

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-525

Filed 16 September 2026

Pender County, Nos. 21CR050774-700, 21CR050775-700, 21CR050776-700

STATE OF NORTH CAROLINA

v.

MICHAEL LEGAGE MILLER, JR., Defendant.

Appeal by defendant from judgments entered 12 December 2023 by Judge Clinton D. Rowe in Pender County Superior Court. Heard in the Court of Appeals 3 June 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Zachary K. Dunn, for the State.

Caryn Strickland, for defendant-appellant.

FLOOD, Judge.

Defendant Michael Legage Miller, Jr., appeals from the trial court's judgments entered upon a jury's verdicts finding him guilty of three counts of first degree murder. On appeal, Defendant argues the trial court erred by, first, denying Defendant's motion to suppress evidence obtained pursuant to a search warrant; second, permitting the State to impeach a witness through extrinsic evidence; third, admitting expert testimony regarding firearm toolmark identification and glass analysis; fourth, denying Defendant's request for a special jury instruction; fifth, instructing the jury that Defendant had the burden to prove third-party guilt *via*

recent possession; and sixth, entering a civil judgment for attorneys' fees without affording Defendant an opportunity to be heard. Defendant also argues that the cumulative effect of these alleged errors requires reversal. After careful review, we conclude that Defendant received a fair trial free from prejudicial error. The trial court erred, however, by entering a civil judgment for attorneys' fees without affording Defendant an opportunity to be heard; thus, we vacate the attorneys' fees orders and remand this matter to the trial court for a new hearing.

I. Factual and Procedural Background

On 8 November 2020, police officers of the Pender County Sheriff's Office were dispatched to the residence of William Coley and Destiny Greene to assist an "unknown-age female that was seven months pregnant[,] later identified as Greene, in cardiac distress. Police Officer Enoch Cottle was one of the first officers to respond to the scene. When he went inside the house to check on Greene, Officer Cottle observed Greene lying in her bed and suffering from "what appeared to be a gunshot wound" right above her eye. Realizing the gravity of the situation, Officer Cottle and the other officers proceeded to "[s]et a perimeter" in an effort "to preserve the crime scene as a whole and protect anything within that area" until detectives arrived.

Shortly thereafter, Detective Roy Brandenburg arrived at the scene. As he was walking around the exterior of the residence, he noticed a "thick" blood trail, "a few inches wide[,] leading from a muddy area "[o]utside of the driveway" into the woods. Detective Brandenburg followed the trail and found Coley's body "laid off into the

woods. His legs were kind of bent. His arms up over his head as if he was dragged out there.” The lead detective for this case, Detective Eric Short, noticed Coley was not wearing shoes, but his socks “were clean and dry.” He also noticed two sets of shoeprints: one set of shoeprints appeared to have the brand name Nike stamped on them and the other shoeprints “appeared to be consistent with . . . the boots the first responders had on.” Inside the residence, law enforcement officers collected a shell casing that was lying near Greene’s arm. According to the autopsy reports, Greene and Coley both died from gunshot wounds to their heads.

The case had no leads for more than six months. Finally, on 5 May 2021, Bureau of Alcohol, Tobacco, Firearms and Explosives Agent Carey Hunter received a tip indicating Defendant was responsible for the triple homicide and that his nephew—later determined to be William Smith—was possibly involved. That same day, Detective Short received “information that a white Malibu” owned by Defendant’s girlfriend, Kim Buentello, was possibly involved.

Law enforcement officers seized Buentello’s Malibu later that evening and transported it to the Brunswick County Sheriff’s Office to do an M-Vac test on the front passenger seat. An M-Vac test is “basically a vacuum cleaner that has a filter in it. It injects something like a . . . sterile solution . . . and it’ll suck that [solution] up through a filter.” “[T]his filter basically collects all of the fluid and filters it through -- you let the filter dry and they can then test at the Lab to see if DNA is present

inside the filter itself.” The results of the M-Vac test indicated Coley had been inside of the car.

Officers also performed two presumptive tests for blood: one test on the black rubber seal that goes around the door, and the second test on the “support arm for the dash to the ceiling.” Both tests were negative. Detective Short then sprayed luminol—another type of presumptive test for blood—on “the front passenger seat and front passenger floorboard[,]” but there was no reaction. While they were processing the car, officers noticed “the molding around the doorjamb appeared to have been taken off and replaced” and how the front passenger window looked like it had been replaced. Detective Short also found and collected shards of glass in the bottom of the passenger side door.

Detective Short’s investigation revealed that Defendant lived part-time with his half-brother, Bilal Jenkins. On 7 May 2020, the SWAT team executed a warrant to search Jenkins’s residence. At the time, Jenkins, Smith, Smith’s then-girlfriend, and Katrina Best, Jenkins’s then-wife, were at the house. Law enforcement arrested Jenkins for absconding parole and detained Smith for his alleged involvement.

Law enforcement interviewed Jenkins later that day; during his interview, Jenkins identified Defendant as the perpetrator and told law enforcement officers, *inter alia*, they would find a barrel buried in the ditch next to his house and broken glass in the woods. Officers returned to Jenkins’s residence and recovered glass

fragments from the driveway. Officers using dogs and metal detectors searched extensively for the barrel but did not find one.

Law enforcement also interviewed Smith. At that time, Smith did not tell law enforcement what had happened because he was “scared for [his] life.” He was questioned sometime after that, but, again, he did not tell law enforcement officers what had happened. Smith did not tell law enforcement officers what had happened until he was arrested in October of 2021. During this interview, Smith confessed to being present at the scene and asserted that Defendant had shot and killed Coley and Greene.

On 11 May 2021, law enforcement officers obtained a warrant for Defendant’s arrest. Two days later, officers traced Defendant’s and Buentello’s phones to Room 200, rented by Buentello, at the Motel 6 in Jacksonville, North Carolina. Detective Short obtained a warrant to search the room and to seize “[a]ny [c]ell phones located” within Room 200. Law enforcement officers subsequently executed the warrants, arrested Defendant, searched the room, and seized Defendant’s and Buentello’s cell phones. A search of Buentello’s phone revealed someone had conducted a Google search for “car glass replacement” on 8 November 2020.

Defendant was indicted on 30 August 2021 for two counts of first degree murder of Coley and Greene, and on 31 January 2022, via a superseding indictment, for first degree murder of Greene’s unborn child. Defendant filed four pretrial motions to (1) “preclude any witness from being declared an ‘expert’ in the presence of the jury

and to preclude the use of the word ‘expert’ to refer to witnesses in front of the jury”; (2) suppress the evidence seized from Buentello’s cell phone; (3) exclude the testimony of the State’s expert firearms witness; and (4) exclude the testimony of the State’s expert glass analyst. All four motions were denied.

In October of 2022, while Defendant was in jail, Jenkins sent him a letter apologizing for “lying” about him. Jenkins also signed an affidavit stating that he had lied during his May 2021 interview because he was afraid Best would be charged with trafficking drugs. On 14 October 2023, Detective Short questioned Jenkins about the letter and the affidavit. During this interview, Jenkins told Detective Short that he wrote the letter because his older brother, Antonio Jenkins, was threatening him.

Defendant’s case came on for trial on 30 October 2023. Smith’s trial testimony tended to show that Defendant had woken Smith up around 6:00 a.m. on 8 November 2020 and asked him to go with him to rob someone. The pair entered Buentello’s Malibu, and Defendant drove to Coley’s and Greene’s residence. When they arrived, Defendant instructed Smith to “go stand beside the house” because Coley would “get skeptical” if he saw Smith. Defendant knocked on the front door until Coley came to the door. Smith heard Coley tell Defendant “to hold on[,]” and then observed Defendant re-enter Buentello’s Malibu. Smith then saw Coley come out of the house with a “Glock with an extended clip” in his hand and enter the front passenger side of the car with Defendant.

According to Smith, “less than a minute after Coley got in and shut the door,

[he saw] the car start shaking and tussling” and then he “heard a gunshot.” Defendant got out of the car and told Smith to come get the body out of the car, but Smith refused, so Defendant “got [Coley] out of the car . . . and then drug [sic] him to the woods.” Smith then watched Defendant go into the house and heard a “lady screaming” followed by a gunshot. Defendant came out with a black Draco, handed it to Smith, told him to put it in the car, went back into the house, and grabbed “a white basket full of shoes.” They got to the “end of the road” before Defendant turned the car around and went back to retrieve a pair of “socks he had around his hand.” When they left Coley’s house, Defendant told Smith to keep his “mouth shut. Because if . . . it gets out, I’ll get the death penalty and you’ll get life.”

Smith further testified that, upon return to Jenkins’s residence, he “told [Jenkins] what happened. That’s when [Jenkins] insisted that we need to burn everything” The three men burned the clothes Smith and Defendant had been wearing as well as the shoes and basket. Jenkins then instructed Defendant “[h]e needed to clean the car out . . . with Windex. Anything with ammonia takes out the blood.” By Smith’s account, Defendant “cleaned the car and then 20 minutes later he went . . . halfway down the dirt road . . . from [Jenkins’s] house, and finished breaking the window out.” Smith also observed Jenkins and Best take pictures with the Draco firearm.

Smith testified that he sold the Draco to a man named Torrence Shaw for three “bricks” of heroin, and Defendant sold the Glock with the extended magazine to

Nashahala King. On 10 May 2021, Detective Short spoke with King, who told him to go to the “address of 516 North Queen Street” and to “look under a traffic cone. And he would . . . have the weapon placed under the traffic cone.” Detective Short found a “Glock 19, 9-millimeter handgun with an aftermarket barrel under the traffic cone.” Later, King, who passed away before trial, signed an affidavit stating that he had “never bought, sold, given, or received a 9-millimeter handgun from” Defendant or “acted as an intermediary.”

The State called Jenkins to testify about what he had told Detective Short during his interviews, but Jenkins testified that, although he remembered Detective Short questioning him, he could not recall the details of the interviews. When the State asked him if looking at the videos of those interviews would refresh his recollection, Jenkins responded, “[i]t wouldn’t.” Jenkins went on to explain that it would be impossible to refresh his memory because he has a disability that affects his memory.

Thereafter, the trial court, at the State’s request, declared Jenkins to be a hostile witness and allowed the State to ask leading questions about the statements Jenkins made during his interviews. The State then asked Jenkins whether he remembered telling Detective Short that he (1) saw an AK-47 in the backseat of Buentello’s Chevy Malibu; (2) had observed Defendant driving the Malibu and having a Glock 9mm handgun with an extended magazine on his person in November 2020; and (3) encountered Smith “coming up to [him] in an early morning November of 2020

crying and distraught.” Jenkins responded that he did not recall telling Detective Short any of those things. After an off-the-record bench conference, the trial court excused the jury, and Defendant argued that Jenkins had “responded several times that he does not recall what statements he made to Detective Short,” and that the State’s attempt “to cross-examine [Jenkins] as to specific things that . . . he said in that interview is just an attempt to get those hearsay statements before the jury.” In rebuttal, the State argued that Jenkins’s testimony was vital to the State’s case because “Jenkins is the only witness in this case who is not an interested witness that is aware of a confession of” Defendant. The trial court ultimately allowed the State to continue asking Jenkins about the statements he made during his police interviews; Jenkins could not recall most of the prior statements.

Over defense counsel’s objections, the trial court then allowed the State to play videos of Jenkins’s interviews—which were cumulatively over an hour long—for the limited purpose of impeaching or corroborating his credibility. After each video, the trial court gave the pattern jury instruction on impeachment or corroboration by prior statement.

The State then called Kristin Crawford, a North Carolina State Crime Laboratory forensic scientist in the trace evidence and glass comparison analysis section, to testify about her analysis of the glass shards recovered from Buentello’s Malibu and those shards of glass recovered from the driveway of Jenkins’s residence. After being qualified as an expert witness over Defendant’s objection, Crawford

testified, opining that the glass recovered from the driveway of Jenkins's residence was "consistent with" the glass recovered from the passenger door of the Malibu. Additionally, Crawford testified that both samples of glass were "consistent with automobile glass," and they "could have shared a common origin." On cross examination, Crawford acknowledged that modern automobile glass is mass produced, "production runs" can last for a period of years, and modern testing methods "can make it difficult to discriminate between" different samples of glass.

The State also called Jennifer Slish, a North Carolina State Crime Laboratory forensic science manager in the firearms section, and tendered her as an expert witness. Slish had examined the Glock pistol Detective Short found under the traffic cone, a shell casing obtained after a controlled test firing of the Glock, and the shell casing officers had recovered from next to Greene's body. Slish opined that both shell casings shared class characteristics consistent with being fired from a Glock, were "fired by the same firearm," and "were fired" from the recovered Glock 9mm handgun.

On cross examination, Slish testified that firearms comparisons are considered "subjective pattern-matching methodology," and it could be "possible for [her] subjective determination to be different from that of another subjective determination of another firearms examiner." Slish also disclosed that she had been removed from casework and retrained on class characterizations because of an error she made in a different case.

At the charge conference, the trial court asked if all parties had received “a copy of the proposed jury instructions” and referenced “one change . . . to [Defendant’s] proposal.” Both parties agreed to the instructions, and the trial court instructed the jury that the State was seeking to prove Defendant’s guilt *via* the doctrine of recent possession. Additionally, the trial court explained that Defendant was seeking to establish guilt of a third party by the doctrine of recent possession and instructed the jury that Defendant had “the burden of proof [to establish] beyond a reasonable doubt” a third party was guilty *via* the doctrine of recent possession.

After two days of deliberations, the jury was deadlocked 10-2, and two of the jurors were crying. The trial court then gave an *Allen* charge.¹ The jury ultimately returned a verdict finding Defendant guilty of first degree murder under the first degree felony murder rule. Defendant was determined to be a prior record level IV with eleven points, and the trial court sentenced Defendant to three consecutive life sentences without the possibility of parole. Defendant appealed.

II. Jurisdiction

Defendant appeals from his criminal judgments, from which Defendant’s counsel gave timely oral notice of appeal. N.C. R. App. P. 4(a)(1) (2025). As such, this Court possesses jurisdiction over Defendant’s appeal from his criminal judgments

¹ An *Allen* charge “is an instruction that may be given to a deadlocked or ‘hung’ jury which encourages the jury to continue deliberating and attempt to reach a verdict, while also emphasizing that each individual member should not abandon their honest convictions.” *State v. Powell*, 921 S.E.2d 603, 609 n.1 (N.C. Ct. App. 2025) (emphasis omitted).

pursuant to N.C.G.S. §§ 7A-27(b)(1) and 15A-1444(a) (2025).

Defendant also appeals from the trial court’s civil judgment for attorneys’ fees. Defendant’s counsel, however, failed to file a timely written notice of appeal, thereby violating Rule 3 of the North Carolina Rules of Appellate Procedure. *See State v. Patterson*, 269 N.C. App. 640, 642 (2020) (“We have previously determined that judgments entered against a defendant for attorney fees and appointment fees constitute civil judgments, which require a defendant to comply with Rule 3(a) of the North Carolina Rules of Appellate Procedure when appealing from those judgments. . . . Failure to give timely notice of appeal in compliance with . . . this rule of the North Carolina Rules of Appellate Procedure is jurisdictional, and an untimely attempt to appeal must be dismissed.” (citation modified)).

Contemporaneously with Defendant’s opening brief, Defendant filed a petition for writ of *certiorari* (“PWC”) to remedy the defects in the notice of appeal. On 13 March 2026, this Court dismissed the PWC “without prejudice to petitioner’s right to refile with sufficient supporting documents[.]” In accordance with this Court’s order, Defendant filed the amended PWC as well as an accompanying conditional motion for remand. Defendant’s amended PWC includes an appendix with three Capital Case Fee Application Order for Payment Judgment Against Indigent forms signed by a superior court judge.

Although Defendant’s Rule 3 violation prohibits this Court from hearing his appeal from the attorneys’ fees orders, this Court possesses discretion to consider the

matter by granting a PWC. *See State v. McCoy*, 171 N.C. App. 636, 638 (2005). A PWC requires the petitioner to show that, (1) “merit or that error was probably committed below[,]” and (2) “extraordinary circumstances” justify the issuance of the writ. *Cryan v. Nat’l Council of YMCAs of the U.S.*, 384 N.C. 569, 572 (2023). This Court has previously issued a writ of *certiorari* where the litigant failed to appeal a civil judgment for attorneys’ fees because the litigant’s argument was meritorious. *See, e.g., State v. Friend*, 257 N.C. App. 516, 522 (2018).

As discussed further below, in Section III. G., Defendant’s argument on the issue of attorneys’ fees is meritorious. *See id.* Thus, we grant Defendant’s PWC. In the exercise of our discretion, we also dismiss Defendant’s conditional motion for remand.

III. Discussion

Defendant argues that the trial court erred by: (A) denying Defendant’s motion to suppress evidence obtained pursuant to a search warrant authorizing the seizure of all cellular phones; (B) permitting the State to impeach Jenkins through extrinsic evidence; (C) admitting expert testimony regarding firearm toolmark identification and glass analysis; (D) denying Defendant’s request for a special jury instruction; and, (E) instructing the jury that Defendant bore the burden of proof in the defense theory of third-party guilt through recent possession. Defendant also argues that (F) the cumulative effect of these alleged errors requires reversal. Lastly, Defendant argues that (G) the trial court erred by entering a civil judgment for attorneys’ fees

without affording Defendant an opportunity to be heard. We discuss each argument in turn.

A. Motion to Suppress

Defendant argues that the trial court erred by denying his motion to suppress evidence obtained from Buentello's cell phone because the warrant was facially overbroad, and the supporting affidavit recklessly omitted material facts. The State argues that this Court should reject Defendant's arguments because Defendant has no standing to challenge the seizure of Buentello's cell phone.

When reviewing the denial of a motion to suppress, this Court's "scope of review is 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. Rogers*, 388 N.C. 453, 458 (2025) (citation modified). "[T]he trial court's conclusions of law are fully reviewable on appeal." *State v. Malone*, 373 N.C. 134, 145 (2019).

The Fourth Amendment of the Constitution of the United States, as incorporated and made applicable to the states through the Fourteenth Amendment, protects "the people" from "unreasonable searches and seizures[.]" U.S. Const. amend. IV. "A person's right to be free from unreasonable searches and seizures is a personal right, and only those persons whose rights have been infringed may assert the protection of the Fourth Amendment." *State v. Mlo*, 335 N.C. 353, 377 (1994).

Thus, as a general rule of law, “one may not object to a search or seizure of the premises or property of another.” *State v. Greenwood*, 301 N.C. 705, 707 (1981); *State v. Taylor*, 298 N.C. 405, 415 (1979) (“[A] defendant may not object to the introduction of evidence which has been obtained in violation of the rights of some third party.”).

“[T]he lack of property rights in an invaded area is not necessarily determinative of whether an individual’s Fourth Amendment rights have been infringed.” *State v. Alford*, 298 N.C. 465, 471 (1979). Whether a defendant has standing to challenge the legality of a search or seizure turns on whether he has a legitimate expectation of privacy in the invaded place. *Id.* A person’s legitimate expectation of privacy “has two components: (1) the person must have an actual expectation of privacy, and (2) the person’s subjective expectation must be one that society deems to be reasonable.” *State v. Wiley*, 355 N.C. 592, 602 (2002) (citation omitted). The burden of demonstrating standing is on the defendant. *Taylor*, 298 N.C. at 415.

Here, Defendant asserts that he had a reasonable expectation of privacy in the hotel room and had standing to contest the seizure of Buentello’s cell phone. We agree with Defendant that he, as a guest of the hotel, had a reasonable expectation of privacy in the room. *See State v. McBennett*, 191 N.C. App. 734, 738 (2008) (“No less than a tenant of a house, or the occupant of a room in a boarding house, a guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures.” (citing *Stoner v. California*, 376 U.S. 483, 490 (1964))). Defendant, however,

has failed to show that he had a reasonable expectation of privacy in Buentello's cell phone. *See Rawlings v. Kentucky*, 448 U.S. 98, 104–05 (1980) (holding that a defendant had no reasonable expectation of privacy in his companion's purse); *State v. Jordan*, 40 N.C. App. 412, 414–15 (1979) (holding that the defendant did not have a reasonable expectation of privacy in the pocketbook of a passenger in his vehicle). Consequently, we conclude that Defendant lacked standing to challenge the seizure of Buentello's cell phone, and the trial court did not err by denying Defendant's motion to suppress.

B. Jenkins's Police Interviews

Next, Defendant argues that the trial court erred by allowing the State to impeach and corroborate Jenkins's testimony by playing his police interviews as extrinsic evidence, denying the defense any meaningful opportunity for confrontation. Specifically, Defendant argues that (1) the admission of Jenkins's testimony was "mere subterfuge" to elicit inadmissible hearsay under the "guise of impeachment," and (2) the police interviews were improperly admitted as extrinsic evidence in violation of Rule 403.

1. "Mere Subterfuge"

Defendant argues that the trial court violated Rule 607 by allowing the State to call Jenkins as a "mere subterfuge to get before the jury evidence not otherwise admissible" under the "guise of impeachment."

This Court's "standard of review for rulings made by the trial court pursuant

to Rule 607 of the North Carolina Rules of Evidence is abuse of discretion.” *State v. Banks*, 210 N.C. App. 30, 38 (2011) (citing *State v. Covington*, 315 N.C. 352, 356–57 (1986)). “A trial court may be reversed for abuse of discretion only upon a showing that its ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision.” *State v. Riddick*, 315 N.C. 749, 756 (1986) (citations omitted).

Rule 607 of the North Carolina Rules of Evidence permits any party, including the party calling the witness, to attack the credibility of the witness. N.C.G.S. § 8C-1, Rule 607 (2025). One way a party may discount the credibility of a witness is by impeaching him with “proof of prior conduct or statements which are inconsistent with the witness’s testimony.” *State v. Riccard*, 142 N.C. App. 298, 302 (2001) (citation omitted). Extrinsic evidence of a prior inconsistent statement may be used to impeach a witness if the matter is material; conversely, “a prior inconsistent statement may not be used to impeach a witness if the questions concern matters which are only collateral to the central issues.” *State v. Najewicz*, 112 N.C. App. 280, 288 (1993). Material matters are those “‘matters which are pertinent and material to the pending inquiry,’ while ‘collateral’ matters are those which are irrelevant or immaterial to the issues before the court.” *Riccard*, 142 N.C. App. at 302 (quoting *State v. Whitley*, 311 N.C. 656, 663 (1984)).

When permissible, prior unsworn inconsistent statements “may only be used to impeach the witness’[s] credibility; they may not be admitted as substantive

evidence.” *State v. Miller*, 330 N.C. 56, 63 (1991). “[T]he difficulty with which a jury distinguishes between impeachment and substantive evidence and the danger of confusion that results has been widely recognized.” *State v. Hunt*, 324 N.C. 343, 349 (1989) (citations omitted). A widespread concern is that the State, in a criminal case, will take “advantage of the jury’s likely confusion regarding the limited purpose of impeachment evidence” and abuse Rule 607 by calling “a witness that it knew would not give it useful evidence, just so it could introduce hearsay evidence against the defendant in the hope that the jury would miss the subtle distinction between impeachment and substantive evidence—or, if it didn’t miss it, would ignore it.” *Id.* at 349–50 (quoting *United States v. Webster*, 734 F.2d 1191, 1192 (1984)). Thus, while Rule 607 “allows a party to impeach its own witness on a material matter with a prior inconsistent statement, impeachment is impermissible where it is used as a mere subterfuge to get evidence before the jury which is otherwise inadmissible.” *Riccard*, 142 N.C. App. at 304 (citing *Hunt*, 324 N.C. at 349).

“[T]o prevent abuse of Rule 607, impeachment should only be allowed when ‘[c]ircumstances indicating good faith and the absence of subterfuge’ are present.” *State v. Lanier*, 165 N.C. App. 337, 352 (2004) (quoting *Hunt*, 324 N.C. at 350). Circumstances indicating good faith and the absence of subterfuge include facts showing “the witness’s testimony was extensive and vital to the government’s case, that the party calling the witness was genuinely surprised by his reversal, or that the trial court followed the introduction of the statement with an effective limiting

instruction[.]” *Hunt*, 324 N.C. at 350 (citation modified). Not all of these circumstances need to be present in order to determine whether impeachment was permissible. *See State v. Goins*, 232 N.C. App. 451, 457 (2014) (“We need not decide whether the record shows the State was genuinely surprised by [the witness’s] reversal because the testimony was critical to the State’s case.”).

In *Hunt*, our Supreme Court addressed the admissibility of a witness’s prior statements as impeachment evidence after the witness repeatedly denied making such statements and determined that her prior statements were impermissibly admitted as substantive evidence. 324 N.C. at 346, 348. In reaching this conclusion, the Supreme Court first reasoned that it was improper to impeach the witness by allowing a police officer to testify as to the substance of the witness’s prior statements because she had denied making such statements. *Id.* at 348–49. This reasoning is in accordance with the well-settled rule “that extrinsic evidence of prior inconsistent statements may not be used to impeach a witness where the questions concern matters collateral to the issues.” *Id.* (citing *State v. Greene*, 296 N.C. 183 (1978)); *see also Najewicz*, 112 N.C. App. at 289 (“[O]nce a witness *denies* having made a prior inconsistent statement, the State may not introduce the prior statement in an attempt to discredit the witness; the prior statement concerns only a *collateral matter*, *i.e.*, whether the statement was ever made.”).

After determining that the trial court had erred by allowing the officer to testify as to the substance of the witness’s prior statements, our Supreme Court

scrutinized the circumstances to determine if the witness's trial testimony "was critical to the [S]tate's case or . . . introduced altogether in good faith and followed by effective limiting instructions." *Hunt*, 324 N.C. at 351. When analyzing the importance of the witness's testimony, our Supreme Court compared her testimony to a witness's testimony in *United States v. DeLillo*, 620 F.2d 939 (2d Cir. 1980). In *DeLillo*, the witness's testimony was deemed vital to the government's case as it corroborated several essential aspects of the government's case. *DeLillo*, 620 F.2d at 946. Conversely, in *Hunt*, the value of the witness's testimony was deemed minuscule as most of her testimony, with the exception of "brief testimony about the color of her bicycle, which another of the [S]tate's witnesses thought he had seen [the] defendant riding, . . . consisted entirely of responding to challenges to her credibility and bias." *Hunt*, 324 N.C. at 351. In scrutinizing the facts to determine whether the State was surprised by the witness's turn, our Supreme Court observed evidence in the record indicating the State knew prior to trial that the witness would refuse to testify consistently with her prior statements. *Id.* Lastly, as the Supreme Court determined, any confusion on the part of the jury was further compounded by the ambiguity of the trial court's limiting instruction. *Id.* at 351–52. Notably, although the trial court had indicated to the jury that it was to consider the witness's prior statements only for impeachment purposes, the trial court failed to instruct the jury accordingly when the statements were read to and denied by the witness or when the statements were reiterated by the officer as extrinsic evidence. *Id.* Accordingly, the Court held that the

statements were erroneously admitted as impermissible hearsay evidence offered under the guise of impeachment. *Id.*

Hunt is distinguishable from the instant case for three reasons. First, unlike the witness in *Hunt*, Jenkins never denied making these statements; rather, Jenkins testified he could not recall the exact statements he made during his interviews. Consequently, his statements were not a collateral matter, and extrinsic evidence of those statements could be used to impeach Jenkins. *See Riccard*, 142 N.C. App. at 303 (“[W]here there is testimony that a witness fails to remember having made certain parts of a prior statement, denies having made certain parts of a prior statement, or contends that certain parts of the prior statement are false, our courts have allowed the witness to be impeached with the prior inconsistent statement.”).

Second, there is no evidence in the instant case indicating the State knew prior to trial that Jenkins would refuse to answer questions while on the stand. In *Hunt*, the prosecutor specifically asked the witness if she had told police officers prior to trial that she was not going to testify. *Hunt*, 324 N.C. at 351. This question, in the Supreme Court’s words, “made evident the fact that the [S]tate was on notice before the trial began that their witness would not reiterate the unsworn statements it wished the jury to hear.” *Id.* Here, Defendant argues the State knew Jenkins was not going to cooperate while on the stand because the State had to obtain a material witness order to force Jenkins to testify at trial. A material witness order may be issued if there are “reasonable grounds to believe that the person whom the State . .

. desires to call as a witness in a pending criminal proceeding possesses information material to the determination of the proceeding and may not be amenable or responsive to a subpoena at a time when his attendance will be sought.” N.C.G.S. § 15A-803 (2025). The material witness order, at most, indicates that Jenkins was reluctant to appear at Defendant’s trial to testify, but it does not show that the State knew prior to trial that Jenkins would not cooperate while on the stand. *See State v. Gabriel*, 207 N.C. App. 440, 450 (2010) (concluding the fact that a witness failed to appear to testify at trial prior to the issuance of a show cause order did not tend to show the State knew the witness would refuse to cooperate); *see also State v. Williams*, 341 N.C. 1, 11 (1995) (holding the fact that the witness had met with the defendant in jail and had ridden home with the defendant’s mother did not indicate the State had knowledge that the witness would change her testimony). Third, unlike the trial court in *Hunt*, the trial court here instructed the jury regarding impeachment or corroboration by prior statement immediately after both interviews were published to the jury.

Thus, after considering the circumstances in this case, we conclude that the State’s attempt to impeach Jenkins with the prior inconsistent statements he made during his police interviews was not a mere subterfuge to admit, as impeaching evidence, otherwise inadmissible hearsay.

2. Rule 403

Defendant further contends that the admission of Jenkins’s police interviews

violated North Carolina Rule of Evidence 403.

“Whether or not to exclude evidence under Rule 403 of the Rules of Evidence is a matter within the sound discretion of the trial court and its decision will not be disturbed on appeal absent a showing of an abuse of discretion.” *State v. Jones*, 176 N.C. App. 678, 687 (2006) (citing *State v. McCray*, 342 N.C. 123, 131 (1995)). “[U]nder the abuse of discretion standard, our role is not to surmise whether we would have disagreed with the trial court, but instead to decide whether the trial court’s ruling was so arbitrary it could not have been the result of a reasoned decision.” *State v. Nova*, 295 N.C. App. 686, 689 (2024) (citation omitted).

“Evidence offered to show a defect in the witness’[s] truthfulness or veracity is relevant for impeachment.” *State v. Withers*, 111 N.C. App. 340, 347 (1993). Such relevant evidence is generally admissible. See N.C.G.S. § 8C-1, Rule 402 (2025). Under Rule 403 of the North Carolina Rules of Evidence, however, relevant impeachment evidence may nevertheless “be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.C.G.S. § 8C-1, Rule 403 (2025).

“The Commentary to Rule 607 speaks directly to . . . the use of [Rule 403] as a check on the improper use of such [impeachment] evidence: ‘The impeaching proof must be relevant within the meaning of Rule 401 and Rule 403 and must in fact be impeaching.’” *Hunt*, 324 N.C. at 353 (citation omitted). When applying Federal Rule

of Evidence 403 in similar instances, federal courts first determine the testimony's impeachment value by examining the witness's testimony "as a whole[.]" *see United States v. Logan*, 121 F.3d 1172, 1175 (8th Cir. 1997), and then "weigh the testimony's impeachment value against its tendency to prejudice the defendant unfairly or to confuse the jury[.]" *United States v. Ince*, 21 F.3d 576, 580 (4th Cir. 1994).² Unfair prejudice to the defendant may be ameliorated with an effective limiting instruction. *See State v. Barnett*, 223 N.C. App. 450, 456 (2012) ("Limiting instructions mitigate the danger of unfair prejudice to the defendant." (citing *State v. Beckelheimer*, 366 N.C. 127, 133 (2012))); *see also State v. Montgomery*, 291 N.C. 235, 244 (1976) ("We assume, as our system for administration of justice requires, that the jurors in this case were possessed of sufficient character and intelligence to understand and comply with this instruction by the court."); *accord DeLillo*, 620 F.2d at 947 ("Any prejudice to [the defendant] traceable to introduction of the tape recording must be considered minimal, since the evidence came in with a limiting instruction which, it must be assumed, was followed by the jury.").

In *Hunt*, after reviewing the witness's testimony as a whole, our Supreme

² While this Court is not bound by federal case law, we find federal courts' analysis and holdings concerning the interplay of Rules 607 and 403 instructive in this case. *See State v. Woods*, 136 N.C. App. 386, 390 (2000) ("[W]ith the exception of the United States Supreme Court, federal appellate decisions are not binding upon either the appellate or trial courts of this State."); *cf. Hunt*, 324 N.C. at 350 ("Although this Court is not bound by the federal courts' interpretation of Rule 607, we are wise to be guided by it, and the unanimous recognition by the federal circuit courts of the unfairness and potential prejudice of permitting hearsay evidence to be considered substantively under the guise of impeachment evidence is impressive.").

Court determined that her prior statements should have been excluded pursuant to Rule 403. *Hunt*, 324 N.C. at 353. Although the witness's prior statements were probative in determining her credibility, the probative value of her prior statements was relatively low because, as mentioned above, the witness's testimony at trial was of little value to the State's case. *Id.* Additionally, the prejudicial effect of the unequivocally inculpatory statements, coupled with the doubt surrounding other inculpatory evidence, "far outweighed" the need to show the witness was not credible. *Id.* Thus, the statements should have been excluded under Rule 403. *Id.* at 354.

Here, Defendant has failed to show that the probative value of the impeachment evidence was substantially outweighed by the risk of unfair prejudice. In considering Jenkins's testimony as a whole, his testimony, unlike the witness's testimony in *Hunt*, corroborated several essential areas of the State's case. For example, Jenkins testified that he (1) is Defendant's half-brother; (2) knows Buentello, his "old roommate[,]"; (3) recalls seeing the "passenger side front seat window" of Buentello's car broken at some point; (4) remembers seeing an AK-47 "in [his] household" at some point; (5) remembers a SWAT team serving a warrant at his residence; and (6) heard Defendant saying in November of 2020 that he "got a wild one out of the way[.]" On the other side of the 403 balancing scale, Jenkins's prior statements were undoubtedly prejudicial to Defendant because of the inculpatory substance. *See id.* at 353; *see also State v. Coffey*, 326 N.C. 268, 281 (1990) ("Evidence which is probative of the State's case

necessarily will have a prejudicial effect upon the defendant; the question is one of degree.”). Any prejudice to Defendant attributable to these prior statements, however, was mitigated by the accompanying limiting instruction. *See Barnett*, 223 N.C. App. at 456; *DeLillo*, 620 F.2d at 947. In weighing the importance of the credibility of Jenkins’s testimony against any unfair prejudice to Defendant attributable to Jenkins’s prior statements, we conclude that any unfair prejudice, when combined with the limiting instruction, did not *substantially* outweigh the probative value of the impeachment evidence.

But even if we were to disagree with the trial court’s ruling, this Court cannot substitute its own judgment for that of the trial court under the abuse of discretion standard. *See Nova*, 295 N.C. App. at 689. Rather, our scope is limited to determining “whether the trial court’s ruling was so arbitrary it could not have been the result of a reasoned decision.” *See id.* Here, the trial court—after hearing arguments from both parties and reviewing the videos of Jenkins’s police interviews—ordered the State to redact certain portions of the videos to curtail any unfair prejudice to Defendant. The trial court also specifically limited its use in its instructions to the jury. *See State v. Miller*, 197 N.C. App. 78, 91 (2009) (“Where the trial judge gives a limiting instruction with regard to the evidence in dispute, it follows that he recognized the potential for prejudice and exercised his discretion in permitting its introduction. This Court will not intervene where the trial court properly appraises the probative and prejudicial values of evidence under Rule 403.” (citation modified)). Thus, given that the trial

court redacted certain portions of the videos and gave two effective limiting instructions, meaning “that [the trial judge] recognized the potential for prejudice and exercised his discretion in permitting its introduction[.]” *see id.*, we are unable to conclude that the trial court failed to apply Rule 403 correctly.

In sum, Defendant has failed to show that the trial court’s process or admission of this evidence constitutes an abuse of discretion.

C. Expert Testimony

Next, Defendant argues that the trial court erred in admitting expert testimony on firearm toolmark analysis and on glass analysis.

Rule 702(a) governs the admission of expert witness testimony. “Whether expert witness testimony is admissible under Rule 702(a) is a preliminary question that a trial judge decides pursuant to Rule 104(a).” *State v. McGrady*, 368 N.C. 880, 892 (2016). Based on its findings, the trial court then determines “whether the proffered expert testimony meets Rule 702(a)’s requirements of qualification, relevance, and reliability.” *Id.* at 893. “This ruling will not be reversed on appeal absent a showing of abuse of discretion.” *Id.* (citation and internal quotation marks omitted).

In 2000, Federal Rule of Evidence 702 was amended to reflect the standards the Supreme Court of the United States articulated in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and clarified in *General Electric Co. v. Joiner*, 522 U.S. 136 (1997), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

Fed. R. Evid. 702, Advisory Committee’s Note to 2000 amendment. In *Daubert*, the Supreme Court of the United States charged trial judges with the responsibility of “gatekeeping” unreliable expert testimony. 509 U.S. at 597. The 2000 amendment affirmed “the trial court’s role as gatekeeper and provides some general standards that the trial court must use to assess the reliability and helpfulness of proffered expert testimony.” Fed. R. Evid. 702, Advisory Committee’s Note to 2000 amendment.

In 2011, our General Assembly amended North Carolina Rule 702(a) to reflect the federal rule. Five years later, in *State v. McGrady*, our Supreme Court interpreted that the 2011 amendments to North Carolina Rule of Evidence 702(a) were enacted to “adopt[] the federal standard for the admission of expert witness testimony articulated in the *Daubert* line of cases[,]” and further held that “the meaning of North Carolina’s Rule 702(a) now mirrors . . . the amended federal rule.” 368 N.C. at 884. Notably, however, North Carolina “Rule 702(a), as amended in 2011, does not mandate particular ‘procedural requirements for exercising the trial court’s gatekeeping function over expert testimony.’” *Id.* at 893 (quoting Fed. R. Evid. 702 Advisory Committee’s Note to 2000 amendment).³

³ Federal Rule of Evidence 702(d) was amended in 2023 to “emphasize that each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert’s basis and methodology.” Fed. R. Evid. 702 Advisory Committee’s Note to 2023 amendment. The Advisory Committee’s Note to the 2023 amendment further explains how the 2023 amendment, effective 1 December 2023, relates to the trial judge’s gatekeeping role:

Judicial gatekeeping is essential because just as jurors may be unable, due to lack of specialized knowledge, to evaluate meaningfully the

As amended, North Carolina Rule 702(a) provides that expert testimony must satisfy a three-part test to be admissible. *State v. Corbett*, 376 N.C. 799, 824 (2021). First, the “proposed testimony must be based on ‘scientific, technical or other specialized knowledge’ that” is relevant such that it “will assist the trier of fact to understand the evidence or to determine a fact in issue.” *McGrady*, 368 N.C. at 889 (quoting N.C.G.S. § 8C-1, Rule 702(a)). “Second, the witness must be ‘qualified as an expert by knowledge, skill, experience, training, or education.’” *Id.* Third, the testimony must be reliable. *Id.* at 890. The proposed testimony is deemed reliable if it meets the three-pronged reliability test: “(1) The testimony is based upon sufficient facts or data. (2) The testimony is the product of reliable principles and methods. (3)

reliability of scientific and other methods underlying expert opinion, jurors may also lack the specialized knowledge to determine whether the conclusions of an expert go beyond what the expert’s basis and methodology may reliably support.

The amendment is especially pertinent to the testimony of forensic experts in both criminal and civil cases. Forensic experts should avoid assertions of absolute or one hundred percent certainty—or to a reasonable degree of scientific certainty—if the methodology is subjective and thus potentially subject to error. In deciding whether to admit forensic expert testimony, the judge should (where possible) receive an estimate of the known or potential rate of error of the methodology employed, based (where appropriate) on studies that reflect how often the method produces accurate results. Expert opinion testimony regarding the weight of feature comparison evidence (i.e., evidence that a set of features corresponds between two examined items) must be limited to those inferences that can reasonably be drawn from a reliable application of the principles and methods. This amendment does not, however, bar testimony that comports with substantive law requiring opinions to a particular degree of certainty.

Id. North Carolina has not adopted the 2023 amendments to Federal Rule of Evidence 702(d). See N.C.G.S. § 8C-1, Rule 702(a) (2025).

The witness has applied the principles and methods reliably to the facts of the case.”
N.C.G.S. § 8C-1, Rule 702(a)(1)–(3) (2025).

Several factors may be helpful when determining the reliability of an expert witness’s testimony, including the following:

(1) “whether a theory or technique . . . can be (and has been) tested”; (2) “whether the theory or technique has been subjected to peer review and publication”; (3) the theory or technique’s “known or potential rate of error”; (4) “the existence and maintenance of standards controlling the technique’s operation”; and (5) whether the theory or technique has achieved “general acceptance” in its field.

McGrady, 368 N.C. at 890–91 (quoting *Daubert*, 509 U.S. at 593–94). The primary focus of the three-pronged reliability test “is on the reliability of the witness’s principles and methodology, not on the conclusions that they generate[.]” *Id.* at 890 (citations and internal quotation marks omitted).

1. Firearm Toolmark Analysis

Defendant argues that the trial court erred in admitting Slish’s testimony that she “was able to determine” the Glock 9mm handgun recovered from under the traffic cone had fired the shell casing found near Greene’s body, contending the Firearm and Toolmark Analysis employed lacks foundational validity and is unreliable.

Defendant presented the trial court with several studies challenging the reliability of the Firearm and Toolmark Identification Analysis. Notably, defense counsel presented the trial court with a 2014 “black-box stud[y,]” known as the Ames I Study, concluding that the false-positive rate with regards to shell-casing analysis

was 1.52 percent; a 2016 report prepared by the President’s Council of Advisors on Science and Technology (“PCAST”), which found that “firearms analysis currently falls short of the criteria for foundational validity, because there is only a single appropriately designed study[, the Ames I Study,] to measure validity and estimate reliability”; and a 2020 study, known as the Ames II study, which was undertaken in direct response to the 2016 PCAST Report. Defendant also presented three experts to explain the flaws within the field of Firearm and Toolmark Identification Analysis and why those principles were not reliably applied here.

During a lengthy *voir dire*, Slish explained how the North Carolina State Crime Lab utilizes the Theory of Identification from the Association of Firearms and Toolmarks Examiners (“AFTE”) as a methodology when conducting their forensic analysis of firearms. According to Slish, when conducting their forensic analysis, examiners consider three characteristics of the cartridge case: class characteristics, individual characteristics, and sub-class characteristics. Class characteristics, as described by Slish, are those “characteristics that are determined prior to manufacture[[]]” e.g., the “caliber; the number of lands and grooves on a projectile; or on a cartridge case, say, the type of detail on the breech[-]face or the type of firing pin, overall shape.” Once the examiner has finished examining the class characteristics, the examiner proceeds to examine the individual characteristics of the firearm. The examiner uses a “comparison microscope” to conduct a “side-by-side comparison” of the projectiles to look for “individual characteristics from the

manufacturing process that are left.” Slish admitted that this part of the analysis is subjective, and the conclusions depend on the examiner’s training and experience. While examining for the individual characteristics, examiners also consider the subclass characteristics, which are, as Slish described, “characteristics that are incidental to manufacture that could carry over from one firearm to the next.”

Slish then explained how she applied the methodology to this case when comparing the two cartridges and the Glock 9mm handgun. Based upon her analysis, Slish concluded that the two cartridges were shot from the Glock 9mm handgun. Slish further explained that her report underwent an administrative peer review and a technical peer review. The technical peer reviewer also concluded that the two cartridges were shot from the Glock 9mm handgun.

During cross examination, Slish acknowledged that the error rate for the field of firearms and toolmarks is unknown. She further acknowledged that the studies and the PCAST Report called the subjective analysis into doubt, but she opined that the studies were flawed. She also admitted that she had made an error in 2014 in another case, which caused her to be temporarily removed from casework, and another error in 2022.

This Court addressed the reliability of an expert witness’s testimony regarding the field of firearm and toolmark identification in *State v. Miller*, 275 N.C. App. 843 (2020). In *Miller*, the defendant argued—at trial and on appeal—that the expert’s testimony was not based on reliable principles or methods, and that the expert did

not apply those principles or methods reliably to the facts of that case. *Id.* at 848. The defendant relied on “case law from other jurisdictions as well as [] reports from the National Research Council” and PCAST to argue that “those cases and reports support the broad proposition that ballistics identification is ‘not reliable’ and that federal courts have begun limiting ‘the nature and scope of permissible ballistics opinion testimony under Rule 702.’” *Id.* at 849. Despite these reports calling the Firearm and Toolmark Identification Analysis into question, this Court held that the trial court’s decision was a reasoned decision based on the expert’s *voir dire* testimony regarding the specific procedures, her analysis, her error rate of zero percent, and the peer review process. *Id.* Thus, this Court concluded that the trial court did not abuse its discretion by allowing the expert witness to testify as to her conclusions based on her Firearm and Toolmark Identification Analysis. *Id.* at 849–50.

Similar to *Miller*, Defendant presents the same arguments on appeal that he made at trial. *See id.* at 849. The trial court conducted a lengthy *voir dire* with both parties questioning Sligh regarding, *inter alia*, her training and experience, which methodology she used, how she utilized that methodology in this case, and the peer review process. Defendant argues that *Miller* is distinguishable because “the defense called no witnesses and did not develop the factual record that exists here” and because, “since *Miller*, the only comprehensive study of repeatability and reproducibility in this field (known as Ames II or Monson), has shown that ‘examiners disagreed with other examiners between 22 percent and 69 percent of the time’ and

‘disagreed with themselves between 14 percent and 38 percent of the time.’” Although no witness testified regarding the reliability of the Firearm and Toolmark Identification Analysis in *Miller*, there was evidence indicating “that some scholars have questioned the reliability of this sort of testimony[.]” *Id.* at 849. The trial court weighed that evidence against the witness’s “explanation of her principles and methods and her testimony about why she believed them to be reliable.” *Id.* That is precisely what the trial court did here: it considered the studies and the testimony of three purported expert witnesses called by Defendant and weighed those against Slish’s testimony and ultimately determined that Slish’s testimony was both reliable and properly applied. Moreover, even though Defendant presented evidence indicating that the Firearm and Toolmark Analysis is inherently subjective, defense counsel could—and did—present this evidence at trial to challenge Slish’s credibility. *See Daubert*, 509 U.S. at 596 (“Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.”); *State v. Fernanders*, 293 N.C. App. 695, 705 (2024) (“[I]t was within the purview of the jury to determine the weight and credibility of the expert’s opinion.”).

Therefore, based on our review of the Record, we cannot say the trial court’s decision was “manifestly unsupported by reason and could not have been the result of a reasoned decision.” *See Riddick*, 315 N.C. at 756.

2. Glass Analysis

Defendant also argues that the trial court abused its discretion by allowing Crawford to testify that the broken glass found near Jenkins's house was "consistent" with the glass found inside Buentello's car. Defendant specifically argues that Crawford's testimony was unreliable because the State failed to conduct a physical match analysis, which Crawford herself had described as the "only definitive way" to link a questioned item to a known sample.

The trial court conducted a *voir dire* and allowed the parties to question Crawford about her training and experience in trace evidence, the methodology utilized by the State Crime Laboratory, and its application to the glass samples involved in this case. During this *voir dire*, Crawford explained that she is trained in "physical examination, elemental composition, and refractive-index analysis[.]" When analyzing glass, Crawford first analyzes the physical properties of the glass, i.e., "thickness; whether or not it's isotropic; what type of glass it is; if it's float glass, which means it would fluoresce under a UV light; and then, any type of characteristics it might have: any markings on it or sometimes glass will have, like, words written in the corner." Once she completes the physical properties analysis, she "continue[s] on to elemental composition" to determine what elements make up the glass fragment.

To determine the elemental composition, glass analysts, like Crawford, use an XRF and a micro-XRF. Crawford elaborated on the differences between XRF and a micro-XRF:

[T]he difference between the XRF and the micro XRF is just sample size, for the most part. The regular XRF required a much bigger sample size, which we don't generally see in casework. So we asked to get a micro-XRF, which uses very -- very small sample size, which is more conducive to forensic casework. The micro-XRF is basically going to strike that glass fragment with an X-ray beam, a very focused X-ray beam that comes from a rhodium tube. It's then going to excite the atoms that are present inside that glass fragment. When it does that, one of the inner-shell electrons of the atoms is going to -- it'd be ejected. So now these atoms are very ex[c]ited. Well, the atoms don't want to be excited; they want to be relaxed. So an electron from an outer-shell orbit is going to move to the inner-shell orbit so that the atom can be relaxed. However, the outer-shell electrons have higher energy than what is needed for the inner-shell electrons. So there's an excess of energy there. When that electron moves down, there's extra energy. And that extra energy has to go somewhere. That energy is ejected as a fluorescent photon. That photon is what's detected by the silicon drift detector. And then, it is visualized on the spectra as a peak.

Crawford also explained that the State Crime Laboratory's technical procedure "for how to use the micro-XRF is based on ASTM International Standard Test Method E2926, which gives you a lot of information on how to start using your micro-XRF, how to validate it, how to verify it, how to -- how many samples to run, you know, things like that." Once she finishes the elemental composition analysis, she does a refractive index to measure "how light bends as it passes from one medium to the other." After completing these tests, Crawford compares all of the data and generates a laboratory report, which is peer reviewed by another qualified analyst.

Crawford testified that she utilized this methodology in this case and

concluded the glass recovered from Jenkins’s residence “is consistent in physical properties, refractive index, and elemental composition with the glass” from Buentello’s Chevy Malibu. She explained that this conclusion was only an “unqualified opinion” because “[t]he characteristics that [she was] comparing during a glass analysis are all class characteristics. In order to say definitively that these two were once from, you know, the same source, [she] would need some sort of individualizing characteristics, like a physical match.” As explained by Crawford, however, a physical match—which is very similar to “putting a puzzle back together”—was not performed in this case because the Pender County Sheriff’s Office declined the service.

After the *voir dire* of Crawford, Defendant called an expert witness, David Ahearn, who testified that a micro-XRF analysis suffered from a “lack of sensitivity,” and opined there were inconsistencies in the samples examined by the State Crime Lab. Based on his analysis of the trace elements, Ahearn concluded that two samples collected in this case were “distinctly different[,]” and Crawford’s analysis was “misleading.”

Despite some evidence challenging the reliability of the micro-XRF analysis, Crawford’s testimony is sufficient to satisfy the reliability requirements of Rule 702(a). Crawford explained that the micro-XRF, the methodology set by the ASTM E2926, and the methodology for the refractive index have been studied and are generally accepted by the forensic-science community. She acknowledged that some

studies have published error rates of micro-XRF but further explained there is no “accepted error rate . . . published in ASTM[.]” Accordingly, the trial court did not abuse its discretion in admitting Crawford’s testimony regarding the glass comparison. *See Riddick*, 315 N.C. at 756.

Notably, at trial, Crawford did not testify that the glass recovered from Buentello’s Malibu matched the glass from Jenkins’s residence to a definitive degree. Rather, Crawford testified that the glass samples from the two sources were “consistent with” each other and could have shared a common origin. Moreover, during cross examination, Crawford acknowledged that modern automobile glass is mass produced and that modern testing methods “can make it difficult to discriminate between” different samples of glass. It was within the purview of the jury to determine the weight and credibility of the expert’s opinion. *See Fernanders*, 293 N.C. App. at 705.

In sum, the trial court did not abuse its discretion by allowing Crawford to testify that the broken glass found near Jenkins’s house was “consistent” with the glass found in Buentello’s car.

D. Special Jury Instruction

Defendant next argues that the trial court erred by denying his request to modify the North Carolina Pattern Jury Instruction regarding the testimony of an expert witness. Specifically, Defendant argues that the trial court improperly “judicially vouch[ed]” for the expert witnesses by refusing his requested jury

instruction to state that the admitted expert witnesses merely “purport[ed] to have specialized skill or knowledge.”

To support his argument, Defendant relies on the ABA Civil Trial Practice Standards; *United States v. Johnson*, 488 F.3d 690 (6th Cir. 2007); and the Advisory Committee Notes on Federal Rule of Evidence 702. The ABA Civil Trial Practice Standards state: “The court should not, in the presence of the jury, declare that a witness is qualified as an expert to render an expert opinion, and counsel should not ask the court to do so.” Relying on this practice standard, the Sixth Circuit Court of Appeals, in *Johnson*, disapproved the practice of trial judges certifying a witness as an expert because doing so “lends a note of approval to the witness that inordinately enhances the witness’s stature and detracts from the court’s neutrality and detachment.” *Johnson*, 488 F.3d at 697. The Advisory Committee Note to Federal Evidence Rule 702 echoes the same sentiment:

The use of the term “expert” in the Rule does not, however, mean that a jury should actually be informed that a qualified witness is testifying as an “expert.” Indeed, there is much to be said for a practice that prohibits the use of the term “expert” by both the parties and the court at trial. Such a practice “ensures that trial courts do not inadvertently put their stamp of authority” on a witness’s opinion, and protects against the jury’s being “overwhelmed by the so-called ‘experts’.”

Fed. R. Evid. 702, Advisory Committee Note to 2000 amendment (citation omitted).

Here, Defendant, relying on the above, urged the trial court to modify the pattern jury instruction on expert testimony, N.C.P.I. Crim. 104.94, to exclude the

word “expert” in reference to any witness. The trial court denied Defendant’s request and instructed the jury in accordance with N.C.P.I. Crim. 104.94, which correctly states North Carolina law regarding expert witnesses. As part of this instruction, the trial court instructed the jury it had “heard evidence from witnesses who have testified as expert witnesses[,]” but also made it clear to the jury that the jurors remained the “sole judges of the credibility of each witness[,]” and they were not required to accept any expert opinion as binding.

Nothing in the trial court’s instruction intimated any disputed fact had been established or otherwise conveyed “judicial endorsement” of the admitted witnesses’ testimony. Rather, the instruction accurately reflects North Carolina law governing expert testimony and the jury’s ultimate role as the “sole judges of the credibility of each witness.” *See State v. Coble*, 63 N.C. App. 537, 541 (1983) (“The credibility of a witness is a matter for the jury to decide.”).

Therefore, the trial court did not err by denying Defendant’s request for the special jury instruction.

E. Jury Instruction on Third-Party Guilt

Defendant argues that the trial court committed structural error and plain error by instructing the jury that Defendant “had the burden to prove ‘beyond a reasonable doubt’ its theory of third-party guilt via recent possession.” Additionally, Defendant argues that this failure to object was *per se* ineffective assistance of counsel. The State, on the other hand, contends that Defendant failed to preserve this

issue for appellate review because any error, structural or plain, was invited error.

It is well settled that “a defendant who invites error has waived his right to all appellate review concerning the invited error, including plain error review.” *State v. Barber*, 147 N.C. App. 69, 74 (2001) (citing *State v. Roseboro*, 344 N.C. 364, 373 (1996)). As such, we review the State’s contention first to determine whether Defendant has waived appellate review.

1. Invited Error

Even assuming error occurred, the State asserts that Defendant waived appellate review of this issue because Defendant’s counsel invited the error.

Under N.C.G.S. § 15A-1443(c), “[a] defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct.” N.C.G.S. § 15A-1443(c) (2025). Thus, “a party cannot complain of a charge given at his request, or which is in substance the same as one asked by him.” *State v. Miller*, 289 N.C. App. 429, 432–33 (2023) (citations omitted).

“In prior cases examining invited error in jury instructions, we have reviewed a broad spectrum of attorney participation in crafting those instructions.” *State v. Plotz*, 295 N.C. App. 404, 414 (2024), *writ denied*, 916 S.E.2d 251 (N.C. 2025), and *disc. rev. denied*, 916 S.E.2d 255 (N.C. 2025). “At one end of that spectrum, error is clearly invited when the defendant requested the instruction at issue[.]” *Id.* (citing *State v. McPhail*, 329 N.C. 636, 643–44 (1991)). At the other end of the spectrum, the invited error doctrine does not apply when trial counsel simply fails to object to

proposed jury instructions. *Id.* (citing *State v. Harding*, 258 N.C. App. 306, 311 (2018)).

At oral argument, the parties acknowledged that the Record on Appeal is rather inconclusive regarding this issue because the charge conference was not recorded, with only objections placed on the Record. Nonetheless, the State argues that the following colloquy “makes clear that Defendant’s counsel did far more than ‘participate in’ or ‘consent to’ the jury instruction at issue”:

THE COURT: Did everyone get a copy of the proposed jury instructions?

[THE STATE]: Yes, Judge.

THE COURT: And I’ll remove the titles and all. It’s just easier if there’s corrections for me to find them. I normally send a copy back with the - - to the jury. Does anybody have any corrections, changes, or additions? I know I made one change to your proposal.

[DEFENDANT’S COUNSEL]: And, Judge, I have no objection to that change. But just for - - in the interest of making the record complete, I was gonna mark what I had submitted yesterday.

THE COURT: Okay. Very good.

[DEFENDANT’S COUNSEL]: What number am I on, Madam Clerk?

MADAM CLERK: 14.

[DEFENDANT’S COUNSEL]: I’m marking this as Defendant’s Exhibit 14 which was the modified jury instruction I provided to the Court. But I don’t have any objection to the correction the Court made.

THE COURT: And, basically, just so it's in the record, it was the last paragraph or sentence of the proposed instruction that read, if you find these things from the evidence beyond a reasonable doubt, you may consider them together with all the other facts and circumstances in deciding whether or not a third party is guilty of murder. I changed that back to the defendant because I felt like it was the jury -- just to decide if he was guilty. Not -- it don't matter if they believe whether or not the third party committed it as long as it creates a reasonable doubt in my mind.

[THE STATE]: Correct, Judge.

THE COURT: Okay. Any other corrections?

[THE STATE]: Not from the State, Judge.

[DEFENDANT'S COUNSEL]: No, Your Honor.

THE COURT: All right.

Defendant's modified jury instruction contained within Defendant's Exhibit 14 is not included in the Record on Appeal, nor could the Clerk of Superior Court of Pender County locate a copy of this document. Although it is clear that defense counsel agreed to substitute a word in a different part of the proposed instruction, it remains unclear as to whether defense counsel's modified jury instruction or the trial court's proposed jury instruction placed the burden of proof on Defendant. Consequently, this Court is unable to definitively conclude that Defendant invited this error. In the interest of justice, we assume Defendant did not invite this error, and we will consider Defendant's arguments.

2. Structural Error

Defendant argues that “[p]lacing the burden on the defense to prove third-party guilt was structural error that violated [Defendant’s] state and federal due process rights.”

“Structural error is a rare form of constitutional error resulting from ‘structural defects in the constitution of the trial mechanism’ which are so serious that ‘a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence.’” *State v. Garcia*, 358 N.C. 382, 409 (2004) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 309–10 (1991)). “The United States Supreme Court has identified only six instances of structural error to date[,]” including “constitutionally deficient jury instructions on reasonable doubt[.]” *State v. Polke*, 361 N.C. 65, 73 (2006) (citing *Sullivan v. Louisiana*, 508 U.S. 275 (1993)).

Although considered a type of constitutional error, “a defendant’s remedy for structural error is not dependent upon harmless error analysis; rather, such errors are reversible *per se*.” *Garcia*, 358 N.C. at 409. Nevertheless, “[s]tructural error, no less than other constitutional error, should be preserved at trial.” *Id.* at 410 (citations omitted). “[T]o preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C. R. App. P. 10(a)(1) (2025).

Here, during oral argument, Defendant conceded that this issue was not preserved for appellate review because Defendant’s trial counsel failed to object at

trial. Since this issue was not “raised and passed upon at trial[,]” we will not address whether the jury instructions constituted structural error. *See Garcia*, 358 N.C. at 410.

3. Plain Error

Acknowledging trial counsel’s failure to object to the jury instruction, Defendant argues that the trial court also committed plain error by instructing the jury that Defendant “had the burden to prove ‘beyond a reasonable doubt’ its theory of third-party guilt via recent possession.”

“Rule 10(c)(4) of our Rules of Appellate Procedure provides that an alleged error not otherwise properly preserved may, nevertheless, be reviewed if the defendant ‘specifically and distinctly contend[s]’ that it amounted to plain error.” *State v. Anderson*, 355 N.C. 136, 142 (2002) (quoting N.C. R. App. P. 10(c)(4)). Plain error review “is limited to errors in a trial court’s jury instructions or a trial court’s rulings on admissibility of evidence[,]” *State v. Golphin*, 352 N.C. 364, 460 (2000), and to those “truly exceptional cases[,]” *State v. Walker*, 316 N.C. 33, 39 (1986).

Under this standard, the defendant is required to not only show error, but to “bear the heavier burden of showing that the error rises to the level of plain error.” *State v. Lawrence*, 365 N.C. 506, 516 (2012) (citation omitted). “For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial.” *Id.* at 518. “To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error ‘had a probable

impact on the jury’s finding that the defendant was guilty.” *Id.* (quoting *State v. Odom*, 307 N.C. 655, 660 (1983)). “Indeed, even when the ‘plain error’ rule is applied, ‘[i]t is the rare case in which an improper instruction will justify reversal of a criminal conviction when no objection has been made in the trial court.” *Odom*, 307 N.C. at 660–61 (quoting *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977)).

Defendant specifically and distinctly contends that the trial court plainly erred by instructing the jury that the defense had the burden to prove third-party guilt via recent possession. As such, we proceed to review this issue for plain error. *See* N.C. R. App. P. 10(a)(4) (2025) (allowing a reviewing court to review certain unpreserved issues in criminal cases “when the judicial action questioned is specifically and distinctly contended to amount to plain error”); *cf. State v. Foye*, 220 N.C. App. 37, 43–46 (2012) (reviewing the defendant’s challenge to a jury instruction on reasonable doubt for structural error and plain error).

The State in this case sought to prove Defendant’s guilt through the doctrine of recent possession. “The doctrine of recent possession allows the jury to infer that the possessor of recently stolen property stole the property.” *State v. Washington*, 277 N.C. App. 576, 583 (2021) (citing *State v. Joyner*, 301 N.C. 18, 28 (1980)). This inference—which has been described as a “violent presumption”—is not conclusive, *State v. Adams*, 2 N.C. 463, 464 (1797), and “is to be considered by the jury merely as an evidentiary fact along with other evidence in the case, in determining whether the State has carried the burden of satisfying the jury beyond a reasonable doubt of the

defendant's guilt[.]" *Joyner*, 301 N.C. at 28. This inference is applicable if, and only if, the State proves that "(1) the property . . . was stolen; (2) the stolen goods were found in [the] defendant's custody and subject to his control and disposition . . . [;] and (3) the possession was recently after the larceny, mere possession of stolen property being insufficient to raise a presumption of guilt[.]" *State v. Maines*, 301 N.C. 669, 674 (1981) (citations omitted). Importantly, "[p]roof of recent possession by the State does not shift the burden of proof to the defendant but the burden remains with the State to demonstrate [the] defendant's guilt beyond a reasonable doubt." *State v. Fair*, 291 N.C. 171, 173 (1976); *see also State v. Baker*, 213 N.C. 524, 526 (1938) ("The burden of establishing the defendant's guilt beyond a reasonable doubt remains upon the State at all stages of the trial.").

"In a criminal trial the judge has the duty to instruct the jury on the law arising from all the evidence presented." *State v. Tyson*, 195 N.C. App. 327, 335 (2009) (citation omitted). "This places a duty upon the presiding judge to instruct the jury as to the burden of proof upon each issue arising upon the pleadings." *Id.* (citing *State v. Redman*, 217 N.C. 483 (1940)). A jury instruction that is confusing or "open to interpretation that the burden is upon the defendant to rebut the presumption of his guilt is erroneous." *State v. Jackson*, 4 N.C. App. 459, 462 (1969) (citation omitted).

In the instant case, the trial court correctly instructed the jury that the State had the burden to prove, beyond reasonable doubt, Defendant's guilt *via* recent possession. When the trial court instructed the jury regarding third-party guilt *via*

recent possession, however, it instructed the jury that defense had the burden of proving a third-party's guilt. As the State points out, however, North Carolina has not recognized an affirmative defense of third-party guilt *via* recent possession.⁴ Without deciding the appropriateness of this special instruction, we assume, *arguendo*, that the trial court erred by instructing the jury that Defendant had the burden to prove third-party guilt *via* recent possession because this jury instruction could have been construed as placing the burden on Defendant to rebut his presumption of innocence. *See Jackson*, 4 N.C. App. at 462.

Assuming this was error, we turn to consider whether Defendant has shown that this error was fundamental, meaning the error “had a probable impact on the jury’s finding that the defendant was guilty.” *Lawrence*, 365 N.C. at 516. That is to say, Defendant must show, “absent the error, the jury probably would have returned a different verdict.” *State v. Reber*, 386 N.C. 153, 158 (2024) (citation omitted). To show that the jury “probably would have returned a different verdict[,]” Defendant must show a different outcome “is significantly more likely than not.” *Id.* at 159.

Defendant argues that this was a fundamental error “because the court’s

⁴ Of course, it is imperative that, in every criminal case, the State has the burden to prove the identity of the perpetrator of the crime charged. *State v. Abbitt*, 385 N.C. 28, 40 (2023). Moreover, North Carolina has long recognized that a defendant may offer evidence to show that someone other than himself committed the crime charged if the evidence points “directly to the guilt of some specific person” and is “inconsistent with the defendant’s guilt.” *State v. McNeill*, 326 N.C. 712, 721 (1990). Our research, however, does not reveal any North Carolina case in which a third-party’s guilt has been used as an affirmative defense to rebut the State’s evidence identifying the defendant as the perpetrator.

instructions were not merely unclear, but explicitly instructed the jury that the *defense* had the burden to prove its theory of third-party guilt.” Defendant also suggests this was a fundamental error because, “in a case where the main dispute was the perpetrator’s identity[,]” the trial court effectively instructed the jury to decide between the State’s theory—that Defendant was the perpetrator—and the defense’s theory—that Jenkins was the perpetrator—“as if they were on equal footing.” To support his argument, Defendant relies on *State v. Tyson*, 195 N.C. App. 327 (2009).

In *Tyson*, the defendant was charged with two counts of taking indecent liberties with a child and two counts of statutory rape of N.B. *Id.* at 328–29. At trial, however, the State presented evidence indicating the defendant was unconscious when the alleged acts occurred. *Id.* at 329. The jury ultimately acquitted the defendant of the two indecent liberties charges but returned verdicts finding the defendant guilty of both statutory rape charges. *Id.* at 328. On appeal, this Court granted the defendant a new trial because the trial court plainly erred by failing to clearly instruct the jury regarding the State’s burden to prove the defendant’s consciousness beyond a reasonable doubt. *Id.* at 337–39. Under North Carolina law, “unconsciousness is . . . an affirmative defense; and [] the burden rests upon the defendant to establish this defense, unless it arises out of the State’s own evidence[.]” *Id.* at 335. In accordance with the pattern jury instruction for unconsciousness, the trial court instructed the jury, stating, in relevant part:

The burden of persuasion rests on the defendant to establish this defense to the satisfaction of the jury, unless it arises out of the State's own evidence, in which case the burden is on the State to prove beyond a reasonable doubt that the defendant was able to exercise conscious control of his physical action.

Id. at 336–37.

This Court concluded that the quoted jury instruction, albeit technically accurate, failed to “clearly charge the jury as to who had the burden of proof, and what that burden was, to show [the d]efendant’s consciousness” in that specific case. *Id.* at 337. After considering “the jury’s seemingly inconsistent verdicts, finding [the d]efendant not guilty of indecent liberties, which has a statutory element of willfulness, but guilty of statutory rape[.]” this Court concluded the erroneous instruction “impermissibly lessened the State’s burden of proof” and therefore constituted plain error. *Id.*

Unlike the inconsistent verdicts in *Tyson*, however, there is no evidence to indicate the jury in the instant case was confused regarding the burden of proof. In fact, the Record reveals that the trial court clearly instructed the jury over thirty times that the State had the burden to prove Defendant’s guilt beyond a reasonable doubt. *See State v. Graham*, 145 N.C. App. 483, 486 (2001) (holding no plain error because, even though “the trial court gave an erroneous preliminary instruction regarding the burden of proof while explaining the law of circumstantial evidence, it instructed the jury properly that the State had to prove its case beyond a reasonable

doubt repeatedly for all fifteen charges brought against [the] defendant”). Indeed, although the identity of the perpetrator was highly contested in this case, the trial court correctly instructed the jury that the State “has the burden of proving the identity of the defendant as the perpetrator of the crime charged beyond a reasonable doubt.” The jury was further instructed that it could not return a verdict of guilty unless it was “satisfied beyond a reasonable doubt that the defendant was the perpetrator of the crime charged[.]” Thus, even if the jury took at face value the jury instruction placing the burden on Defendant to prove third-party guilt *via* recent possession, that instruction is not mutually exclusive with the State retaining its burden to show beyond a reasonable doubt that Defendant was the perpetrator.

Moreover, the doctrine of recent possession permits the jury to infer Defendant’s guilt if, and only if, the State proves “(1) the property . . . was stolen; (2) the stolen goods were found in [the] defendant’s custody and subject to his control and disposition . . . [.] and (3) the possession was recently after the larceny, mere possession of stolen property being insufficient to raise a presumption of guilt[.]” *See Maines*, 301 N.C. at 674 (citation modified). As the trial court instructed, the jury could accept or reject this inference along with the other evidence in deciding whether Defendant was guilty of murder. *See State v. Holder*, 331 N.C. 462, 487 (1992). But the jury was not required to make this inference. *See State v. Smith*, 170 N.C. App. 461, 469 (2005) (“A mandatory presumption instructs the jury that it must infer the presumed fact if the [S]tate proves certain predicate facts. A permissive inference

suggests to the jury a possible conclusion to be drawn if the State proves predicate facts, but does not require the jury to draw that conclusion.”), *aff’d as modified*, 360 N.C. 341 (2006).

We are cognizant that this case, as the State conceded at oral arguments, was a close case in which there was no physical evidence tying Defendant to the murders, and the jury had to rely on the testimony of witnesses, some of whom the State itself described as “nefarious” people. As our Supreme Court has reminded this Court, however, a close case, even if “based mostly on witness credibility[,]” is simply “not enough to prevail on the prejudice prong of plain error.” *Reber*, 386 N.C. at 162. Although it is certainly possible the singular instruction placing the burden of proof on Defendant was harmful, Defendant has failed to show that, absent this error, the jury *probably* would have reached a different result. *See id.* Consequently, after considering the entire Record, less the erroneous jury instruction, we conclude the trial court did not commit plain error.

4. Ineffective Assistance of Counsel

Defendant further argues that his counsel’s failure to object to the court’s jury instructions constitutes Ineffective Assistance of Counsel (“IAC”).

“A criminal defendant’s right to counsel pursuant to the Sixth Amendment to the United States Constitution ‘includes the right to the effective assistance of counsel.’” *State v. Gillard*, 386 N.C. 797, 866 (2024) (citation omitted). “Whether a defendant was denied the effective assistance of counsel is a question of law that is

reviewed de novo.” *State v. Clark*, 380 N.C. 204, 215 (2022) (citation omitted).

In *State v. Braswell*, 312 N.C. 553, 561–62 (1985), our Supreme Court adopted the test the Supreme Court of the United States announced in *Strickland v. Washington*, 466 U.S. 668 (1984). Pursuant to *Strickland*, a defendant must satisfy a two-part test to successfully assert an IAC claim:

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. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s error[s] were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Braswell, 312 N.C. at 562 (emphasis omitted) (quoting *Strickland*, 466 U.S. at 687).

Notably, the IAC test “imposes a lesser burden than that imposed by plain error[.]” and there may “be instances in which the trial court committed no plain error but counsel rendered ineffective assistance, and vice versa.” *State v. Lane*, 271 N.C. App. 307, 314, 316 (2020). To prevail on the prejudice prong for an IAC claim, a defendant must show that “there is a reasonable probability that, but for counsel’s errors, there would have been a different result in the proceedings.” *Braswell*, 312 N.C. at 563. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *State v. Allen*, 360 N.C. 297, 316 (2006) (quoting *Strickland*, 466 U.S. at 694). “[I]f a reviewing court can determine at the outset that there is no reasonable probability that in the absence of counsel’s alleged errors the

result of the proceeding would have been different, then the court need not determine whether counsel's performance was actually deficient." *Braswell*, 312 N.C. at 563.

Assuming, without deciding, that the performance of Defendant's trial counsel was defective, trial counsel's failure to object to the jury instruction regarding third-party guilt did not prejudice Defendant. The State provided evidence through the testimony of Smith to describe the events that took place on the morning of 8 November 2020, the law enforcement officers that processed the crime scene, and two expert witnesses who analyzed the forensic evidence. Moreover, the trial court instructed the jury approximately thirty-three times and required the State to bear the burden of proof beyond a reasonable doubt to convict. Defendant has failed to show that the singular, erroneous jury instruction was prejudicial so as to award a new trial. As such, Defendant's IAC claim lacks merit.

F. Cumulative Error

Defendant argues that the cumulative effect of the trial court's errors requires reversal.

"Cumulative errors lead to reversal when 'taken as a whole' they 'deprived [the] defendant of his due process right to a fair trial free from prejudicial error.'" *State v. Wilkerson*, 363 N.C. 382, 426 (2009) (quoting *State v. Canaday*, 355 N.C. 242, 254 (2002)). "[C]umulative error requires there be multiple significant errors before an appellate court can conclude that a defendant has met the high bar of demonstrating that he has been wholly deprived of his due process right to a fair trial

free from prejudicial error.” *Gillard*, 386 N.C. at 852 (citation modified).

As explained, at most the only error committed by the trial court was instructing the jury that Defendant had the burden to prove third-party guilt *via* recent possession, and this assumed error was not prejudicial. Since there are not multiple significant errors, we conclude that Defendant has failed to demonstrate the trial court cumulatively erred. *See id.* As such, Defendant’s cumulative error argument lacks merit.

G. Attorneys’ Fees as Civil Judgment

Lastly, Defendant argues that the trial court erred by entering a civil judgment for attorneys’ fees without affording Defendant an opportunity to be heard.

A “trial court may enter a civil judgment against a convicted indigent defendant for the amount of fees incurred by the defendant’s court-appointed attorney.” *State v. Jacobs*, 172 N.C. App. 220, 235 (2005); *see also* N.C.G.S. § 7A-455(b) (2025). “Before imposing a judgment for [] attorneys’ fees, [however,] the trial court must afford the defendant notice and an opportunity to be heard.” *Friend*, 257 N.C. App. at 522. “[T]rial courts should ask defendants—personally, not through counsel—whether they wish to be heard on the issue.” *Id.* at 523. Otherwise, “the requirements of notice and opportunity to be heard will be satisfied only if there is other evidence in the record demonstrating that the defendant received notice, was aware of the opportunity to be heard on the issue, and chose not to be heard.” *Id.*

Here, the State concedes “that the [R]ecord and transcripts do not show that [Defendant] was given an opportunity to be heard on the attorney’s fees issue as required.” Indeed, the transcript reveals that the trial court did not have a colloquy directly with Defendant on this issue, and no evidence in the Record establishes that Defendant “received notice, was aware of the opportunity to be heard on the issue, and chose not to be heard.” *See id.* Consequently, we vacate the civil attorneys’ fees orders and remand for a new hearing on attorneys’ fees and costs consistent with the opinion in *Friend*.

IV. Conclusion

For the reasons stated above, we conclude that Defendant received a fair trial free from prejudicial error. Since the trial court erred by entering a civil judgment for attorneys’ fees without affording Defendant an opportunity to be heard, however, we vacate the attorneys’ fees orders and remand this matter to the trial court for a new hearing on attorneys’ fees.

NO ERROR IN PART; VACATED IN PART AND REMANDED.

Judge TYSON concurs.

Judge WOOD concurs in result only.