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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-56

Filed 16 April 2025

Wake County, No. 18 CRS 210227-910

STATE OF NORTH CAROLINA

v.

CHARLES JARROD LOTSON, JR., Defendant.

Appeal by Defendant from judgment entered 26 April 2023 by Judge Keith O. Gregory in Wake County Superior Court. Heard in the Court of Appeals 25 September 2024.

Attorney General Jeff Jackson, by Special Deputy Attorney General Michael E. Bulleri, for the State.

Parry Law, PLLC, by Attorney Edward Eldred, for the defendant-appellant.

STADING, Judge.

Charles Jarrod Lotson, Jr. (“Defendant”) appeals from final judgment after a jury convicted him of felonious child abuse inflicting serious bodily injury. After careful consideration, we discern no error.

I. Background

On the morning of 1 June 2018, Brittany Lotson left her two-month-old baby, P.L.¹, with Defendant, P.L.’s father, while she went to the store. When Brittany left, P.L. was acting normal. Upon returning about an hour later, Brittany found P.L. on his outdoor swing with his head slumped to the side, one eye slightly open, and crying as if he were hurt. Then, Brittany picked up P.L. and unsuccessfully attempted to get him to respond. After Brittany called Defendant outside, he insisted P.L. was asleep and fine. Brittany called 9-1-1. Defendant was the only person at the residence watching P.L. in Brittany’s absence.

Emergency personnel arrived and transported P.L. to WakeMed Hospital, where a scan revealed bleeding between his brain and skull. WakeMed determined that P.L. would require more advanced care at Duke University Hospital to address the cranial bleeding. On 2 June 2018, P.L. was transported by helicopter to Duke University Hospital.

Upon arrival at Duke University Hospital, P.L. was treated by Dr. Lindsay Terrell who recounted P.L. had “significant injuries to his face, injury to the white part of his eyes, injury to the back of his eye, bleeding around his brain[,] and a contusion to the inner part of his brain.” Dr. Terrell observed “bilateral upper lip cuts, a lower lip bruise, bruising to both eyes, . . . subconjunctival hemorrhages to the white part of [his] eyes . . . and [] bleeding in his nose.” Dr. Terrell further recounted

¹ A pseudonym is used to protect the identity of the minor child.

that she was made aware of Brittany's observation on 1 June 2018 of a "red spot on . . . the white part of [P.L.'s] eye." On 2 and 3 June 2018, P.L. received neurological exams which revealed two subdural bleeds, and Dr. Terrell believed "it happened within the past week."

Dr. Terrell's expert opinion was that these injuries "were most consistent with direct trauma to [P.L.'s] face. . . . like blunt force trauma, something hitting his face." And the subdural hematomas, retinal hemorrhaging, and injuries to P.L.'s brain were most consistent with a "significant rotational acceleration/deceleration type movement." Her opinion was based on observable injuries to P.L., a lack of preexisting conditions, and the parent's inability to accurately recount the cause of injury. Dr. Terrell concluded that P.L.'s injuries were "most consistent with significant head trauma . . . and abusive injury." She added if the explanation provided by Defendant and Brittany is "true, . . . then it's very concerning if not consistent with that these injuries occurred during that time that was reported that he was normal, and then that he was not normal." Additionally, Dr. Sharon Freedman, an expert in pediatric ophthalmology at Duke University Hospital, testified to her observation of P.L.'s eyes. Dr. Freedman did not treat P.L. but examined him. She described bilateral retinal hemorrhages that were "too many to count," which, in her expert opinion, were "most consistent with abusive head trauma." Dr. Freedman further recounted that abusive head trauma could include "shaking" and "direct blows to the child."

While P.L. was being treated, Investigator Jeff Willis interviewed both Defendant and Brittany on 2 June 2018. Brittany first explained to Investigator Willis that on 1 June 2018, she left P.L. at home with Defendant around 9:50 a.m. and returned approximately one hour later to find P.L. unresponsive. After interviewing Brittany, Investigator Willis interviewed Defendant; Defendant agreed that he was the only person home with P.L. during that time. Investigator Willis further recounted that Defendant was interacting with P.L. and, although Defendant did not notice anything wrong with P.L., Defendant admitted that “when mom came home, there was an issue.” At this point, there was no plausible explanation for P.L.’s injuries. Investigator Willis recalled Defendant saying that he was playing with P.L. and then went outside to do yard work.

After interviewing both Defendant and Brittany, Investigator Willis interviewed Dr. Terrell who informed Investigator Willis of the trauma suffered by P.L., including “the bleeding around the child’s brain.” In response to the interview, Investigator Willis “had a plan placed in effect to prevent . . . [Defendant], from having any contact with the child while he was at [the hospital].” After the interviews, Investigator Willis obtained an arrest warrant for Defendant and a search warrant for his home. While Investigator Willis searched the house, Investigator Graham Horne interviewed Defendant. Investigator Horne asked Defendant about 1 June 2018, and Defendant replied, “I’m not trying to incriminate myself.”

Defendant was subsequently indicted for felonious child abuse inflicting serious bodily injury. At Defendant's trial, the State introduced 588 pages of P.L.'s medical records into evidence without objection. These records included lengthy quotations from scholarly articles regarding the specificity of retinal hemorrhages for abusive head trauma and information that Defendant was a gang member who had a criminal history. The record mentioned Defendant's prior charges of robbery with a weapon, a description of Defendant's character by Brittany which stated he was "short temper[ed]," "controlling," and a "bad boy." These records further noted that Defendant had been charged with misdemeanor child abuse, possession of marijuana, and assault with a deadly weapon because of a "road rage" incident.

On direct examination, Brittany recounted her interview with Investigator Willis and a social worker at the hospital on 2 June 2018. On cross-examination, defense counsel asked Brittany whether she told Investigator Willis and the social worker that Defendant was a "good father." On redirect, the State asked Brittany whether Defendant had assaulted her while she was pregnant with P.L. Over defense counsel's objection, the trial court allowed Brittany to answer, and she testified Defendant had hit her in the face with a closed fist when she was pregnant.

The jury began deliberations, and after an hour, it requested to review the medical records. The trial court permitted the jury to view the records in the courtroom. The jury did not reach a verdict that day. The following day, the jury resumed deliberations but sent a note to the trial court around 3:00 p.m. stating they

could not reach a verdict. The trial court gave an *Allen* charge, encouraging it to continue deliberations. The jury requested to begin the following morning by reviewing the medical records again. In the afternoon of third day of deliberations, the jury returned a guilty verdict. The trial court entered judgment, sentencing Defendant to a minimum term of 238 months and a maximum of 298 months of imprisonment. Defendant entered his notice of appeal.

II. Jurisdiction

Defendant appeals his judgment under N.C. Gen. Stat. §§ 7A-27(b)(1) (“From any final judgment of a superior court”) and 15A-1444(a) (2023) (“A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered.”).

III. Analysis

Defendant asserts three issues on appeal: (1) whether the trial court committed plain error by admitting the entirety of P.L.’s Duke University Hospital medical file; (2) whether Defendant received ineffective assistance of counsel (“IAC”) when defense counsel failed to object to the admission of the medical file; and (3) whether Defendant opened the door to character evidence by asking Brittany about a comment of Defendant being a good father.

A. Admission of P.L.’s Entire Medical File

Defendant contends the trial court's admission of the entire medical file amounts to plain error. He maintains that certain portions of the medical record should have been redacted since they contained hearsay within hearsay and were overly prejudicial. Defendant specifically contests two categories of information in the medical file: (1) information from a study offered by Dr. Freedman; and (2) information about Defendant's criminal history and character.

"The admissibility of evidence at trial is a question of law and is reviewed *de novo*." *State v. McLean*, 205 N.C. App. 247, 249, 695 S.E.2d 813, 815 (2010). Where "a defendant fails to object at trial to the improper admission of evidence, the reviewing court determines if the erroneously admitted evidence constitutes plain error." *Id.*; see also *State v. Lawrence*, 365 N.C. 506, 512–16, 723 S.E.2d 326, 330–33 (2012). Plain error is defined as:

a fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done, or where the error is grave error which amounts to a denial of a fundamental right of the accused, or the error has resulted in a miscarriage of justice or in the denial to appellant of a fair trial[,] or where the error is such as to seriously affect the fairness, integrity[,] or public reputation of judicial proceedings[,] or where it can be fairly said the instructional mistake had a probable impact on the jury's finding that the defendant was guilty.

State v. Odom, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (citations, quotation marks, and alterations omitted). "To show that an error was fundamental, a defendant must establish prejudice." *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334.

“Under the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result[.]” *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993) (citation omitted).

“‘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) (2023). Hearsay evidence is not admissible unless it falls into an exception described by another statute or rule of evidence. *Id.* § 8C–1, Rule 802. Under Rule 803(6), a business record may be excepted from hearsay where it was “made at or near the time by, or from information transmitted by, a person with knowledge, if (i) kept in the course of a regularly conducted business activity and (ii) it was the regular practice of that business activity to make the” record. *Id.* § 8C-1, Rule 803(6). “Statements made by a person other than the person(s) compiling the business record which are recorded within the record are double hearsay, or compound hearsay, and may only be admitted if an exception to the hearsay rule is found for that statement.” *State v. Sisk*, 123 N.C. App. 361, 369, 473 S.E.2d 348, 353-354 (1996). However, “[h]earsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule” N.C. Gen. Stat. § 8C-1, Rule 805.

1. Information From the Study

At trial, the State introduced P.L.’s medical file from Duke University Hospital—without objection and via the business records exception—after the trial court accepted Dr. Terrell as an expert in pediatrics and child abuse. *See State v. Heiser*, 36 N.C. App. 358, 359, 244 S.E.2d 170, 172 (1978) (“Our Supreme Court held . . . that upon a proper foundation hospital and medical records are admissible under the business records exception to the hearsay rule.”). After the medical file was admitted into evidence, the State published portions of it for the jury to see.

Defendant does not challenge the admissibility of the medical file under N.C. Gen. Stat. § 8C-1, R. 803(6). Rather, Defendant asserts the following report by Dr. Freedman, in the medical file, is unpermitted hearsay within hearsay:

According to a 2013 systematic review (Maguire et al), “the odds ratio that a child with [retinal hemorrhage] has suffered [abusive head trauma] is 14.7 (CI 6.39, 33.62) and the probability of abuse is 91%. . . . In a 2010 systematic review (Bhardwaj et al) found that “combined data from prospective studies of head injury indicate that [intraocular hemorrhages] have a specificity of 94% for abuse ([level of evidence] A, II). The specificity of [intraocular hemorrhages] for [abusive head trauma] is further increased when there is bilateral involvement, preretinal hemorrhages, premacular and peripheral involvement, and moderate to severe [intraocular hemorrhage] (A, II).

Defendant maintains the references to other scholarly works should have been redacted since neither expert laid a proper foundation for their admission.

Rule 803(18) provides an exception to the rule against hearsay for learned treatises:

To the extent called to the attention of an expert witness upon cross-examination or relied upon by him in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

N.C. Gen. Stat. § 8C–1, Rule 803(18). “To comply with Rule 803(18), [a party] must show that the [learned treatise was] relied upon by the expert witness in direct or cross-examination and must establish the [learned treatise] as reliable authority.” *Whisenhunt v. Zammit*, 86 N.C. App. 425, 429, 358 S.E.2d 114, 117 (1987).

Here, the record provides that Defendant failed to challenge the reliability of these sources. We have previously held “that a party who fails to challenge the reliability of authority prima facie admissible under Rule 803(18) must overcome a presumption of admissibility on appeal.” *State v. Oliver*, 85 N.C. App. 1, 14, 354 S.E.2d 527, 535 (1987); *see also Rowan Cnty. Bd. Of Educ. v. United States Gypsum Co.*, 103 N.C. App. 288, 306, 407 S.E.2d 860, 870 (1991). Notwithstanding this presumption, we are unable to find any indication in the record that Dr. Freedman or Dr. Terrell relied on these sources when giving their testimony or opinions. Moreover, neither expert testified as to the reliability of these sources. *See Oliver*, 85 N.C. App. at 14, 354 S.E.2d at 535. Thus, it appears that admission of this portion of the medical file as substantive evidence was in error under Rule 803(18).

In any event, Defendant is unable to demonstrate prejudice. *See Jordan*, 333 N.C. at 440, 426 S.E.2d at 697 (citation omitted) (to establish prejudice, a defendant must show that “absent the error, the jury probably would have reached a different result[.]”). Defendant asserts the admission of this portion of the medical file was prejudicial since the jury spent hours reviewing the medical file during deliberation, and certain portions of the passage were underlined, making “the statements catch the eye.” However, given the overwhelming other expert evidence showing that P.L.’s injuries were sustained by way of significant head trauma and abusive injury, the inclusion of this passage in the medical file was not so prejudicial as to amount to plain error.

Indeed, Dr. Freedman testified, prior to the medical file being admitted into evidence, that: (1) The hemorrhages in P.L.’s eyes were “too many to count” and inconsistent with the health of the child, thus indicating a “suspicion and worry about an abusive situation”; and (2) P.L.’s retinal hemorrhages were consistent with abusive head trauma. Additionally, Dr. Terrell testified, without reference to the challenged passage, that: (1) Upon arrival to Duke University Medical Hospital, P.L. was immediately placed in the care of the child abuse team; (2) P.L.’s injuries to his face, brain, and eyes were consistent with significant head trauma and abusive injury; (3) P.L.’s brain injuries were “consistent with some sort of significant rotational acceleration/deceleration type movement that would cause the shearing of th[e] layers of his brain, the contusion to his brain, and the shearing of the layer in

the back of his retina”; and (4) P.L.’s facial injuries were consistent with blunt force trauma.

Considering the other substantial and consistent evidence, even if the challenged portion of the medical file were to be redacted, the jury probably would not have reached a different result. *Jordan*, 333 N.C. at 440, 426 S.E.2d at 697. Accordingly, Defendant’s first assignment of plain error is overruled.

2. Statements of Defendant’s Character & Criminal History

Defendant next asserts that the trial court plainly erred by admitting the entire medical file because it contained several other instances of hearsay within hearsay: (1) statements that identified Defendant as a gang member; (2) statements that noted Defendant was on probation and house arrest; (3) statements that Defendant had a misdemeanor charge of child abuse, possession of marijuana, and assault with a deadly weapon involving a road rage incident; (4) statements that P.L.’s grandmother called Defendant “a bad boy;” and (5) statements highlighting that Defendant had a “short temper” and was “controlling.” Since Defendant is unable to establish prejudice, we disagree.

Rule 803(4) carves out an exception to the rule against hearsay when statements are made for the purposes of medical diagnosis or treatment. *See* N.C. Gen. Stat. § 8C-1, Rule 803(4) (“Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source

thereof insofar as reasonably pertinent to diagnosis or treatment.”). This exception “requires a two-part inquiry: (1) whether the declarant’s statements were made for purposes of medical diagnosis or treatment; and (2) whether the declarant’s statements were reasonably pertinent to diagnosis or treatment.” *State v. Hinnant*, 351 N.C. 277, 284, 523 S.E.2d 663, 667 (2000).

Here, the statements in question were not made to the treating physicians by P.L. Rather, they were made by several third parties, including: Defendant; Brittany; P.L.’s maternal grandmother; Investigator Willis; and social workers. The State submits that the challenged passages of the medical file are admissible under Rule 803(4)—despite being made by third parties—pursuant to *In re J.M. & J.*, 255 N.C. App. 483, 490, 804 S.E.2d 830, 835 (2017). That case acknowledged that “North Carolina Courts have not considered whether N.C. [Gen. Stat.] § 8C-1, Rule 803(4) allows hearsay statements by persons other than the patient obtaining treatment.” *Id.* at 491, 804 S.E.2d at 836. However, it determined that “[w]e find no principled basis . . . not to apply the same rationale to a parent who brings a very young child to a doctor for medical attention; the parent has the same incentive to be truthful, in order to obtain appropriate medical care for the child.” *Id.* (citation omitted).

Yet, the record does not show that any of the challenged statements were made by Brittany—P.L.’s mother. In fact, many of the statements made to the treating physicians were attributed to Investigator Willis, P.L.’s maternal grandmother, or social workers. To the extent that any of the statements were made by Brittany, the

record does not show that they were made for purposes of treatment or diagnosis. *Hinnant*, 351 N.C. at 284, 523 S.E.2d at 667. Contrary to the State's urging, we are unable to conclude that the admission of these statements would be proper under Rule 803(4).

In any event, Defendant is unable to show prejudice. *See Jordan*, 333 N.C. at 440, 426 S.E.2d at 697. To support a conviction for felonious child abuse inflicting serious bodily injury, the State must prove "that: (1) the defendant was the parent of the child; (2) the child had not reached [sixteen years of age]; and (3) the defendant intentionally and without justification or excuse inflicted serious bodily injury." *State v. Bohannon*, 247 N.C. App. 756, 760, 786 S.E.2d 781, 786 (2016) (citation and quotation marks omitted). "[W]hen an adult has exclusive custody of a child for a period of time during which the child suffers injuries that are neither self-inflicted nor accidental, there is sufficient evidence to create an inference that the adult intentionally inflicted those injuries." *State v. Liberato*, 156 N.C. App. 182, 186, 576 S.E.2d 118, 120–121 (2003); *see also State v. Riggsbee*, 72 N.C. App. 167, 171, 323 S.E.2d 502, 505 (1984).

At trial, Brittany testified to the fact that Defendant is P.L.'s father. *See Bohannon*, 247 N.C. App. at 760, 786 S.E.2d at 786. The record also reflects that at the time of the incident, P.L. was two months old. *See id.* In addition, Brittany testified that at the time the incident occurred, Defendant had exclusive custody over the child. *See Liberato*, 156 N.C. App. at 186, 576 S.E.2d at 120–121. On the morning

in question, Brittany noted that Defendant, herself, and P.L. were the only three people at their home. At the time, P.L. was acting “normal” and had no bruises on his eyes. Later in the morning, Brittany left the house to go to the store so that she could get provisions for a cookout she was planning to host; she left Defendant in charge of watching P.L. at the house. Brittany added that when she left, P.L. was “in his swing,” and was alert and active. About an hour later, Brittany returned to the home, and she found P.L. “slumped over” in his swing. Moreover, two different expert witnesses—Dr. Freedman and Dr. Terrell—concluded that P.L.’s injuries were the result of an abusive injury as opposed to an accident. *See id.* Last, the record contains testimony of Investigator Willis and Dr. Terrell, who corroborate the fact that Defendant had exclusive custody of P.L. during the period in question.

In light of the overwhelming and uncontroverted evidence supporting a conviction, even if the challenged portions of the medical file were redacted, “the jury probably would [not] have reached a different result[.]” *Jordan*, 333 N.C. at 440, 426 S.E.2d at 697 (citation omitted). We thus overrule Defendant’s second assignment of plain error.

B. Ineffective Assistance—Failure to Object

Defendant next asserts that he received IAC based on his counsel’s failure to object to the admission of the medical file in evidence. We disagree.

“We review IAC claims *de novo*.” *State v. Demick*, 288 N.C. App. 415, 438, 886 S.E.2d 602, 619 (2023). “Under a *de novo* review, the court considers the matter anew

and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–633, 669 S.E.2d 290, 294 (2008) (citation omitted).

A two-part test is applied to determine whether a defendant received IAC: “First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). Next, “the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” *Id.*

“Generally, a claim of [IAC] should be considered through a motion for appropriate relief before the trial court in post-conviction proceedings and not on direct appeal.” *State v. Allen*, 262 N.C. App. 284, 285, 821 S.E.2d 860, 861 (2018). However, IAC claims “brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing.” *State v. Thompson*, 359 N.C. 77, 122–23, 604 S.E.2d 850, 881 (2004).

Having determined that Defendant was not prejudiced by the introduction of the entire medical file, we hold that Defendant was not prejudiced by his trial counsel’s failure to object to the admission of the medical file. *See State v. Hightower*,

168 N.C. App. 661, 668, 609 S.E.2d 235, 240 (2005) (holding that since the trial court did not commit plain error by admitting a certain piece of evidence, his trial counsel did not render IAC by failing to object to that evidence's admission).

C. Character Evidence

Lastly, Defendant faults the trial court for determining that he “opened the door” to character evidence by the State after defense counsel asked Brittany if he was a good father on cross-examination. Defendant maintains he only asked this question to follow up “on the State’s question about the interview at the hospital.” Defendant asserts the trial court erroneously allowed the State to ask Brittany whether he assaulted her while she was pregnant on redirect. We disagree.

“A trial court’s decision to admit or exclude evidence to which a party has opened the door is subject to review on appeal for abuse of discretion.” *State v. McKoy*, 385 N.C. 88, 97, 891 S.E.2d 74, 81 (2023); *see also State v. Campbell*, 359 N.C. 644, 673, 617 S.E.2d 1, 19 (2005) (“The decision whether to exclude evidence under Rule 403 of the Rules of Evidence is within the discretion of the trial court and will not be overturned absent an abuse of discretion.”). “Abuse of discretion results where the court’s ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hodge*, 270 N.C. App. 110, 114, 840 S.E.2d 285, 288 (2020) (citation omitted).

“The basis for the rule commonly referred to as ‘opening the door’ is that when a [party] in a criminal case offers evidence which raises an inference favorable to his

case, the [other party] has the right to explore, explain or rebut that evidence.” *McKoy*, 385 N.C. at 95, 891 S.E.2d at 79 (citation omitted). “Where one party introduces evidence as to a particular fact or transaction, the other party is entitled to introduce evidence in explanation or rebuttal thereof, even though such latter evidence would be incompetent or irrelevant had it been offered initially.” *State v. Albert*, 303 N.C. 173, 177, 277 S.E.2d 439, 441 (1981). “Reliance on the opening-the-door rule is no longer necessary in many instances because the Rules of Evidence expressly provide for the introduction of rebuttal or explanatory evidence in certain situations.” *McKoy*, 385 N.C. at 95, 891 S.E.2d at 80. To that end, North Carolina Rule of Evidence 404 provides:

(a) Character evidence generally. - Evidence of a person’s character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(1) Character of accused. - Evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same;

....

(b) Other crimes, wrongs, or acts. - Evidence 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. It may, however, 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(a)–(b) (2023).

Here, Brittany testified on direct examination that she was interviewed at the hospital on 2 June 2018:

[PROSECUTOR]: When you were at the hospital, did the doctors ask you what had happened?

[BRITTANY]: Yeah, they did.

. . . .
[PROSECUTOR]: At some point, was CPS involved, Child Protective Services?

[BRITTANY]: They were.

[PROSECUTOR]: Tell us about that. What happened?

[BRITTANY]: They . . . took me into a room and asked me some questions about what had happened. And I . . . told them what happened, how I went to the store and found him.

[PROSECUTOR]: And at that point in time, did law enforcement also get involved?

[BRITTANY]: Yes, they questioned me as well.

On cross-examination, defense counsel questioned Brittany about the contents of the interview:

[DEFENSE COUNSEL]: When asked, did you believe that [Defendant] hurt your child, what did you tell him?

[BRITTANY]: I said, no.

[DEFENSE COUNSEL]: And didn't you describe [Defendant] as a good father?

[BRITTANY]: I did.

Then, on redirect examination, the State elicited the following, to which Defendant objected:

[PROSECUTOR]: And you asked about whether the Defendant was a good father; is that right?

[BRITTANY]: Yes.

[PROSECUTOR]: And isn't it true while you were pregnant with [P.L.], he assaulted you?

[BRITTANY]: That is true.

[DEFENSE COUNSEL]: Objection.

[PROSECUTOR]: Opened the door.

[THE COURT]: Overruled.

The trial court overruled Defendant's objection, determining that he had opened the door. As a result, the trial court allowed the State to re-ask their question:

[PROSECUTOR]: Brittany, while you were pregnant with [P.L.], did this Defendant assault you?

[BRITTANY]: He did.

[PROSECUTOR]: And at the time that you referred to him as a good father, were you aware that the Defendant had gotten into a road rage incident with a stranger, with [P.L.] in the car?

[BRITTANY]: No.

Our review of the transcript indicates that Defendant opened the door to the State's subsequent questions on Defendant's character for violence. *See, e.g., State v. Burgess*, 134 N.C. App. 632, 636, 518 S.E.2d 209, 212 (1999) (affirming admittance of

the defendant's character for violence in a child-abuse case when defense counsel asked a neighbor "if defendant was a good mother and kept the baby clean[.]"). Whenever a defendant "opens the door" to character evidence by introducing evidence of their pertinent trait—in this case, Defendant's character for being a "good father"—the prosecution may rebut that evidence with contrary character evidence. *See id.*; *see also* N.C. Gen. Stat. § 8C-1, R. 404. Defendant cannot complain when the whole story is revealed after he elicited such evidence through his own questioning. *See State v. Syriani*, 333 N.C. 350, 378, 428 S.E.2d 118, 132 (1993) ("Defendant, however, elicited the first instance of misconduct toward daughter Rose from her during cross-examination when he asked her whether he had ever beaten her."); *see also* N.C. Gen. Stat. § 1443(c) (2023) ("A defendant is not prejudiced . . . by error resulting from his own conduct.").

This Court's decision in *State v. Burgess* is particularly instructive. 134 N.C. App. 632, 518 S.E.2d 209 (1999). In that case, the defendant argued "that the State was erroneously allowed, over objection, to present specific instances of violent conduct by defendant . . . to prove defendant's character for violence" under Rule 404(b). *Id.* at 635–636, 518 S.E.2d at 212. Upon review of the record, our Court determined that the defendant "opened the door" to the State's subsequent questions "concerning defendant's character for violence." *Id.* at 636, 518 S.E.2d at 212. The Court determined as such in light of the fact that on cross-examination, the defendant asked a witness whether "defendant was a good mother and kept the baby clean"

Id. In response to this question, “the State presented evidence that, contrary to the picture being painted by the defense, defendant was not a good mother.” *Id.* In its final remarks, our Court noted that “[d]efendant cannot invalidate a trial by . . . eliciting evidence on cross-examination which he might have rightfully excluded if the same evidence had been offered by the State.” *Id.*

While the bad acts elicited by the State on redirect of Brittany may have been inadmissible on direct examination before Defendant opened the door, the prosecution’s rebuttal to Defendant’s evidence of good character was proper. *See State v. Garner*, 330 N.C. 273, 289–90, 410 S.E.2d 861, 870 (1991) (holding “that the trial court did not err by allowing the prosecutor to elicit details of the prior assaults to rebut the defendant’s direct testimony”); *see also State v. Silhan*, 302 N.C. 223, 273, 275 S.E.2d 450, 484 (1981) (finding no error in the admission of rebuttal evidence by the State concerning the defendant’s bad reputation in the army, which tended to contradict the defendant’s evidence that he had been a good child, a good husband and father, and a good neighbor). We thus hold the trial court did not abuse its discretion by allowing the State to present character evidence after Defendant opened the door. *See McKoy*, 385 N.C. at 97, 891 S.E.2d at 81.

IV. Conclusion

We hold that the trial court did not commit plain error when it admitted the entire medical file into evidence; Although several portions of the medical file contained hearsay within hearsay, Defendant is unable to establish prejudice.

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Jordan, 333 N.C. at 440, 426 S.E.2d at 697. Additionally, since Defendant was not prejudiced by the admission of the entire medical file, Defendant is unable to establish prejudice supporting his IAC claim. *Hightower*, 168 N.C. App. at 668, 609 S.E.2d at 240. Lastly, the trial court did not abuse its discretion by allowing the State to present character evidence on redirect since Defendant opened the door on cross-examination. See N.C. Gen. Stat. § 8C-1, R. 404; *see also Burgess*, 134 N.C. App. at 636, 518 S.E.2d at 212.

NO ERROR.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).