified that when Defendant encountered Mr. Dolby on the night of 10 March 2014, he "reacted to his perception of an imminent threat to his well-being and that his judgment, his thinking, his decision-making abilities were all impaired by the PTSD, and that fear in essence took over." Dr. Sapia explained:

> PTSD can be highly reactive. In a stressful situation, in a situation where [Defendant] has sensed fear and danger historically, he has been very anxious and very reactive, very impulsive. Prone to react or respond when he is anxious. And so my opinion is that his perception of the situation was impacted by his PTSD, and the stress and the fear and the emotion took over, which impaired his ability to consider the situation, to reflect upon it, consider his courses of action. That his response and his action was reflective, not thoughtful. He reacted to his perception of an imminent threat to his well-being. So again, it was a reflexive, reactive action vs. something that was thoughtful and considered.

¶ 9 Dr. Corvin testified to a similar psychiatric opinion:

> [G]iven the evidence that I have looked at from a

> psychiatric standpoint, . . . up until the moment that the victim bumped into him, [Defendant] was sort of in his usual state of mind. . . . However, given his trauma history at the moment, . . . it's this sudden reflexive, impulsive act based on a post-traumatic induced misinterpretation or overinterpretation of what was probably a nothing event in the lives of both of these individuals, but he misinterpreted it as dangerous with tragic consequences.

¶ 10 In rebuttal, the State presented the testimony of Dr. Thomas Owens, M.D., an expert in forensic psychiatry employed by Central Regional Hospital who evaluated Defendant in an inpatient psychiatric unit in May and June of 2019. Dr. Owens prepared a written report of his findings based on his evaluation of Defendant, and prior to his testimony, the parties agreed to redact certain portions of the report that were unfairly prejudicial to Defendant.

¶ 11 During trial, the State sought to enter Dr. Owens's redacted report into evidence:

> Q Okay. And I'm going to show you what I have marked State's Exhibit number 90. If you could look through that. Let me know when you have had a chance to do that.
>
> A Yeah, there is some modifications, but this is a copy of the report I prepared for the court.
>
> . . . .
>
> Q And State's Exhibit number 90, is that a fair and accurate version of your report as it exists here in court? Is that a copy of your report?
>
> A *It's a copy of my report. There is some information that was taken out that I understand could have been*

> *prejudicial.*
>
> [DEFENSE COUNSEL]: Objection, your Honor.
>
> THE COURT: Sustained. Motion to strike is allowed. Ladies and gentlemen, you will disregard the last statement of the witness.

(Emphasis added).

¶ 12 Defense counsel then asked to be heard outside the presence of the jury and moved for a mistrial:

> Your Honor, we're going to ask for a mistrial. I think the jury's going to be given a copy of this report. It's already been marked as an exhibit. There are obviously lots of gaps in that report, lots of spaces. Now the jury knows that the reason that information was taken out is because it's prejudicial towards the defendant. . . . This is something that I would think that an experienced witness who has testified over 200 times would know better than to say, but to look at the jury and say, I took out prejudicial information against the defendant, I don't see how you correct that.

The trial court heard the arguments of the parties and denied Defendant's motion for a mistrial.

¶ 13 Defense counsel then moved, as an alternative remedy, that the report not be admitted into evidence. The trial court agreed to exclude the report:

> THE COURT: All right. Defense motion is allowed. Report's excluded . . . due to the potential prejudicial effect. All right. I think that in light of the court's motion to strike, limiting instruction, and excluding the written report, that that's a more than sufficient remedy for any prejudice that may have occurred. Just to make that clear for the record.

> . . . .
>
> I'm not saying [the State] can't ask [Dr. Owens] what his opinions are. I'm not saying you can't ask him what the basis of them is. You just can't put the report into evidence.
>
> . . . .
>
> And he can refer to the report, and defense can ask him about stuff that's in the report, but the report itself is not coming into evidence. And just to be clear, the reason for that is the excisions that have been made from the report in relation to what's happened in court, that's the problem. So in light of that, out of abundance of caution, I've allowed the defendant's motion.

¶ 14 During his testimony, Dr. Owens opined that "in spite of . . . [Defendant]'s long history of trauma," he was not suffering from PTSD in March of 2014. He further testified that he "saw no evidence that [Defendant] lacked the [ability to e]ngage in deliberative contemplation."

¶ 15 On 11 October 2019, the jury returned its verdict finding Defendant guilty of first-degree murder. The matter then proceeded to the sentencing phase, and on 16 October 2019, the jury returned its recommendation of life imprisonment without parole. The trial court entered judgment upon the jury's verdict and sentenced Defendant to life imprisonment without the possibility of parole, served in the custody of the North Carolina Division of Adult Correction. Defendant gave notice of appeal in open court.

II. Discussion

¶ 16 Defendant raises two arguments on appeal. First, Defendant argues that the trial court abused its discretion by denying his motion for a mistrial after Dr. Owens testified that "his report had to be redacted to take out the 'prejudicial' information in it." Second, Defendant argues that the trial court abused its discretion by overruling Defendant's objections during the State's closing argument, and that "even in the face of sustained objections[,]" certain arguments by the State "irreparably prejudiced the jury[,]" with the cumulative effect of the State's improper argument warranting a new trial.

A. Motion for Mistrial

¶ 17 Defendant contends that the jury's decision as to whether Defendant shot Mr. Dolby with premeditation and deliberation "came down to whether the jury believed one set of experts over the other." Thus, Defendant asserts that he was irreparably prejudiced by Dr. Owens's testimony that certain prejudicial information had to be redacted from his report, which effectively inflated the value of his report and testimony over that of Defendant's expert witnesses; such testimony intimated to the jurors that, unlike the defense experts, Dr. Owens "had access to information that was so bad for [Defendant] that it had to be removed from his report." Defendant maintains that, accordingly, the trial court erred in denying his motion for a mistrial. We disagree.

1. Standard of Review

¶ 18 The determination of whether to declare a mistrial and "whether substantial and irreparable prejudice has occurred lies within the sound discretion of the trial judge and will not be disturbed on appeal absent a showing of abuse of discretion." *State v. McNeill*, 371 N.C. 198, 248, 813 S.E.2d 797, 829 (2018) (citation omitted), *cert. denied*, ___ U.S. ___, 203 L. Ed. 2d 417 (2019). "An abuse of discretion occurs when a ruling is manifestly unsupported by reason, which is to say it is so arbitrary that it could not have been the result of a reasoned decision." *Id.* (citations and internal quotation marks omitted). "Further, the decision of the trial judge is entitled to great deference since he is in a far better position than an appellate court to determine the effect of any such error on the jury." *Id.* (citation and internal quotation marks omitted).

2. Analysis

¶ 19 Section 15A-1061 of the North Carolina General Statutes governs motions for mistrial:

> Upon motion of a defendant or with his concurrence the judge may declare a mistrial at any time during the trial. The judge must declare a mistrial upon the defendant's motion if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant's case.

N.C. Gen. Stat. § 15A-1061 (2019).

¶ 20 Generally, "a mistrial should not be allowed unless there are improprieties in

the trial so serious that they substantially and irreparably prejudice the defendant's case and make it impossible for the defendant to receive a fair and impartial verdict." *State v. Hurst*, 360 N.C. 181, 188, 624 S.E.2d 309, 316 (citation and internal quotation marks omitted), *cert. denied*, 549 U.S. 875, 166 L. Ed. 2d 131 (2006). "Further, when the trial court withdraws incompetent evidence and instructs the jury not to consider it, any prejudice is ordinarily cured." *State v. King*, 343 N.C. 29, 44, 468 S.E.2d 232, 242 (1996) (citation and internal quotation marks omitted). We presume that jurors follow the instructions of the court, because "[o]ur system of trial by jury is based upon the assumption that the trial jurors are men and women of character and of sufficient intelligence to fully understand and comply with the instructions of the court[.]" *Id.* at 45, 468 S.E.2d at 242 (citation and internal quotation marks omitted). However, "[w]hether instructions can cure the prejudicial effect of [incompetent evidence] must depend in large measure upon the nature of the evidence and the particular circumstances of the individual case." *State v. Hunt*, 287 N.C. 360, 375, 215 S.E.2d 40, 49 (1975).

¶ 21 Limiting instructions that are too vague or delivered too remotely in time after the improper testimony may not suffice to cure its prejudicial effect. For example, in *Hunt*, the prosecutor improperly cross-examined a defense witness regarding the defendant's prior record, including a conviction for assault. *Id.* at 372–73, 215 S.E.2d at 48. The defendant moved for a mistrial the following day, and the trial court denied

the motion and "immediately sought to remove from the minds of the jurors the harmful effect of the incompetent evidence." *Id.* at 376, 215 S.E.2d at 50. Nevertheless, our Supreme Court reasoned that the error could not be cured by the trial court's limiting instructions:

> [I]t must be noted that the instructions then given were not specific as to the content of the challenged questions, and by this time the evidence must have found secure lodgment in the minds of the jurors. The questions posed by the prosecutor were loaded with prejudice, and we are of the opinion that under the circumstances of this capital case, the harmful effect of the evidence could not have been removed by the court's instruction.

Id. at 376–77, 215 S.E.2d at 50–51. Thus, the Court concluded that the trial court erred by denying the defendant's motion for a mistrial and awarded the defendant a new trial. *Id.*

¶ 22 Similarly, where the prejudicial effect of improper evidence is particularly strong, even an immediate curative instruction may not remedy the error. For example, in *State v. Aycoth*, where a State's witness in a capital trial testified, unprompted, that the defendant had previously been under indictment for murder, the trial court's immediate curative instruction could "not remove from the minds of the jurors the prejudicial effect of the knowledge they had acquired from [the improper] testimony that [the defendant] had been or was under indictment for murder." 270 N.C. 270, 273, 154 S.E.2d 59, 61 (1967). The inadmissible statement

was "of such serious nature that its prejudicial effect was not erased" by the court's curative instruction, and our Supreme Court therefore determined that the defendant was entitled to a new trial. *Id.*

¶ 23 Here, the State's witness, Dr. Owens, testified, "There is some information that was taken out [of my report] that I understand could have been prejudicial." Unlike in *Hunt*, the trial court immediately sustained Defendant's timely objection to Dr. Owens's statement and delivered a prompt, specific limiting instruction to the jury, stating, "Ladies and gentlemen, you will disregard the last statement of the witness." *Cf.* 287 N.C. at 376, 215 S.E.2d at 50.

¶ 24 Furthermore, Dr. Owens's improper reference to redacted information that "could have been prejudicial" to Defendant was far more nebulous than the improperly elicited testimony concerning the *Hunt* defendant's prior conviction for a violent offense, *see id.* at 372–73, 215 S.E.2d at 48, or the unprompted reference to the *Aycoth* defendant's previous murder indictment, *see* 270 N.C. at 273, 154 S.E.2d at 61. Moreover, it is notable that, unlike in *Hunt* and *Aycoth*, the jury did not actually hear what possibly prejudicial information the report contained; the jury only learned that certain information had been redacted from Dr. Owens's report. And here, significantly, the prosecutor did not intentionally elicit the improper testimony. *Cf. Hunt*, 287 N.C. at 372–73, 215 S.E.2d at 48. Indeed, in making the motion for a mistrial, defense counsel noted that fault did not belong with the prosecutor, in that

Dr. Owens offered the improper statement unprompted.

¶ 25 Nonetheless, Defendant argues that the trial court's limiting instruction was inadequate to remedy the error, because the record shows "that the jury failed to follow the instructions of the trial court and did not disregard the testimony of [Dr. Owens] as ordered." *State v. McCollum*, 157 N.C. App. 408, 415, 579 S.E.2d 467, 472 (2003) (citation omitted), *aff'd per curiam*, 358 N.C. 132, 591 S.E.2d 519 (2004). He points to two instances at trial in support of this argument. The first is that the prosecutor, in closing argument, repeatedly highlighted Dr. Owens's improper reference to the redactions:

> [PROSECUTOR:] Dr. Owens gave [Defendant] an MRI of his brain and EKG of his electrical functioning, both of which came back as normal. *Let me read to you finally Dr. Owens'*[*s*] *observations and conclusions.* [Defendant] suffered from a traumatic childhood.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: Thank you.
>
> [PROSECUTOR]: I need to be heard, your Honor.
>
> THE COURT: *That's not in evidence.* Sustained.
>
> [PROSECUTOR]: *I'm reading from his report.*
>
> THE COURT: Yes, sir.
>
> [PROSECUTOR]: Please the Court --
>
> THE COURT: *It's not in evidence.* Sustained.

(Emphases added).

¶ 26 Despite the fact that the trial court sustained Defendant's objection to Dr. Owens's improper reference to the redacted information, struck the testimony, instructed the jury to disregard the reference, and prohibited the State from entering Dr. Owens's report into evidence, the State repeatedly referenced the report in its closing argument, requiring the trial court to intervene *ex mero motu*. As a byproduct of the trial court's necessary intervention, the jury was again reminded that it was not permitted to see Dr. Owens's report. Defendant contends that these improper remarks by the prosecutor erased any curative effect of the trial court's earlier instruction that the jurors disregard Dr. Owens's improper statement.

¶ 27 Further, during jury deliberations, the jury requested to see a number of documentary exhibits, including "Dr. Owens'[s] statement." The trial court noted again, outside the presence of the jury, that Dr. Owens's report was not in evidence:

> The only reason that report did not come into evidence is the [S]tate's expert made a gross and gratuitous statement from the witness stand, drawing attention to the fact that things were excised from his report because they were prejudicial to the defendant, and there was no way the jury could look at that report and not believe that every time a gap appeared in that report, there was something bad about the defendant there. It was egregious, and the report was excluded by the court because there was no way that report could be used without prejudice, without unfair prejudice.

¶ 28 In order to accommodate the jury's request without highlighting yet again that Dr. Owens's report was not in evidence, with the consent of both parties, the trial

court allowed the jury to review the documentary exhibits in open court. Defendant argues that the fact that the jury requested to see Dr. Owens's report makes it "clear that the jury disregarded" the trial court's instruction to disregard the improper testimony.

¶ 29 Following careful and thorough review, we cannot conclude that Dr. Owens's improper testimony resulted in substantial and irreparable prejudice to Defendant, nor that the record reflects that the jury was unwilling or unable to follow the trial court's instruction to disregard Dr. Owens's improper testimony. Importantly, neither the prosecutor nor Dr. Owens attempted to read or recount any of the *redacted* portions of Dr. Owens's report. Nor did the prosecutor remind the jury during closing argument that the report contained information that the parties deemed unfairly prejudicial to Defendant. And given that the trial court responded to the jury's request to see Dr. Owens's statement and other documentary exhibits in such a manner as not to draw more attention to the exclusion of Dr. Owens's report, we cannot conclude that the trial court abused its discretion in designing remedies to manage the error.

¶ 30 In the instant case, the trial court promptly sustained Defendant's objection, struck the improper statement, instructed the jury to disregard it, and excluded Dr. Owens's report. Moreover, the record does not show that the trial court's curative instructions were insufficient to remedy the error. Accordingly, we cannot conclude

that the court's denial of Defendant's motion for a mistrial was "so clearly erroneous so as to amount to a manifest abuse of discretion[.]" *McCollum*, 157 N.C. App. at 415, 579 S.E.2d at 471 (citation omitted).

B. Closing Argument

¶ 31 Defendant next contends that the State made several statements during closing argument that were so improper and prejudicial as to entitle Defendant to a new trial. We disagree.

1. Standard of Review

¶ 32 In reviewing allegedly improper closing arguments,

> [o]ur standard of review depends on whether there was a timely objection made or overruled, or whether no objection was made and [the] defendant contends that the trial court should have intervened *ex mero motu*. If there is an objection, this Court must determine whether the trial court abused its discretion by failing to sustain the objection. Application of the abuse of discretion standard to closing argument requires this Court to first determine if the remarks were improper. Next, we determine if the remarks were of such a magnitude that their inclusion prejudiced [the] defendant, and thus should have been excluded by the trial court.

State v. Walters, 357 N.C. 68, 101, 588 S.E.2d 344, 364 (citations and internal quotation marks omitted), *cert. denied*, 540 U.S. 971, 157 L. Ed. 2d 320 (2003). "[C]ontrol of arguments is generally left to the trial court's discretion, and reversal is warranted only where the remark in issue is extreme and clearly calculated to prejudice the jury." *State v. Prevatte*, 356 N.C. 178, 241, 570 S.E.2d 440, 475 (2002),

cert. denied, 538 U.S. 986, 155 L. Ed. 2d 681 (2003).

2. Overruled Objections

¶ 33 During the State's closing argument, Defendant objected to a number of the prosecutor's remarks, and the trial court also intervened *ex mero motu* in several instances. On appeal, Defendant first contends that the trial court abused its discretion by overruling his objections to the two italicized portions of the prosecutor's remarks below, which concern the State's burden of proof:

> So what I am telling you is when you are satisfied of the defendant's guilt beyond a reasonable doubt, it simply means that, using your common sense in evaluating this evidence, you have no doubt that [is] reasonable about the defendant's guilt. Now, obviously, we cannot satisfy unreasonable doubts. *The fact that more could have been done or that mistakes were made is not a reasonable doubt.*
>
> . . . .
>
> *Bottom line, if you believe that the defendant is guilty, then you're entirely convinced and fully satisfied beyond a reasonable doubt. Don't say later, we, or I believe he did it, the* [*S*]*tate just didn't prove it.*

¶ 34 Defendant contends that in so arguing, the prosecutor misstated the standard of reasonable doubt, thereby lessening the State's burden of proof and prejudicing Defendant. We first evaluate the propriety of the prosecutor's remarks. *See Walters*, 357 N.C. at 101, 588 S.E.2d at 364.

¶ 35 Prosecutors are entitled to argue the law to the jury during closing argument. *McNeill*, 371 N.C. at 249, 813 S.E.2d at 829. Of course, prosecutors "may not make

erroneous statements of law[.]" *State v. Harris*, 290 N.C. 681, 695, 228 S.E.2d 437, 445 (1976). "However, if such arguments are made, a new trial is required only where [the] defendant shows on appeal that this error was material and prejudicial." *Id.*

¶ 36 In *State v. Rose*, our Supreme Court concluded that a prosecutor's similar remarks in closing argument were not improper. 339 N.C. 172, 197, 451 S.E.2d 211, 225 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). In that case, the prosecutor argued the following regarding reasonable doubt:

> [The q]uestion is whether this evidence is sufficient to lead you to believe basically that he killed the [victims]. You have to understand there is no such thing as an absolute certainty, but there is a certainty sufficient for the purposes of human life. That is essentially what proof beyond a reasonable doubt means.
>
> . . . .
>
> What is required here, ladies and gentlemen, is not that you be convinced absolutely as to know the defendant's guilt. What is required is that you be convinced to the point of believing he is guilty. The evidence must convince the twelve of you who have no personal knowledge to the point where you have enough knowledge to where you believe that he is guilty.

Id. at 195–96, 451 S.E.2d at 224. The *Rose* Court concluded that "[t]his was not error. The jury does not have to be absolutely certain or totally free from doubt to find a defendant guilty." *Id.* at 196, 451 S.E.2d at 225.

¶ 37 The prosecutor's remarks in the present case are not materially distinguishable from those held not to constitute error in *Rose*. In *Rose*, our Supreme

Court held that the prosecutor did not lower the State's burden of proof when he told the jury that the "[q]uestion is whether this evidence is sufficient to lead you to believe basically" that the defendant is guilty, and that the jury must "be convinced to the point of believing he is guilty." *Id.* at 195–96, 451 S.E.2d at 224. Here, the prosecutor told the jury, "Bottom line, if you believe that the defendant is guilty, then you're entirely convinced and fully satisfied beyond a reasonable doubt." In accordance with this precedent, we cannot conclude that the trial court erred by overruling Defendant's objection to the prosecutor's remarks.

¶ 38 But even assuming, *arguendo*, that the prosecutor's remarks in the instant case were in error, "[t]he trial court may ordinarily remedy improper argument with curative instructions [because] it is presumed that jurors will understand and comply with the instructions of the court." *McNeill*, 371 N.C. at 249, 813 S.E.2d at 829 (citation and internal quotation marks omitted). Where a prosecutor makes a misstatement of the law, the trial court generally corrects such an error by providing "a full and accurate instruction" on the law at issue together with an instruction to the jury "to apply only the law given to them by the court." *Harris*, 290 N.C. at 695, 228 S.E.2d at 445.

¶ 39 In the case at bar, the trial court instructed the jury as follows:

> You must then apply the law which I am about to give you to [the] facts. It is absolutely necessary that you understand and apply the law as I give it to you and not as

> you think it is or might like for it to be.
>
> . . . .
>
> The [S]tate must prove to you that the defendant is guilty beyond a reasonable doubt. Ladies and gentlemen, a reasonable doubt is a doubt based on reason and common sense arising out of some or all of the evidence that has been presented or the lack or insufficiency of the evidence, as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies and entirely convinces you of the defendant's guilt.

¶ 40 "This correct instruction, which followed the complained-of statement by the prosecutor, remedied the error, if any, in the prosecutor's closing argument. In this context, any error of the prosecutor in defining the term reasonable doubt . . . did not require a new trial." *Rose*, 339 N.C. at 197, 451 S.E.2d at 225–26. "Accordingly, we find the trial court properly handled the issues raised by [D]efendant. Moreover, the trial court's instructions cured any potential error." *Prevatte*, 356 N.C. at 246, 570 S.E.2d at 477.

3. Sustained Objections

¶ 41 Defendant also challenges several other statements made during the State's closing argument, which he contends so "irreparably prejudiced the jury even in the face of sustained objections" as to warrant a new trial. Specifically, Defendant directs this Court to portions of the State's argument that he asserts "impugned defense counsel's integrity"; impermissibly "disparaged [Defendant]'s character and encouraged the jury to consider how he behaved during trial"; and "referenced

inadmissible evidence that supported the State's theory of the case." In the alternative, Defendant asserts that "[e]ven if none of the State's improper arguments individually rose to the level of reversible error, the State's argument had the cumulative effect of denying [Defendant] a fair trial." Again, we must disagree.

¶ 42 As Defendant consistently acknowledges throughout his brief, the trial court either sustained Defendant's objections or intervened *ex mero motu* to remedy each of the allegedly problematic remarks pertinent to this portion of his appeal. For argument's sake, we presume that the relevant portions of the State's closing argument were indeed improper, and that the trial court therefore properly sustained Defendant's objections or otherwise exercised its discretion to control the boundaries of closing argument. *See id.* at 241, 570 S.E.2d at 475 ("[C]ontrol of arguments is generally left to the trial court's discretion . . . ."); *see also State v. Williams*, 274 N.C. 328, 333, 163 S.E.2d 353, 357 (1968) ("An appellate court is not required to, and should not, assume error by the trial judge when none appears on the record before the appellate court."). Accordingly, as to each of the challenged statements, whether due to his own objection or the trial court's vigilance, Defendant—and the jury—received almost immediate relief from the improper arguments.

¶ 43 Defendant, understandably, does not challenge the trial court's favorable rulings as to these statements; rather, on appeal, he contends that the State's closing argument was so prejudicial as to warrant a new trial, notwithstanding the trial

court's curative actions. In so arguing, Defendant essentially requests relief that this Court will not grant.

¶ 44 As previously explained, we review a defendant's preserved challenge to the State's allegedly improper closing argument for abuse of discretion. "Application of the abuse of discretion standard to closing argument requires this Court to first determine if the remarks were improper. Next, we determine if the remarks were of such a magnitude that their inclusion prejudiced [the] defendant, *and thus should have been excluded by the trial court*." *Walters*, 357 N.C. at 101, 588 S.E.2d at 364 (emphasis added) (citations and internal quotation marks omitted). Here, as Defendant repeatedly recognizes, the challenged remarks *were* excluded by the trial court. Accordingly, even assuming, *arguendo*, that these statements were improper, we are unable to conclude that Defendant was prejudiced, in light of the trial court's swift and diligent responsive, remedial actions.

¶ 45 Moreover, for the reasons set forth in section A, nor did the trial court abuse its discretion in declining to declare a mistrial, notwithstanding the prosecutor's attempts to read portions of Dr. Owens's unadmitted report during closing argument. It is axiomatic that a prosecutor may not argue facts that are not in evidence. *State v. Monk*, 286 N.C. 509, 515, 212 S.E.2d 125, 131 (1975). We presume, however, that jurors understand and comply with the trial court's instructions to disregard improper remarks made during closing argument. *McNeill*, 371 N.C. at 249, 813

S.E.2d at 829. Thus, absent any evidence that the jurors failed to heed the trial court's instructions to disregard the improper statements and rely on their own recollection of the evidence, we have no basis upon which to conclude that the trial court erred, let alone abused its discretion. *See id.* at 248, 813 S.E.2d at 829 ("[T]he decision of the trial judge is entitled to great deference since he is in a far better position than an appellate court to determine the effect of any such error on the jury." (citation and internal quotation marks omitted)).

¶ 46 Finally, we conclude that the prosecutor's allegedly improper statements during the State's closing argument, taken cumulatively, do not warrant a new trial. "Cumulative errors lead to reversal when taken as a whole they deprived the defendant of his due process right to a fair trial free from prejudicial error." *State v. Wilkerson*, 363 N.C. 382, 426, 683 S.E.2d 174, 201 (2009) (citation and internal quotation marks omitted), *cert. denied*, 559 U.S. 1074, 176 L. Ed. 2d 734 (2010). As explained above, we discern no error in the trial court's overruling of certain of Defendant's objections during the State's closing argument, nor were the trial court's interventions *ex mero motu* to strike improper remarks and provide curative jury instructions insufficient to remedy any prejudice caused by the State's allegedly improper arguments. Accordingly, it necessarily follows that we must also reject Defendant's argument regarding cumulative error. *State v. Lopez*, 264 N.C. App. 496, 510, 826 S.E.2d 498, 507–08 (2019).

III. Conclusion

¶ 47 We conclude that the trial court did not abuse its discretion by denying Defendant's motion for mistrial. We further conclude that the trial court did not abuse its discretion by overruling Defendant's objections during the State's closing argument, nor were the trial court's curative instructions insufficient to remedy any prejudice caused by the State's allegedly improper remarks. Accordingly, we conclude that Defendant received a trial free from prejudicial error.

NO PREJUDICIAL ERROR.

Judges MURPHY and GORE concur.

Report per Rule 30(e).