

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-863

Filed 19 August 2026

Forsyth County, No. 23CR251848-330

STATE OF NORTH CAROLINA

v.

MIGUEL CUADRA, Defendant.

Appeal by the State from judgment entered 18 February 2025 by Judge Tonia Cutchin in Forsyth County Superior Court. Heard in the Court of Appeals 15 April 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Reginaldo E. Williams, Jr., for the State.

J. Clark Fischer for defendant-appellee.

DILLON, Chief Judge.

The State is the appellant in this criminal matter, a matter in which Defendant Miguel Cuadra was charged with assaulting a female for allegedly hitting a woman in the face at a bar. The State appeals the trial court's order entered during the trial dismissing the charge—effectively with prejudice, as jeopardy had already attached—based on misconduct by two State witnesses during their trial testimonies. The trial court concluded dismissal was appropriate pursuant to G.S. 15A-954(a)(4), which provides a defendant's motion to dismiss must be granted where “[t]he defendant's

constitutional rights have been flagrantly violated *and* there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution." (Emphasis added.)

I. Background

On the evening of 17 December 2022, Defendant Miguel Cuadra allegedly punched a woman in her face at a bar. Three months later, he was charged with assaulting a female based on this incident.

Defendant was convicted of the charge in district court, but he appealed for a trial de novo in superior court.

During the superior court trial, the State called two witnesses, the victim and the arresting officer. During the testimony of the officer, Defendant moved that the charge be dismissed, arguing the officer had testified in violation of a pre-trial order prohibiting the State from offering evidence regarding an unrelated assault charge involving Defendant. The trial court granted Defendant's motion. The State appeals.

II. Standard of Review

On appeal, the State argues the trial court erred by granting Defendant's motion to dismiss under G.S. 15A-954(a)(4). The State contends Defendant failed to show how the conduct by the State's witnesses irreparably damaged Defendant's ability to defend against the charge and that lesser sanctions were available.

When reviewing a trial court's granting of a defendant's motion to dismiss, we are "strictly limited to determining whether the trial judge's underlying findings of

fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Williams*, 362 N.C. 628, 632 (2008). *See also State v. Dorman*, 225 N.C. App. 559, 618 (2013).

"The decision that defendant has met the statutory requirements of N.C.G.S. § 15A-954(a)(4) and is entitled to a dismissal of the charge against him is a conclusion of law." *Williams*, 362 N.C. at 632. "Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal." *CP&L v. City of Asheville*, 358 N.C. 512, 517 (2004).

III. Analysis

The trial court dismissed the assault of a female charge against Defendant pursuant to G.S. 15A-954(a)(4), which states that:

The court on motion of the defendant must dismiss the charges stated in a criminal pleading if it determines . . . [t]he defendant's constitutional rights have been flagrantly violated *and* there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution.

(Emphasis added.) "As the movant, [the] defendant bears the burden of showing the flagrant constitutional violation and . . . irreparable prejudice to the preparation of his case." *Williams*, 362 N.C. at 634. For the reasoning below, we conclude the trial court erred by granting Defendant's motion to dismiss the charge against him.

In its order, the trial court found each of the two State witnesses had acted

inappropriately during their respective testimonies.

We first address the trial testimony of the first witness called by the State, the alleged victim. The alleged victim testified she was at the bar with a friend; she observed Defendant (whom she did not know) acting drunk; she and her friend went outside but then returned; after returning, she was sitting at a table with Defendant and others; and Defendant, unprovoked, punched her in her face.

At times during her testimony, she recounted statements made by others at the bar, which drew hearsay objections from Defendant's counsel. The trial court sustained the objections and instructed this witness on several occasions *not* to testify about what others might have said at the bar, sometimes after sending the jury out of the courtroom. In its order dismissing the charge, the trial court found as follows concerning the alleged victim's testimony:

[The prosecutor] called [the alleged victim] as his first witness during the State's case-in-chief. [The alleged victim] attempted to testify to inadmissible hearsay evidence. The Court advised [the alleged victim] that her testimony was improper and ordered [her] not to provide any testimony that someone stated who was not present during the hearing. Even after the Court asked [her] if she understood the Court's order, she consistently disobeyed the Court and became combative.

The Court excused the jury from the courtroom and explained to [the alleged victim] that her behavior was inappropriate. The Court again ordered [her] to comply with the Court's ruling on at least five separate occasions. After each occurrence, the Court gave curative instructions to the jury.

* * *

The Court brought the jury back into the courtroom and [the alleged

victim] continued to provide inadmissible hearsay testimony when [the prosecutor] asked the next question.

The Court excused the jury again and addressed [the alleged victim's] conduct because her conduct disrupted the court proceedings, impaired the respect due a court [sic] during proceedings, disobeyed and interfered with the court's order, and impaired the respect due to the Court.

We note that after dismissing the charge against Defendant, the trial court held the alleged victim in contempt for willfully violating its directive about testifying concerning inadmissible hearsay.

We have reviewed the transcript from the witness's testimony and conclude some findings by the trial court in its dismissal order are not supported by the evidence and the testimony otherwise did not implicate G.S. 15A-954(a)(4): The testimony did not violate Defendant's constitutional rights, nor did the testimony prejudice Defendant at all in the preparation of his case.

As found in the trial court's order, the trial court sustained hearsay objections by Defendant's counsel during the witness's testimony, as explained below.

The witness's testimony covers approximately 44 pages of the transcript, from page 53 to page 96.

From page 53 to page 59, the witness testified she went to the bar with a friend and began talking with a man named Carlos who was at the bar with Defendant. She testified that during her conversation with Carlos she noticed Defendant was acting intoxicated. Her first "hearsay" violation occurred when she then testified she

observed Defendant shoving another bar patron:

[Prosecutor] Can you paint a picture for the jury of what you were seeing when you turned around?

[Witness] Yes. I saw [Defendant] going, like (indicating), trying to push one of them or shove the other one, and the other one had a drink in his hand and he was, Whoa, like, what are you doing? And his friend was, like, . . . trying to back his friend that got shoved a little bit [by Defendant]. So that's when [my friend] grabbed Carlos and was, like, Hey, come get your friend [referring to Defendant]. Your friend is tripping. That's what she said. She said, Your friend is tripping.

[Defense Attorney] Objection.

[The Court] Sustained. Whenever you hear the word "objection," you can stop talking.

[Witness] I didn't hear him.

[The Court] All right. So at this point, remain quiet until you hear the next question.

The trial court sustained the objection, but without explaining to the witness the concern about her testimony. The State did not challenge the ruling. We note, though, it does not appear from the context that the witness was offering the friend's statement *to prove the fact* that Defendant "was tripping," but she was simply testifying to what she was observing. Indeed, a third party's out-of-court statement recounted during a witness's trial testimony is hearsay only when the statement is being offered "to prove the truth of the matter asserted." N.C.G.S. § 8C-1, Rule 801(c) (emphasis added). The fact that Defendant "was tripping" would potentially mitigate Defendant's culpability. In any event, the friend's statement, if inadmissible hearsay,

was not prejudicial to Defendant, as the statement had nothing to do with the alleged victim's later testimony that Defendant, later in the evening, punched her in the face.

The second "hearsay" statement by the alleged victim occurred on page 61 of the transcript, when she testified that the bar owner kicked out the patron who had been shoved and the patron's friend:

[Prosecutor] Do you know [the bar owner's] relationship with [Defendant]?

[Witness] From what I heard from my friends, I heard they were, like--

[Defense Attorney] Objection.

[The Court] Sustained.

[Witness] -- best friends or something.

[The Court] All right. When you hear the word "objection," you need to stop talking. Do you hear me; yes or no?

[Witness] Yes.

[The Court] All right. Next question, please.

It is true that the alleged victim's statement here that her friends had told her the bar owner was a friend of Defendant was being offered for the truth of the matter, that is, to prove the bar owner and Defendant were friends, a fact to the alleged victim did not have personal knowledge. The trial court, correctly, sustained this objection. Notwithstanding, the statement was not prejudicial to Defendant. That is, whether the bar owner was Defendant's friend or not had no bearing on the determination of whether he punched the alleged victim in the face later that evening.

The third “hearsay” statement occurred a page later, on page 62, where the witness recounted how Defendant was trying to order more alcohol after the last call:

[Witness] After that, they had called ‘last call’ for the drinks. So we were already done drinking, me and [my friend] were done drinking, but [Defendant] still wanted to drink, so he went up to the bar.

[Prosecutor] Did you notice anything about [Defendant’s] demeanor or behavior when he was at the bar?

[Witness] Yes. He kind of, like, told the bartender, like, I want another drink, and the bartender was like, we’re closing. It’s already last call. You cannot get anything to drink. So he goes, like, I spilled my drink, and the bartender was, like--

[Defense Attorney] Objection.

[Witness]-- no.

[Defense Attorney]-- to anything the bartender said.

[The Court] Sustained. All right. So you cannot say anything that anyone else said. Thank you. Next question, please.

The alleged victim’s statements here are not hearsay, as the bartender’s statements were not being offered by the alleged victim for the truth of the matter asserted. The alleged victim was merely recounting how Defendant was being denied more alcohol. In any event, the bartender’s statements were not prejudicial to Defendant’s ability to offer any defense to the charge that he had punched the alleged victim in the face.

The fourth “hearsay” statement occurred a page later, on page 63. The alleged victim recounted how she and others left the bar while Defendant was still inside and why she returned to the bar where she would later be punched in the face by

Defendant:

[Prosecutor] What's the next interaction you had with that group of people?

[Witness] When we were out the door, me and my friend[,] [the bar owner] was, like, Hey, I need you guys' help. That's what [the bar owner] told me and my friends.

[Defense Attorney] Objection, Your Honor.

[The Court] Sustained. As I mentioned, you cannot say anything that someone else said. Only answer the questions being asked.

[Defense Attorney] Move to strike, Your Honor.

[Prosecutor] Your Honor. I would argue that that was for the effect it has on her.

[Short bench conference]

[The Court] The objection is sustained. You are to disregard anything that anyone else said that is not testified to in this action at this time. Thank you so much.

Again, the bar owner's statement was not being offered for the truth of the matter, to prove the bar owner needed help. Rather, it was offered, as the State argued, to show why the alleged victim ended up back inside the bar.

The alleged victim then testified at length about how, once back inside the bar, she was allegedly punched in the face by Defendant. Some 20 pages later, on page 83 of the transcript, the alleged victim offered her fifth "hearsay" statement, the bar owner's reaction to Defendant punching the alleged victim:

[Prosecutor] Did you see [Defendant] stumble or fall when he hit you?

[Witness] [No] He just got right back up. Like, he got up. I just

remember getting punched and then that's when [the bar owner] grabbed him back, like, What are you doing, or Whoa.

[Prosecutor] And did you say anything to him at that time?

[Defense Attorney] Objection, anything that [the bar owner] had said.

[Judge directs the jury to leave the courtroom, after which the judge admonishes the alleged victim for violating the court's directive not to testify about what others may have said. The alleged victim states that she understands and will follow the judge's instructions. The judge warns the alleged victim that she may be held in contempt.]

[The Court] Okay. Please be advised, ma'am, if you continue to speak about someone that said something that's not present, I will hold you in contempt. Have I made myself clear?

[The Witness] Well, I'm just confused.

[The Court] I need you to listen to me. I didn't ask you for your comments. At this point if you cannot answer the question I provided to you, I will hold you in contempt. These are questions, which means I didn't ask for commentary. I need you to respond to questions, so, therefore, it's a yes-or-no question. Do you understand the Court when I say to you, if you continue to say things that are not - - for people that are not present, I will hold you in contempt; yes or no?

[The Witness] Yes.

The bar owner's exclamations, "What are you doing" and "Whoa," are not hearsay. These statements were not offered to prove any matter asserted by the bar owner, as the bar owner was not asserting anything. Rather, they were offered to show the bar owner's reaction to Defendant's alleged punch of the alleged victim's face.

In any event, at this point, the jury was called back into the courtroom whereupon the prosecutor continued his direct examination. The alleged victim made

her sixth “hearsay” statement to the first question after the jury returned, as found by the trial court in its dismissal order. Specifically, the prosecutor’s first question to the alleged victim after the jury returned was, “After [Defendant] punched you in the face, what did you do?” She responded, “I told [the bar owner] if I could call the police or call someone, and he said, ‘No.’ ”

The trial court again sustained defense counsel’s objection to the bar owner’s statement that the witness should not call the police. Though in its order, the trial court “found” that, by making this statement, the alleged victim was “continu[ing] to provide inadmissible hearsay,” we conclude the statement was not being offered for the truth of the matter asserted. The alleged victim was simply explaining why she did not call the police. In any event, the statement, even if inadmissible, in no way was prejudicial to Defendant’s preparation of his case.

At this point, however, the judge removed the jury again. The alleged victim apologized and stated she was simply trying to answer the question the prosecutor asked her, to which the trial court told her to be quiet. The prosecutor then argued that the bar owner’s statement was not hearsay but was elicited for the effects that the statement had on the alleged victim’s actions.

Whether the alleged victim, indeed, engaged in contemptuous behavior, as found by the trial court, is not before us. The trial court’s directive to the alleged victim may have been a little overbroad, in that the court directed the alleged victim not to testify about *any* statement she heard at the bar, as not all out-of-court

statements are inadmissible hearsay. Indeed, it appears most of the complained-of statements were admissible, as they were not being offered for the truth of the matter asserted. But we also understand the trial judge's challenge of explaining, in layman terms, that a witness is not to offer the statements of others which would constitute inadmissible hearsay. And it is unclear from the transcript whether this witness acted willfully in not following the trial court's directives. Indeed, the last complained-of statement—the bar owner's statement that the alleged victim is not to call the police—was directly responsive to the prosecutor's question as to what she did after being punched.

In sum, we conclude that none of the findings regarding the testimony by the alleged victim provide any support for the trial court's order dismissing the assault on a female charge against Defendant under G.S. 15A-954(a)(4).

We now turn to the trial court's findings concerning the second State witness, the arresting officer. It must be noted that Defendant had been charged for an alleged assault he committed in a private home earlier in the evening, prior to going to the bar. The following day, the arresting officer served a warrant on Defendant for that assault. Defendant, however, was not charged for the bar incident until months later.

In any event, prior to the trial in this present matter, Defendant was acquitted in a separate trial for the other alleged assault. As a result, prior to the trial in this present matter, the trial court granted Defendant's motion in limine, directing the State not to offer any evidence concerning the other assault charge.

However, during the arresting officer's testimony, when asked how he came to know Defendant, he stated he first came in contact with Defendant when he served a warrant on Defendant the day after the bar incident (which was also the day after the other incident for which Defendant had been acquitted). The officer did not elaborate what the warrant was for.

Defense counsel immediately objected. The prosecutor responded explaining he was simply trying to elicit testimony about the conversation the officer had with Defendant the day after the bar incident. Defense counsel, though, moved for the assault on a female charge be dismissed, quoting G.S. 15A-954(a)(4) and contending "there is no remedy but to dismiss the prosecution." The State argued, however, that the trial court should, alternatively, give the jury a curative instruction, as the officer only mentioned a "warrant." The State further argued it would be hard to conceive that the jury would connect the mention of a "warrant" to another assault, as the jury would not know anything about the other assault incident. Defense counsel, though, argued the jury would be left to speculate what the warrant was about, suggesting the jury may speculate the warrant was for something as egregious as a first-degree murder charge. The trial court granted the motion to dismiss.

In its written dismissal order, the trial court found that since defense counsel had pointed out to the jury in its opening that the warrant for the assault on a female charge was not served for many months, the trial court determined in its order "[i]t is obvious that [the officer] was not speaking about the warrant in [the present case]"

but about some other case, being the other assault. The trial court further found the officer's statement violated the trial court's motion in limine. Based on the officer's "warrant" statement and the "hearsay" statements by the alleged victim, the trial court determined Defendant's constitutional rights had been flagrantly violated and that he had suffered irreparable prejudice based on the violations.

We conclude the trial court did not err in holding the officer's reference to a "warrant" violated its prior order granting Defendant's motion in limine.

We, further, conclude, however, the trial court erred by granting Defendant's motion to dismiss the charge as a remedy in this case under G.S. 15A-954(a)(4). In so holding, we note our Supreme Court has construed the statute to cover pre-trial misconduct. *State v. Williams*, 362 N.C. 628, 639 (2008) ("[T]he statute under which we are granting relief contemplates injuries occurring pretrial, during defendant's 'preparation of his case.' N.C.G.S. § 15A-954(a)(4) (2007)."). But, here, the "misconduct" occurred during trial.

We further note our Supreme Court's guidance that a dismissal under G.S. 15A-954(a)(4) is "drastic relief" and "a motion to dismiss under its terms should be granted sparingly." *State v. Joyner*, 295 N.C. 55, 59 (1978). Indeed, in this case, the trial court could have simply given a curative instruction to the jury to disregard the officer's reference to a "warrant," perhaps even explaining that the warrant was for a misdemeanor for which Defendant was acquitted, without detailing the nature of the crime. *See State v. Clark*, 298 N.C. 529, 531 (1979) (holding that a reference by

an officer during testimony to the defendant's "police file" is harmless where the trial court promptly gives a curative instruction).

Finally, even assuming a curative instruction would have been inadequate in this case, we conclude a dismissal was not warranted. Rather, the trial court did not make adequate findings to show why a mere mistrial would not have been a more appropriate remedy. Indeed, "[a] dismissal pursuant to [G.S.] 15A-954(a)(4) is not appropriate in every case in which there has been a flagrant constitutional violation. The violation must have also caused 'such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution.'" *Dorman*, 225 N.C. App. at 622 (quoting *Williams*, 362 N.C. at 639). But, here, there is nothing to suggest Defendant's ability to prepare his case was irreparably prejudiced.

IV. Conclusion

Many of the trial court's findings are supported by the evidence, while others are not. We conclude the trial court's findings supported by the evidence do not support its conclusion that Defendant met his burden of proving how he was irreparably prejudiced in the preparation of the case under G.S. 15A-954(a)(4). Therefore, we reverse the order granting the motion to dismiss and remand the matter for further proceedings which may include a new trial.

REVERSED AND REMANDED.

Judge GRIFFIN concurs.

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Opinion of the Court

Judge ARROWOOD concurs in result only by separate opinion.

ARROWOOD, Judge, concurring in result.

I concur in the result reversing the trial court's order and remanding the matter for further proceedings. I write separately to emphasize that, while the trial court was correct to identify issues with the State's witness presentation, lesser sanctions were available.

Under N.C.G.S. § 15A-954(a)(4), dismissal is required where “[t]he defendant's constitutional rights have been flagrantly violated and there is such irreparable prejudice to the defendant's preparation of his case that there is no remedy but to dismiss the prosecution.” “This statutory provision ‘contemplates drastic relief,’ such that ‘a motion to dismiss under its terms should be granted sparingly.’” *State v. Williams*, 362 N.C. 628, 634 (2008).

N.C.G.S. § 15A-954(a)(4) was enacted to embody our Supreme Court's holding in *State v. Hill*, 277 N.C. 547 (1971). *State v. Williams*, 362 N.C. 628 (2008); *see also* Official Commentary to N.C.G.S. § 15A-954(a)(4). In *Hill*, the defendant was arrested and later charged with operating a vehicle while intoxicated. *Hill*, 277 N.C. at 548–50. Following his arrest, the defendant was denied his constitutional rights to counsel and to obtain a witness on his behalf. *Id.* As a result, it was impossible for the defendant to have a disinterested witness observe his condition or obtain a blood test, thereby depriving the defendant of “his only opportunity to obtain evidence which might prove his innocence.” *Id.* The Court held that the defendant was so

prejudiced by the violation of his constitutional right that his pretrial motion to dismiss should have been granted. *Id.* at 555–56.

Our Supreme Court held that there was similar prejudice to a defendant's preparation of his case in *State v. Williams*. 362 N.C. at 640. There, the defendant "requested specific items of evidence that were favorable to him and material to his defense, but the State failed to provide that evidence, destroyed it, and then stated that it could not be produced." *Id.* at 636. The Court held that due to the destruction of the evidence, "any trial commenced against defendant would not comport with our notions of due process." *Id.* at 639 (emphasis added). Accordingly, "no other remedy exist[ed] but for the assault charge against [the] defendant to be dismissed." *Id.* at 640.

In my view, the errors and violations to defendant's constitutional rights in the instant case are distinct from those in *Hill* or *Williams* such that defendant was not irreparably prejudiced in the preparation of his case and there were remedies other than dismissal that were available to the trial court. The constitutional violations found by the trial court resulted in the jury hearing inadmissible and prejudicial testimony. It did not permanently deprive defendant of any evidence or strategy in his defense. Rather, the prejudice resulting from the improper testimony was limited only to the current trial and the effect on the jury. Such prejudice can be, and routinely has been, remedied by lesser sanctions than dismissal, namely curative instructions or a mistrial.

Generally, “ ‘where inadmissible evidence is published to the jury, a trial court may cure this error by instructing the jury not to consider that specific evidence.’ ” *State v. Hauser*, 271 NC App 496, 499 (2020) (quoting *State v. Hines*, 131 N.C. App. 457, 462–63 (1998)). For example, in *State v. McDougald*, 279 N.C. App. 25, 30 (2021), this Court considered the prejudicial nature of inadmissible testimony similar to the officer’s testimony in the instant case. There, a detective testified that the photograph of the defendant used in compiling a photographic lineup was obtained from the jail archives, which the defendant argued was prejudicial because it informed the jury that he had previously been arrested. *Id.* The trial court immediately issued instructions to the jury to not consider the detective’s response as evidence. *Id.* We held that the instructions were sufficient to cure any prejudice to the defendant resulting from the detective’s testimony. *Id.*

That said, in some cases “ ‘the cautionary admonitions of the trial judge are ineffective to erase from the minds of a jury the effects of prejudicial errors.’ ” *State v. Hauser*, 271 N.C. App. 496, 499 (2020) (quoting *State v. Hines*, 131 N.C. App. 457, 463 (1998)). Even if curative instructions are insufficient, as the trial court found here, the improper admission of evidence can also be remedied by mistrial. *See State v. Aycoth*, 270 N.C. 270, 273 (1967). A mistrial may be granted “ ‘when 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.’ ” *Hauser*, 271 N.C. App. at 498 (quoting *State v. Warren*, 327 N.C.

364, 376 (1990)); N.C.G.S. § 15A-1061 (2025). Notably, a mistrial, as opposed to a dismissal, may allow for a new trial. Here, a trial by a new jury that had never heard the improper testimony by the State’s witnesses here would be free from any prejudice, making mistrial an appropriate remedy.

The trial court found that “any potential retrial due to a mistrial, was irreparably prejudiced as jeopardy had attached, thereby implicating the Double Jeopardy Clause of the Fifth and Fourteenth Amendments to the United States Constitution.” The trial court is correct that jeopardy had already attached. “There are few if any rules of criminal procedure clearer than the rule that ‘jeopardy attaches when the jury is empaneled and sworn.’ ” *State v. Courtney*, 372 N.C. 458, 463 (2019) (quoting *Martinez v. Illinois*, 572 U.S. 833, 839 (2014)). And the Double Jeopardy Clause may, in some cases, prevent a defendant from being retried following a mistrial. *See generally, State v. Schalow*, 251 N.C. App. 334 (2016).

However, I would conclude that double jeopardy would not have prevented a new trial here. “ ‘When a defendant seeks or consents to the grant of a mistrial, there is no bar to his later retrial.’ ” *Id.* at 347 (emphasis removed) (quoting *Gilliam v. Foster*, 75 F.3d 881, 893 (4th Cir. 1996)). When a defendant objects to the trial court’s declaration of a mistrial, he may be retried only if there is a “manifest necessity” for the mistrial. *Id.*; *see also State v. Grays*, 276 N.C. App. 21, 28 (2021). Relevant here, one type of manifest necessity is the necessity of doing justice. *Schalow*, 251 N.C. App. at 348. “[T]he necessity of doing justice ‘arises from the duty of the court to

guard the administration of justice from fraudulent practices’ and includes ‘the occurrence of some incident of a nature that would render impossible a fair and impartial trial under the law.’” *Id.* (quoting *State v. Crocker*, 239 N.C. 446, 450 (1954)).

Here, prior to making his motion to dismiss, defendant had considered moving for a mistrial. Had the trial court denied defendant’s motion to dismiss, it could have ordered a mistrial with defendant’s consent, in which case double jeopardy would not have prevented a retrial. Even if the trial court did not have defendant’s consent, an order for a mistrial based on manifest necessity was an available remedy and would not have prevented a retrial. Without actually deciding that manifest necessity exists here, it is clear that if the trial court considered the errors to be so “irreparably prejudicial” as to warrant dismissal, those errors would necessarily also “render impossible a fair and impartial trial under the law.” The trial court’s order provides no reason why manifest necessity would not have applied and allowed a retrial. I do recognize, as noted by the trial court, that a retrial imposes a financial and emotional burden on the defendant. However, that added burden does not erase an order of a mistrial as an available remedy.

In sum, N.C.G.S. § 15A-954(a)(4) should be applied only where there is *no* remedy but to dismiss the prosecution. Due to the nature of the errors during the trial, lesser sanctions, such as a mistrial, were available and appropriate remedies.

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ARROWOOD, J., concurring in result

Accordingly, I would conclude the trial court erred by dismissing the prosecution instead of pursuing one of those lesser sanctions.