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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-684

Filed 7 May 2025

Mecklenburg County, Nos. 17 CRS 212358; 17 CRS 212359; 17 CRS 212360, 23 CRS 007934

STATE OF NORTH CAROLINA

v.

CURTIS SYLVESTER ATKINSON, JR., Defendant.

Appeal by Defendant from judgments entered 31 August 2023 by Judge Karen Eady-Williams in Mecklenburg County Superior Court. Heard in the Court of Appeals 12 February 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Heidi M. Williams, for the State.

Marilyn G. Ozer for Defendant.

GRIFFIN, Judge.

Defendant, Curtis Sylvester Atkinson, Jr., appeals from the trial court's judgments entered after a jury found him guilty of two counts of first-degree murder, one count of first-degree kidnapping, conspiracy to commit murder, conspiracy to commit first-degree kidnapping, and possession of a firearm by a felon. Defendant

raises three issues on appeal. Defendant contends the trial court erred by (1) denying his *Batson* challenges; (2) denying his Motion to Dismiss the charge of conspiracy to commit first-degree murder; and (3) violating his Sixth Amendment right to the effective assistance of counsel. We hold the trial court did not err and Defendant did not receive ineffective assistance of counsel.

I. Factual and Procedural Background

Defendant and his girlfriend, Nikkia Cooper, brutally murdered Defendant's parents, Curtis and Ruby Atkinson, at their home in Charlotte, North Carolina, on 30 March 2017. The evidence presented at trial tended to show as follows:

The day before the murders occurred, Defendant and Cooper received notice they were being evicted from their residence. Defendant's father helped Defendant and Cooper pack up and move their belongings to his house. Cooper testified she and Defendant were "never sober" around this time. They were regularly taking ten to fifteen ecstasy pills each day and obtained at least some of the drugs by proceeds from committing robberies. After Defendant's father had helped move their belongings, Defendant and Cooper went back to their residence. Later that evening, Defendant requested his father to come and pick him up, but Defendant's father denied the request. The next morning, on 30 March 2017, Defendant and Cooper took a taxi to Defendant's parents' house. On the way there, Defendant and Cooper stopped at a Western Union to pick up \$100 wired to Cooper by her brother, who lived in Washington, D.C.

When Defendant and Cooper arrived at the residence, Defendant's father was not present. Defendant's mother let Defendant and Cooper inside the home, and they spent the rest of the day there. Defendant's father and mother lived at the residence along with their eleven-year-old granddaughter, Arieyana, whose father was killed in 2013.

When Defendant's father returned home after picking up Arieyana from school, a discussion ensued about Defendant and Cooper staying overnight at Defendant's parents' house. When Defendant's father refused to let them stay, Defendant erupted. Cooper testified Defendant's father expressed he had given Defendant money and rent in the past, and Defendant would destroy the properties. After Defendant's father asked Defendant and Cooper to leave, Defendant pulled out his gun and shot both of his parents.

After Defendant had shot his father, Defendant beat him with a glass candle holder, attempted to strangle him with a TV cord, and stabbed him repeatedly. Cooper admitted stabbing Defendant's mother in the neck. During the assaults, Defendant instructed Cooper to bring Arieyana from her bedroom and into the living room for her to observe the attacks. Defendant's mother sustained eighteen sharp force injuries, and two gunshot wounds: one to the top of her head and one to her neck. Defendant's father sustained sixty-nine separate injuries; sixty-six were sharp trauma injuries and three were blunt force injuries.

After the murders were completed, Defendant and Cooper worked together to

clean the crime scene and search the house for money. Defendant and Cooper refused to let Arie yana leave. After staying in the home for a few days following the murder, on Sunday morning, while Cooper was cooking, she fell asleep. The fire alarm went off, alerting emergency personnel, and Defendant and Cooper fled the scene and began driving towards Washington, D.C. Defendant and Cooper forced Arie yana into the car with them. Arie yana asked Defendant to be dropped off at her mother's house, but Defendant refused. When they arrived in D.C., police cars began following them and attempted to initiate a traffic stop. Defendant fled and a car chase ensued. Defendant eventually crashed the car, and officers took Defendant and Cooper into custody and rescued Arie yana.

Following his arrest, Defendant waived his *Miranda* rights and gave a statement to the police, in which he admitted he and Cooper came to his parents' house with weapons. Defendant brought a gun, and Cooper brought a knife. Defendant acknowledged that after he shot his mother, Cooper had stabbed her in the neck to kill her. Cooper also assisted Defendant in stabbing Defendant's father.

On 17 April 2017, Defendant was indicted by a Mecklenburg County Grand Jury for two counts of first-degree murder, one count of first-degree kidnapping, and for obtaining habitual felon status. On 19 June 2023, the State issued amended indictments, charging Defendant with first-degree kidnapping accompanied by a firearms enhancement, conspiracy to commit first-degree murder, and conspiracy to commit first-degree kidnapping. Defendant was also charged with possession of a

firearm by a felon, arising out of the same events.

Defendant's case came on for trial during the 31 July 2023 Criminal Session of Mecklenburg County Superior Court. During jury selection, Defendant raised two *Batson* challenges, and they were denied by the trial court. At trial, Defendant asserted affirmative defenses of insanity and diminished capacity. Defendant testified and admitted to killing and torturing his parents. However, Defendant claimed he was not in his right mind at the time of the murders, as he believed his parents were human clones. The State was prohibited from presenting expert testimony to establish Defendant's mental state at the time of the crimes. At the close of the State's evidence and after all evidence was presented, Defendant moved to dismiss each of the charges, and the trial court denied Defendant's motions.

On 31 August 2023, the jury rejected Defendant's defenses of insanity and diminished capacity and found him guilty of two counts of first-degree murder, one count of first-degree kidnapping, conspiracy to commit murder, conspiracy to commit first-degree kidnapping, and possession of a firearm by a felon. Defendant's judgments were entered 31 August 2023. Defendant timely appeals.

II. Analysis

Defendant contends the trial court erred by (1) denying Defendant's *Batson* challenges; (2) denying Defendant's Motion to Dismiss the charge of conspiracy to commit first-degree murder; and (3) violating Defendant's Sixth Amendment right to the effective assistance of counsel. We hold the trial court did not err and Defendant

did not receive ineffective assistance of counsel.

A. Batson challenges

Defendant argues the trial court erred by denying Defendant's *Batson* challenges. Specifically, Defendant contends the trial court failed to consider side-by-side comparisons of the State's questions to jurors before denying Defendant's *Batson* objections.

The Constitution of the United States forbids striking a prospective juror for a discriminatory purpose. *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008). "[T]he State's privilege to strike individual jurors through peremptory challenges, is subject to the commands of the Equal Protection Clause." *Batson v. Kentucky*, 476 U.S. 79, 89 (1986). In *Batson v. Kentucky*, the United States Supreme Court established a three-part test to determine whether a juror has been improperly excluded based on race. *Id.* at 96. Like the Constitution of the United States, the North Carolina Constitution prohibits race-based peremptory challenges. N.C. Gen. Stat. Art. 1, § 26 (2023). Our Supreme Court "adopted the *Batson* test for reviewing the validity of peremptory challenges under the North Carolina Constitution." *State v. Campbell*, 384 N.C. 126, 133, 884 S.E.2d 674, 680 (2023) (quoting *State v. Nicholson*, 355 N.C. 1, 21–22, 558 S.E.2d 109, 125 (2002)).

Under *Batson*, the trial court must first "determine whether the defendant has met his or her burden of establishing a prima facie case that the peremptory challenge was exercised on the basis of race." *Id.* (citations and internal quotations omitted).

This requires showing an inference of purposeful discrimination. *Id.* at 134, 884 S.E.2d at 681. “A defendant meets his or her burden at step one ‘by showing that the totality of the relevant facts gives rise to inference of discriminatory purpose.’” *Id.* (quoting *Batson*, 476 U.S. at 94). In response, the prosecutor may argue the defendant has not met his or her burden to establish “a prima facie showing of discrimination.” *Id.* (citation and internal quotations omitted). “A prosecutor’s questions and statements during voir dire examination . . . may support or refute an inference of discriminatory purpose.” *Id.* (citation and internal quotations omitted).

At stage one of the *Batson* inquiry, trial courts are instructed to consider a non-exhaustive list of factors, including, but not limited to, “the race of the defendant, the race of the victim, the race of the key witnesses, repeated use of peremptory challenges demonstrating a pattern of strikes against black prospective jurors in the venire, disproportionate strikes against black prospective jurors in a single case, and the State’s acceptance rate of black potential jurors.” *Id.* (citation omitted). If the trial court determines that stage one has been satisfied, the trial court moves to stage two of the *Batson* analysis. *Id.*

At stage two, “the burden shifts to the prosecutor to offer a racially neutral explanation to rebut the defendant’s prima facie case.” *Id.* (citation and internal quotations omitted). The race-neutral explanation requires a reason for the juror’s removal other than race. *Id.* at 135, 884 S.E.2d at 681 (citation and internal quotations omitted). “[I]f the State produces only a frivolous or utterly nonsensical

justification for its strike, the case does not end—it merely proceeds to step three.” *Id.* (quoting *Johnson v. California*, 545 U.S. 162, 171 (2005)).

Stage three requires the trial court to “determine the persuasiveness of the defendant’s constitutional claim.” *Id.* (citation and internal quotations omitted). The burden is still “on the defendant who alleges discriminatory selection of the venire to prove the existence of purposeful discrimination.” *Id.* (citation and internal quotations omitted). “The ultimate inquiry is whether the State was motivated in substantial part by discriminatory intent. [] [N]o matter how closely tied or significantly correlated to race the explanation for a peremptory strike may be, the strike does not implicate the Equal Protection Clause unless it is based on race.” *Id.* (cleaned up) (citation and internal quotations omitted).

To determine the presence or absence of intentional discrimination, factors such as the “susceptibility of the particular case to racial discrimination, whether the State used all of its peremptory challenges, the race of witnesses . . . , questions and statements by the prosecutor during jury selection which tend to support or refute an inference of discrimination, and whether the State has accepted any African-American jurors” are to be considered. *State v. Golphin*, 352 N.C. 364, 427, 533 S.E.2d 168, 211 (2000).

“A trial court’s rulings regarding race neutrality and purposeful discrimination are largely based on evaluations of credibility and should be given great deference.” *Id.* (citing *Batson*, 476 U.S. at 98 n. 21). We will uphold the trial court’s determination

unless we are convinced the decision was clearly erroneous. *Id.* (citing *State v. Kandies*, 342 N.C. 419, 434–35, 467 S.E.2d 67, 75 (1996)).

On appeal, Defendant contends the trial court erred by denying his *Batson* challenges regarding two prospective jurors, Tanjanique Washington and Ramona Martin. In both instances, the trial court found Defendant “barely” established a *prima facie* case under *Batson* but ultimately held Defendant failed to prove purposeful discrimination and denied the challenges.

1. Prospective Juror Washington

The first challenged prospective juror was Tanjanique Washington, a black female who is a Certified Nurse Assistant for a home health organization. Prior to working for home health, Washington was employed by Novant hospital and had worked closely with mental health patients. While at Novant, Washington testified she “work[ed] close with the nurses[,]” “assist[ed] other staff in documenting [the] behaviors” of mental health patients, and was trained on what to “look out for.” Washington left Novant and made the transition to home health because her job at Novant “trigger[ed] [her] anxiety.” Washington stated she noticed a decline in her own mental health because she was “dealing with other people’s mental health.” Washington expressed she had a panic attack while working at Novant, and she also experienced chest pain.

Although Defendant contends the State’s peremptory strike was racially motivated, the State responded to Defendant’s objection with race-neutral reasons.

Before excusing Washington, the State had only exercised one other peremptory strike. The strike was on a white female, Scarlet Jennings, “who indicated significant history with mental health experience, both through family and with an individual who she described as taking an interest in her[.]” Like Jennings, Washington also had significant mental health experience. Washington’s previous employment consisted of direct involvement with mental health patients, which she testified triggered her anxiety. Washington also admitted she had her own mental health challenges which consisted of anxiety, depression, and PTSD. This was concerning for the State, particularly the impact Washington could have on the jury, since the State was not allowed to present and admit any professional mental health experts in the case.

Defendant’s response rested on the assertion two other white jurors, Ms. Ritch and Ms. Hicks, were not excused even though they had “some mental health exposure.” Defendant contends the prosecutor specifically asked them if they would pledge not to become experts on mental health in the jury room, and they said they would not, but Washington was not asked that question. However, Defendant incorrectly asserts the trial court failed to conduct a side-by-side comparison of the jurors in question. The trial court specifically made a distinction between the prospective jurors. The court explained it remembered Washington testifying she was in direct contact with mental health patients. Washington assisted doctors and documented patient behaviors in the mental health ward. The court noted the close

similarity between Washington and Jennings, the first prospective juror who was excused on a peremptory strike. Unlike Washington and Jennings who had direct and close interactions with those who suffer from mental health challenges, the court did not find the same similarity with Ms. Ritch and Ms. Hicks.

The court noted “I didn’t see [the] level of detail [with] the former police officer with the Huntersville police. And I can’t recall who the person was, but I don’t recall her level of engagement or interaction being the same as the CNA working at the hospital in the mental health ward, assisting doctors . . . , documenting patient behaviors[.]” As a result, the court concluded the prosecution’s race-neutral explanation for striking Washington was not pretextual and denied Defendant’s *Batson* objection.

Based on our review of the record, Defendant has failed to show the trial court erred in denying Defendant’s *Batson* objection to Washington. The court responded to Defendant’s concern regarding Washington compared to the other prospective jurors, and the court made appropriate side-by-side comparisons, drawing a distinction based on “direct contact” with those who suffer from mental health challenges. *See State v. Hobbs*, 384 N.C. 144, 152-53, 884 S.E.2d 639, 646–47 (2023) (holding no clear error on a *Batson* challenge when the trial court “consider[ed] the evidence in its totality,” “highlight[ing] key differences” between prospective jurors). Here, as in *Hobbs*, the trial court considered the evidence in its totality based on what was presented regarding prospective jurors and highlighted key differences between

them. *Id.* As a result, we hold the trial court's decision to deny Defendant's *Batson* objection was not clearly erroneous. *Id.*

2. Prospective Juror Martin

The second challenged prospective juror was Ramona Martin, another black female who is a healthcare technician. During jury selection, Martin testified about several traumatic life events she had experienced. Martin's ex-husband served in the military, and there was an incident where he returned home from Afghanistan suffering from PTSD, and he choked her to the point she blacked out. When asked whether she felt as if he needed to be held accountable for his actions, Martin responded that she "didn't have any feelings about it at all at that particular time. [She] was just happy to be alive." She testified they were still "[the] best of friends today." Martin also shared that her sister had committed suicide, and she had a co-worker who was shot by the co-worker's son. Aside from her personal experiences, Martin testified she works as a healthcare technician/CNA at a hospital. Two days a week, Martin works with hospital patients who are struggling with mental illness.

After the State exercised a peremptory strike on Martin, Defendant again contended that the State's peremptory strike was racially motivated. However, the State responded to Defendant's objection with race-neutral reasons. The State explained some of Martin's answers were concerning, particularly Martin's response where she stated, "in her experience she's never been around somebody that exhibited to where she could tell that even though they suffered from a mental disease or defect

that they knew those things, they knew that they were hurting somebody.” Without having expert testimony speak to Defendant’s mental state in the case, the State was concerned about the influence Martin could have over the jury pool. The prosecution explained the reason for striking Martin was very similar to the same reason for striking Washington and Jennings, the other prospective jurors who were excused on a peremptory strike. People with firsthand, close, and weekly interactions with mental health patients were problematic for the State out of concern they could “be the expert” in the jury room. Martin was particularly concerning because her responses indicated “she doesn’t know if people suffering from mental disease or defect could know . . . right from wrong or that they were hurting somebody[.]”

Defendant’s response rested on the assertion that even though Martin had these experiences, her answers indicated she does not claim to be an expert on mental health subjects, and the State’s assertion that she would be “an expert” in the jury room is unfounded.

Defendant did not compare Martin to any other jurors at trial, but on appeal, Defendant contends the State did not ask Washington or Martin to affirm they would not try to be experts, as the State had done with three white jurors. Defendant asserts the court did not consider this side-by-side comparison. We disagree.

Side by side comparisons are not limited to a question-specific inquiry. *See Hobbs*, 384 N.C. at 150, 884 S.E.2d at 644 (holding the trial court did not err by adopting the State’s “‘whole juror’ approach in its comparisons” of “three excused

prospective jurors at issue with similarly situated prospective white jurors whom the State did not strike”); *Flowers v. Mississippi*, 588 U.S. 284, 310–11 (2019) (“To be clear, disparate questioning or investigation alone does not constitute a *Batson* violation. . . . But the disparate questioning or investigation can also, along with other evidence, inform the trial court’s evaluation of whether discrimination occurred.”). Here, the court did not limit its comparison with the questions asked of the jurors, but like *Hobbs* adopted the “whole juror” approach in its comparisons.

Specific to the Martin challenge, the court noted the similarities between Jennings and Washington. The court explained Jennings and Washington were excused “based on the concern that they had mental health background so far as their career paths or some of the jobs they had.” The court noted that Martin has a job, “akin to a CNA” and, two days during the week, “she watches those with mental health concerns or mental disorders.” Martin stated “[s]he’s observed a lot[,] [s]he’s had conversations with some, said some are capable of having conversations, some are not.” She remarked “it falls under cognitive abilities, and it varies based on mental illness.”

The court stated Martin “seems to have a lot of familiarity. At the end of the day, she’s watching the patients making certain they aren’t a danger to themselves or others, which goes straight to the issue of whether they need to be admitted or not.” The court ultimately held “[t]he State’s peremptory strike [was] not for a discriminatory basis but rather due to the heart of the case” considering any defense

that may be raised.

We find no error in the trial court’s reasoning. Based on our review of the record, it is clear the State was concerned with prospective jurors who had direct interaction with those dealing with mental health challenges. This was consistent among the three jurors who were excused based on a peremptory strike. The trial court was diligent in noting these similarities and made appropriate comparisons between the jurors and the peremptory strikes. Additionally, the peremptory strikes were not racially disproportionate as they were exercised on both white and black prospective jurors based on their direct involvement with mental health. Thus, we hold the trial court’s decision to deny Defendant’s *Batson* objection was not clearly erroneous.

B. Motion to Dismiss

Defendant argues the trial court erred by denying Defendant’s Motion to Dismiss the charge of conspiracy to commit murder. Specifically, Defendant contends the State presented no evidence of an agreement between Defendant and Cooper to kill Defendant’s parents. We disagree.

This Court “generally review[s] motions to dismiss de novo to determine whether, in the light most favorable to the State, ‘there was substantial evidence (1) of each essential element of the offense charged, and (2) that [the] defendant is the perpetrator of the offense.’” *State v. Juran*, 294 N.C. App. 81, 85, 901 S.E.2d 872, 877 (2024) (quoting *State v. Collins*, 283 N.C. App. 458, 465, 874 S.E.2d 210, 215 (2022)).

“Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78–79, 265 S.E.2d 164, 169 (1980). Substantial evidence may be direct or circumstantial. *State v. Wright*, 275 N.C. 242, 249–50, 166 S.E.2d 681, 686 (1969). “Direct evidence is that which is immediately applied to the fact to be proved, while circumstantial evidence is that which is indirectly applied, by means of circumstances from which the existence of the principal fact may reasonably be deduced or inferred.” *Id.* “[T]he law does not distinguish between the weight given to direct and circumstantial evidence[.]” *State v. Parker*, 354 N.C. 268, 279, 553 S.E.2d 885, 894 (2001). “The test of the sufficiency of the evidence on a motion to dismiss is the same whether the evidence is direct, circumstantial, or both[.]” *State v. Bullard*, 312 N.C. 129, 160, 322 S.E.2d 370, 388 (1984), and that is “whether a [r]easonable inference of the defendant’s guilt of the crime charged may be drawn from the evidence,” *State v. Powell*, 299 N.C. 95, 99, 261 S.E.2d 114, 117 (1980).

The trial court should only be concerned with “the sufficiency of the evidence to carry the case to the jury and not with its weight.” *Id.* If the court determines there is sufficient evidence presented, it is then for the jury to decide “whether the facts, taken singly or in combination, satisfy them beyond a reasonable doubt that the defendant is actually guilty.” *Id.* (quoting *State v. Rowland*, 263 N.C. 353, 358, 139 S.E.2d 661, 665 (1965)).

Conspiracy requires two elements. The State must prove: “(1) [the] defendant entered into an agreement with at least one other person; and, (2) the agreement was for an unlawful purpose[.]” *State v. Jackson*, 189 N.C. App. 747, 754, 659 S.E.2d 73, 78 (2008) (citing *State v. Larrimore*, 340 N.C. 119, 156, 456 S.E.2d 789, 809 (1995)). An express agreement is not required. *State v. Bindyke*, 288 N.C. 608, 615, 220 S.E.2d 521, 526 (1975). “A mutual, implied understanding is sufficient, so far as the combination or conspiracy is concerned, to constitute the offense.” *Id.* at 615–16, 220 S.E.2d at 526 (quoting *State v. Smith*, 237 N.C. 1, 16, 74 S.E.2d 291, 301 (1953)). “[C]onspiracy is the crime and not its execution[.]” thus “no overt act is necessary to complete the crime of conspiracy.” *Id.* (citing *State v. Lea*, 203 N.C. 13, 164 S.E. 737 (1932)). “As soon as the union of wills for the unlawful purpose is perfected, the offense of conspiracy is completed.” *Id.* (citation omitted). “The existence of a conspiracy may be established by direct or circumstantial evidence.” *State v. Gibbs*, 335 N.C. 1, 48, 436 S.E.2d 321, 348 (1993).

Here, it is not disputed Defendant and Cooper were the perpetrators who murdered Defendant’s parents. The contested issue is whether there was substantial evidence presented to support the crime of conspiracy. We hold the evidence was sufficient.

Here, the evidence shows the day before the murders occurred, Defendant and Cooper received notice they were being evicted from their residence. That same day, Defendant’s father helped Defendant and Cooper pack up and move their belongings.

Later that evening, Defendant called his father and requested he come pick them up. Defendant's father declined the request. The next day, on the morning of the murders, Defendant and Cooper took a taxi to Defendant's parents' house. They both admitted to bringing weapons. Defendant brought a gun and Cooper brought a knife. On the way there, they stopped at a Western Union to pick up \$100 wired to Cooper by her brother who lived in Washington, D.C.

Defendant and Cooper spent the day at Defendant's parents' house, but when Defendant's father returned to the house after picking up his granddaughter from school and refused to let them stay overnight there, Defendant erupted. In response, Defendant's father said "y'all need to get out," and Defendant pulled out his gun and shot both of his parents. Both Defendant and Cooper then executed brutal attacks against Defendant's mother and father, and Cooper brought Arie yana from her bedroom and into the living room for her to observe the assaults. After the murders were completed, Defendant and Cooper worked together to clean the crime scene, searched the house for money, held Arie yana hostage, fled the scene, and drove to Washington, D.C.

Following Defendant's arrest, Defendant admitted in a police interview when Arie yana was expressing concern it was her fault for her grandparents' deaths, Defendant told her it was not her fault but rather Defendant's father's fault for refusing to give Defendant and Cooper a ride.

Although no evidence tends to show an express agreement to murder Defendant's parents, sufficient evidence supports an implied agreement between Defendant and Cooper. *See State v. Brewton*, 173 N.C. App. 323, 329, 618 S.E.2d 850, 855 (2005) (holding evidence sufficient to support an implied agreement where "the State presented evidence suggesting not just an awareness by Hyatt that Boston might be killed, but also affirmative acts by Hyatt to assist [the] defendant"); *Gibbs*, 335 N.C. at 48–49, 436 S.E.2d at 348 (holding circumstantial evidence sufficient of an agreement to commit first-degree burglary where the defendant and Yvette watched the victim leave, approached the home in the "dark, early morning hours when the family was likely to be sleeping[,] and committed "subsequent acts . . . in furtherance of the conspiracy to commit burglary"). *See also State v. Choppy*, 141 N.C. App. 32, 39, 539 S.E.2d 44, 49 (2000) (holding "evidence of repeated coordinated assaults and the defendant's agreement to 'go on a killing spree' clearly refutes his argument that the State did not offer sufficient evidence of one or more conspiracies to commit first-degree murder").

Here, like in *Brewton* there was more than awareness by Cooper that Defendant's parents might be killed, but also affirmative acts by Cooper to assist Defendant. Defendant and Cooper brought weapons to Defendant's parents' house, and they executed the murders together. For the same reasons, the circumstances supported an agreement like in *Gibbs*, and there were subsequent acts that followed. Together, they committed the murders, moved the bodies to the hallway of the house,

cleaned up the crime scene, and fled the home. Although no evidence tended to show an express agreement to “go on a killing spree” as in *Choppy*, there is evidence of repeated coordinated assaults. Thus, we hold the evidence collectively is sufficient to support conspiracy to commit murder and the trial court did not err in denying Defendant’s Motion to Dismiss.

C. Ineffective Assistance of Counsel

Defendant alleges he received ineffective assistance of counsel during the State’s cross-examination of Defendant. Specifically, Defendant contends the State asked details about work product turned over by Defendant, when the State was aware Dr. Artigues, Defendant’s retained psychiatrist, would not be called to testify.

While the preferred method of raising an ineffective assistance of counsel claim is by a motion for appropriate relief in the trial court, “a defendant may bring his ineffective assistance of counsel claim on direct appeal. On direct appeal, [a] defendant’s ineffective assistance of counsel claim ‘will be decided on the merits when the cold record reveals that no further investigation is required[.]’” *State v. Phifer*, 165 N.C. App. 123, 127, 598 S.E.2d 172, 175 (2004) (quoting *State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001)).

To challenge a conviction based on ineffective assistance of counsel, a defendant must establish that his counsel’s conduct “fell below an objective standard of reasonableness.” *State v. Braswell*, 312 N.C. 553, 561–62, 324 S.E.2d 241, 248 (1985) (citing *Strickland v. Washington*, 466 U.S. 668, 688 (1984)). To meet this

burden, the defendant must satisfy a two-part test. *Id.* at 562, 324 S.E.2d at 248. First, the defendant must prove that his counsel's performance was deficient, such that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* (citation omitted). Second, the defendant must prove his counsel's performance was prejudicial, such that "counsel's errors were so serious as to deprive the defendant of a fair trial, *a trial whose result is reliable.*" *Id.* (citation omitted). An error made by counsel, even an unreasonable one, "does not warrant reversal of a conviction unless there is a reasonable probability that, but for counsel's errors, there would have been a different result in the proceedings." *Id.* at 563, 324 S.E.2d at 248 (citation omitted).

Here, Defendant asserts his trial counsel should have objected to the State's questions to Defendant concerning Dr. Antiques, but Defendant acknowledges his trial counsel failed to do so. Defendant relies on *State v. Dunn*, a case where this Court held the trial court "infringed upon the defendant's Sixth Amendment right to effective assistance of counsel, and unnecessarily breached the work-product privilege," by allowing the State to "compel testimony from employees of Lab Corp that [the] defendant did not plan to call as witnesses." 154 N.C. App. 1, 17, 571 S.E.2d 650, 660 (2002). We find *Dunn* distinguishable.

First, in *Dunn*, and unlike the present case, the defendant had objected to the challenged testimony, and the trial court allowed the testimony over the defendant's objection. *Id.* at 4, 571 S.E.2d at 652. Second, *Dunn* deals with an entirely different

fact pattern. In *Dunn*, the State compelled testimony from two employees at Lab Corp, a testing facility retained by the defendant to perform independent analysis of the substance found on the defendant. *Id.* The witnesses were able to confirm that the substance was heroin, but the defendant did not intend to call Lab Corp or its representatives at trial. *Id.* at 9–10, 571 S.E.2d at 656.

In reaching its holding that the trial court erred by admitting the testimony and infringed upon the defendant’s Sixth Amendment right to the effective assistance of counsel, this Court adopted the reasoning of one of our neighboring jurisdictions. “[I]f the prosecution were allowed, in effect, to co-opt the defendant’s experts, ‘defense attorneys might be deterred from hiring experts lest they inadvertently create or substantially contribute to the prosecution’s case against their clients.’” *Id.* at 17, 571 S.E.2d at 660 (quoting *Hutchinson v. People*, 742 P.2d 875, 882 (Colo. 1987)). Furthermore, “they might be motivated to hire only those experts which they have reason to believe will lean their way. Neither outcome advances the search for the truth, and both impair the defendant’s right to ‘effective’ assistance of counsel.” *Id.*

Here, unlike in *Dunn*, the State did not call as a witness any of Defendant’s experts or attempt to introduce any of their reports into evidence. The question about Dr. Artigues was raised during the State’s cross-examination of Defendant concerning a letter Defendant had written while he was in jail. The letter referenced several individuals involved in the case, including the ADAs, the lead detective, Arieyana, Cooper, and Dr. Artigues. During the questioning concerning the letter,

the following exchange took place:

Prosecutor: You identified Nikkia Cooper and Arie yana Forney as the State’s main witnesses in your letter, correct?

Defendant: That’s right.

Prosecutor: And you also identified Moria Artigues, who is a forensic psychiatrist, in your letter, right?

Defendant: That’s right.

Prosecutor: That was the defense psychiatrist hired by your legal team to prepare your defense at trial, correct?

Defendant: That’s right.

Prosecutor: You met with her three times prior to this trial, on May 3rd, 2019, July 26, 2019, and January 16th, 2020. Is that correct?

Defendant: That’s correct.

We hold this is not error. The State did not call Defendant’s expert as a witness or introduce any information concerning Defendant’s expert’s opinion. A reasonable juror could not infer the expert opinion of Dr. Artigues concerning Defendant’s mental state at the time of the crime based on the questioning during cross-examination.

Because the challenged testimony was not error, Defendant cannot meet the first prong of the ineffective assistance of counsel test and Defendant’s argument fails.

III. Conclusion

STATE V. ATKINSON

Opinion of the Court

We hold the trial court properly denied Defendant's *Batson* challenges and Motion to Dismiss. Additionally, we hold Defendant did not receive ineffective assistance of counsel.

NO ERROR.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).