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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1185

Filed 16 September 2026

Wilson County, Nos. 21CR052928-970, 21CR052929-970, 21CR052930-970,
21CR052931-970

STATE OF NORTH CAROLINA

v.

ADRIAN TYNRELL HORNE

Appeal by Defendant from Judgments entered 18 March 2025 by Judge Seth
H. Edwards in Wilson County Superior Court. Heard in the Court of Appeals 2 June
2026.

*Attorney General Jeff Jackson, by Assistant Attorney General Kaeli E. Czosek,
for the State.*

Cooley Law Office, by Craig M. Cooley, for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Adrian Tynrell Horne (Defendant) appeals from Judgments¹ entered upon jury
verdicts finding him guilty of Second-Degree Kidnapping, Discharging a Weapon into

¹ The Judgments in the Record are not file-stamped.

Occupied Property, four counts of Discharging a Weapon into Occupied Property Resulting in Serious Bodily Injury, two counts of Attempted First-Degree Murder, and two counts of First-Degree Murder. The Record before us, including evidence presented at trial, tends to reflect the following:

On 14 February 2022, Defendant was indicted on charges of Second-Degree Kidnapping, Larceny of a Motor Vehicle, Discharging a Weapon into Occupied Property, four counts of Discharging a Weapon into Occupied Property Resulting in Serious Bodily Injury, two counts of Attempted First-Degree Murder, and two counts of First-Degree Murder.

The case came on for trial on 10 March 2025. Defendant pleaded not guilty and chose to represent himself with standby counsel.

The State's evidence tended to show, at the time of the events at issue, Defendant was in a relationship with Latasha Williams. Latasha had a daughter and son, Fredria and Raekwon, respectively, who lived with their grandmother, Shirley Tomlin. Raekwon's girlfriend, Lakiyah Williams, and their eight-month-old daughter, Sa'Nadiyah Williams, also lived with Shirley.

On 31 August 2021, Fredria called Latasha on the phone. Fredria testified Latasha sounded "frightened" and "scared." Latasha was "whispering" throughout the call and kept asking Fredria about a "flat tire," although Fredria had not mentioned a flat tire during their conversation. Believing something was wrong, Fredria asked Latasha if she was okay, to which Latasha replied, "No."

Fredria told Raekwon and Shirley she was driving to Latasha's house because she believed Defendant was "doing something" to Latasha. Raekwon and Lakiyah said they would come too. Fredria drove them in her car, a black Buick, to Latasha's residence. Lakiyah also brought Sa'Nadiyah.

Fredria arrived at Latasha's home and backed into the driveway. Only Fredria exited the vehicle. Lakiyah sat in the front passenger seat and Raekwon sat behind her with Sa'Nadiyah. As Fredria approached the front door, Latasha "was already headed out [of] the house" with a look of "fear" across her face.

Fredria saw Defendant exit the front door with "an angry, angry look on his face." Both Fredria and Latasha got into the car. Latasha sat behind the driver's seat. As Fredria began to drive away, she heard gunshots. She slammed on the brakes and saw Defendant standing beside the driver's side door with a gun pointed at her. According to Lakiyah, Defendant tried to open the rear passenger door, where Latasha was seated, but he was unable. Defendant then "started shooting" at the back passenger window. When Defendant stopped shooting, Fredria, Raekwon, and Lakiyah exited the car and ran.

Defendant re-entered the house through its front door. Fredria went back to the Buick to check on Latasha and Sa'Nadiyah, who were still in the car. Latasha appeared to be dead, and Sa'Nadiyah was bleeding.

Defendant came back outside, got into his car, and began repeatedly ramming the Buick with his own vehicle. Defendant eventually tried to drive around the

Buick—but accidentally drove his car into a narrow ditch, getting it stuck, and exited the vehicle. Fredria testified she believed Defendant was “thinking about his next move[.]” so she told him to take her car “and go[.]” Defendant drove off with Latasha’s body and Sa’Nadiah still in the back seat.

Defendant drove to Rebecca Horne’s residence. Rebecca shares two children with Defendant. Defendant dropped Sa’Nadiah off with Rebecca. He did not inform Rebecca what had happened.

Defendant left Rebecca’s residence and drove to the home of Rebecca’s aunt. There, Defendant called his brother, Timothy Horne, to come pick him up. Timothy arrived and asked Defendant what was “going on.” Defendant would not answer at first, then eventually said: “If you want to be so nosey, go look in the car.” Timothy walked behind the home and saw Fredria’s car with Latasha’s body in the back. Timothy walked back to Defendant and asked what happened. Defendant then admitted he shot Latasha.

Timothy reluctantly agreed to give Defendant a ride. In the car, Defendant called his son, Tyrik Joyner. Timothy dropped Defendant off with Tyrik in Goldsboro. Tyrik testified “everything [was] good” when he picked up Defendant. Tyrik dropped Defendant off at his mother’s house. Later that evening, Tyrik saw social media posts indicating his father was wanted for murder, and his sister called him to tell him the same.

The next morning, Tyrik went back to his mother's house and told Defendant he could not stay there. A friend of Tyrik's picked Defendant up shortly thereafter. Later that day, law enforcement came to Tyrik's mother's house looking for Defendant, and Tyrik helped the police locate his father.

Lakiyah suffered a nonfatal gunshot wound to her back. Fredria suffered seven or eight nonfatal gunshot wounds. Raekwon was shot twice, and Latasha was shot three times; both individuals died at the scene.

Fredria and Shirley testified they had seen Latasha with a black eye in the days leading up to the events at issue. Both testified Latasha told them it was Defendant who had injured her.²

Vashawn Tomlin, Latasha's brother, testified that around two days before Latasha was murdered, she had a black eye and had told him she was "scared" of Defendant. He also described another incident where Defendant and Latasha had been arguing, and he had called the police because he was concerned for Latasha's safety. He explained Latasha was hesitant to talk to the police because she "knew [Defendant] had been to federal prison and stuff and she said she didn't want him to spend the rest of his life in prison."

Joshua Tomlin, Latasha's nephew, testified Defendant had threatened to kill both him and Latasha about one week prior. Joshua testified Defendant pointed his

² Vashawn Tomlin and Rebecca both testified they had seen Latasha with a black eye as well; however, neither testified Defendant inflicted the injury.

gun at the two of them during this altercation before shooting into the floor. A photo of a bullet hole in the floor was introduced into evidence.

At the close of the State's evidence, Defendant moved to dismiss all charges. The trial court dismissed the charge of Larceny of a Motor Vehicle but denied the motion as to the remaining charges. After Defendant put on his own evidence, he renewed his motion to dismiss. The trial court denied the motion and submitted the charges to the jury.

On 18 March 2025, the jury returned verdicts finding Defendant guilty of all charges. At sentencing, the trial court imposed the following sentences: (1) life without parole for each of the two First-Degree Murder convictions, (2) 207 to 261 months for each of the two Attempted First-Degree Murder convictions, (3) 33 to 52 months for Second-Degree Kidnapping, (4) 96 to 128 months for each of the two Discharging a Weapon into Occupied Property Resulting in Serious Bodily Injury convictions,³ and (5) 33 to 52 months for Discharging a Weapon into Occupied Property. The trial court ordered each of the sentences to run consecutively.

Defendant gave oral Notice of Appeal in open court.

Issues

³ The trial court arrested judgment on the two other convictions of Discharging a Weapon into Occupied Property Resulting in Serious Bodily Injury because Defendant was convicted of two counts of First-Degree Murder on a theory of felony murder with Discharging a Weapon into Occupied Property Resulting in Serious Bodily Injury as the underlying offenses for both convictions.

The issues on appeal are whether: (I) the trial court abused its discretion by not sua sponte declaring a mistrial when Vashawn testified Defendant had previously been incarcerated; (II) the trial court plainly erred by not striking Vashawn's testimony Defendant had previously been incarcerated or by not providing a curative instruction; and (III) Defendant preserved his argument the trial court erred by admitting Fredria's and Shirley's testimony Defendant had punched Latasha.

Analysis

I. Mistrial

Defendant argues the trial court erred by not sua sponte declaring a mistrial when Vashawn, while testifying before the jury, stated Defendant had previously been in federal prison.⁴

Under N.C. Gen. Stat. § 15A-1063, the trial court may, on its own motion “declare a mistrial if . . . [i]t is impossible for the trial to proceed in conformity with law[.]” N.C. Gen. Stat. § 15A-1063(1) (2025). “This statute allows a judge . . . to grant a mistrial where he could reasonably conclude that the trial will not be fair and

⁴ The State contends Defendant waived appellate review of this issue because he told the jury he had previously been incarcerated in his opening statement. “[W]here a defendant himself offered testimony that is similar to the testimony from the witness that defendant challenges on appeal, the defendant has waived his right to appellate review of any error that may have resulted from the admission of the challenged testimony.” *State v. Crane*, 269 N.C. App. 341, 343, 837 S.E.2d 607, 609 (2020) (citing *State v. Steen*, 226 N.C. App. 568, 576, 739 S.E.2d 869, 876 (2013)). *See also* N.C. Gen. Stat. § 15A-1443(c) (“A defendant is not prejudiced . . . by error resulting from his own conduct.”). However, as the State concedes, opening statements are not “testimony” or evidence. *See State v. Lewis*, 321 N.C. 42, 49, 361 S.E.2d 728, 732-33 (1987); *State v. Roache*, 358 N.C. 243, 289, 595 S.E.2d 381, 411 (2004) (citation omitted). As such, we conclude Defendant did not waive his right to review of this argument on its merits.

impartial.” *State v. Ramirez*, 156 N.C. App. 249, 253, 576 S.E.2d 714, 718 (2003) (alteration in original) (citation and quotation marks omitted).

“The decision to grant a mistrial is within the trial court’s discretion.” *State v. Jaynes*, 342 N.C. 249, 280, 464 S.E.2d 448, 467 (1995) (citations omitted). “This is particularly true where, as here, [the] defendant has not moved for a mistrial.” *Id.* “An abuse of discretion occurs only upon a showing that the judge’s ruling was so arbitrary that it could not have been the result of a reasoned decision.” *State v. Salentine*, 237 N.C. App. 76, 81, 763 S.E.2d 800, 804 (2014) (citation and quotation marks omitted).

“It is appropriate for a trial court to declare a mistrial only when there are such serious improprieties as would make it impossible to attain a fair and impartial verdict under the law.” *State v. Bowman*, 349 N.C. 459, 472, 509 S.E.2d 428, 436 (1998) (citation and quotation marks omitted). “The decision of the trial judge is entitled to great deference since he is in a far better position than an appellate court to determine whether the degree of influence on the jury was irreparable.” *State v. Williamson*, 333 N.C. 128, 138, 423 S.E.2d 766, 772 (1992) (citation omitted).

In the present case, Vashawn testified:

[Latasha] knew [Defendant] had been to federal prison and stuff and she said she didn’t want [Defendant] to spend the rest of his life in prison.

“[E]vidence of incarceration is . . . character evidence under Rule 404(a).” *State v. Rios*, 251 N.C. App. 318, 324, 795 S.E.2d 234, 238 (2016). Character evidence is

generally not admissible to prove conduct in conformity therewith. N.C. Gen. Stat. § 8C-1, Rule 404(a). Defendant argues the trial court should have “immediately declare[d] a mistrial based on unfair prejudice.” He contends the jury was “free to speculate as to the seriousness of [Defendant’s] prior federal conviction(s) and the length of his prior federal prison sentence.” Thus, he argues, the jury was “free to assume the worst and use these speculative and prejudicial assumptions to conclude [Defendant] was nothing more than a cold-blooded repeat offender who didn’t learn his lesson the first time he went to prison—and who had the propensity and disposition to commit first-degree murder[.]” (emphasis removed).

Defendant, citing N.C. Gen. Stat. § 15A-1061, asserts: “Even if the defendant doesn’t request a mistrial, a trial court ‘must declare’ a mistrial *sua sponte* ‘if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant’s case.’” This is a misstatement of the law. Section 15A-1061 clearly states the trial court *may* declare a mistrial at any time with the defendant’s consent and “*must* declare a mistrial *upon the defendant’s motion* if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant’s case.” (emphasis added). In the instant case, Defendant did not move for a mistrial. As such, the rule in Section 15A-1061 is not dispositive in our analysis.

Here, in light of “the totality of the facts and circumstances of the case,” *State*

v. Shore, 258 N.C. App. 660, 680, 814 S.E.2d 464, 476 (2018), we cannot conclude Vashawn’s statement “amounted to such serious impropriety that it was impossible for [D]efendant to obtain a fair trial[.]” *Bowman*, 349 N.C. at 472, 509 S.E.2d at 436 (citation omitted). In the present case, there was overwhelming evidence of Defendant’s guilt. Fredria and Lakiyah testified Defendant shot into Fredria’s car, injuring them and killing Raekwon and Latasha; the evidence showed Fredria was shot seven or eight times, Raekwon twice, Latasha three times, and Lakiyah once. Photographs introduced at trial showed numerous bullet holes in the body of the car and the driver-side windows. Timothy testified Defendant admitted shooting and killing Latasha. And Fredria and Rebecca’s testimony showed Defendant drove away in the Buick with Sa’Nadiyah still inside, eventually leaving the child with Rebecca.

Thus, given the strength of the evidence against him, Defendant has failed to demonstrate his case was irreparably prejudiced by Vashawn’s testimony Defendant had spent time in federal prison. *Bowman*, 349 N.C. at 472, 509 S.E.2d at 436; see *State v. Eanes*, 300 N.C. App. 438, 444, 920 S.E.2d 914, 919 (holding trial court did not abuse its discretion in not granting a mistrial on its own motion where “[o]ther overwhelming evidence of Defendant’s guilt was also properly admitted”), *cert. denied*, _ N.C. _, 923 S.E.2d 565 (2025). Therefore, Defendant has failed to show the trial court’s alleged failure to sua sponte declare a mistrial was manifestly unsupported by reason. Consequently, the trial court did not abuse its discretion by not declaring a mistrial sua sponte.

II. Evidence of Prior Incarceration

Defendant further argues the trial court erred by (A) failing to strike Vashawn's testimony regarding Defendant's prior federal incarceration and (B) not providing a limiting or curative jury instruction regarding this testimony.

As Defendant failed to object to this testimony at trial, our review of this issue is limited to plain error. N.C. R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion"); *id.* 10(a)(4) ("In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action nevertheless may be made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.").

The Supreme Court of North Carolina has set forth a three-prong test for determining whether plain error has occurred:

First, the defendant must show that a fundamental error occurred at trial. Second, the defendant must show that the error had a probable impact on the outcome, meaning that absent the error, the jury probably would have returned a different verdict. Finally, the defendant must show that the error is an exceptional case that warrants plain error review, typically by showing that the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

State v. Reber, 386 N.C. 153, 158, 900 S.E.2d 781, 786 (2024) (internal citations and quotation marks omitted) (quoting *State v. Lawrence*, 365 N.C. 506, 518-19, 723

S.E.2d 326, 334 (2012)).

“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.’” *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334 (quoting *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983)). “[S]howing that a jury *probably would have* reached a different result[] requires a showing that the outcome is significantly more likely than not.” *Reber*, 386 N.C. at 159, 900 S.E.2d 787 (emphasis in original). In other words, it must be “probable, not just possible, that the outcome would have been different absent the error.” *Id.* at 160, 900 S.E.2d at 787 (citation and quotation marks omitted).

On appeal, Defendant contends had the trial court struck Vashawn’s testimony or provided a curative jury instruction, the jury probably would have convicted Defendant of Second-Degree Murder, as opposed to First-Degree Murder. We address each argument in turn.

A. Admission of testimony

As explained above, “evidence of incarceration is . . . character evidence under Rule 404(a)[.]” *Rios*, 251 N.C. App. at 324, 795 S.E.2d at 238, and is generally not admissible to prove conduct in conformity therewith, N.C. Gen. Stat. § 8C-1, Rule 404(a). However, a criminal defendant may offer evidence of his own pertinent character trait. *Id.* § 8C-1, Rule 404(a)(1). “If the defendant so elects to ‘open the door’ to his or her character, ‘proof may be made by testimony as to reputation or by

testimony in the form of an opinion.’ ” *Rios*, 251 N.C. App. at 322, 795 S.E.2d at 237 (citing N.C. Gen. Stat. § 8C-1, Rule 405(a) (2015)). “The prosecution may then rebut with evidence of the defendant’s bad character, including ‘relevant specific instances of conduct.’ ” *Id.* at 323, 795 S.E.2d at 237 (citing N.C. Gen. Stat. § 8C-1, Rules 404(a)(1), 405(a) (2015)).

Defendant was convicted of First-Degree Murder on a theory of premeditation and deliberation, as well as on a theory of felony murder. Defendant first argues “because jurors were left to speculate as to the seriousness of [his] prior federal conviction(s),” they likely relied on those speculations to find the elements of premeditation and deliberation.

“First-degree murder is defined in part as a ‘willful, deliberate, and premediated killing[.]’ ” *State v. Walker*, 286 N.C. App. 438, 442, 880 S.E.2d 731, 735 (2022) (quoting N.C. Gen. Stat. § 14-17(a) (2021)). In assessing whether there is evidence of premeditation and deliberation, we consider several factors, including:

- (1) want of provocation on the part of the deceased; (2) the conduct and statements of the defendant before and after the killing; (3) threats and declarations of the defendant before and during the occurrence giving rise to the victim’s death; (4) ill-will or previous difficulty between the parties; (5) evidence that the killing was done in a brutal manner; and (6) the nature and number of the victim’s wounds.

Id. at 442, 880 S.E.2d at 736 (quoting *State v. Pittman*, 332 N.C. 244, 255, 420 S.E.2d 437, 443 (1992)).

The State contends, even without Vashawn’s testimony, there was substantial

evidence presented at trial from which a jury could find Defendant acted with premeditation and deliberation. We agree.

In *State v. Streater*, the State presented testimony the defendant “was previously incarcerated and used marijuana[.]” 197 N.C. App. 632, 648, 678 S.E.2d 367, 377 (2009). However, the Court held, “in light of the other similar evidence properly admitted at trial,” it was “not ‘convinced that absent the error the jury probably would have reached a different verdict.’ ” *Id.* (quoting *State v. Walker*, 316 N.C. 33, 39, 340 S.E.2d 80, 83 (1986)).

Here, the Record shows Fredria testified Defendant followed Latasha out of the house with “an angry, angry look on his face.” According to Fredria and Lakiyah, Defendant attempted to open the car door and when he could not, he began firing repeatedly through the car’s window. The evidence showed Fredria was shot seven or eight times, Raekwon twice, Latasha three times, and Lakiyah once. Lakiyah and Raekwon were both shot in the back. Photographs showed bullet holes in the body of the car and the driver-side windows.

Moreover, several witnesses testified Defendant had been threatening and abusive toward Latasha and her family prior to the events at issue. Joshua testified that in an instance which took place about one week prior, Defendant had threatened to kill both him and Latasha. Joshua testified Defendant also pointed his gun at the two of them during this altercation before shooting into the floor. At trial, a photo of the bullet hole in the floor was introduced into evidence, corroborating Joshua’s

testimony. Similarly, Vashawn, Fredria, and Shirley testified Latasha had expressed she was scared of Defendant. Vashawn discussed an incident where he had called the police on Defendant because he was worried about Latasha's safety.

Thus, given the evidence in the Record, we cannot say Defendant has shown the alleged error had a "probable impact" on the outcome of his trial. *Reber*, 386 N.C. at 158, 900 S.E.2d at 786. Nor has Defendant presented any argument as to how this alleged error "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (citations and quotation marks omitted). Therefore, the trial court did not plainly err in admitting the testimony as it relates to Defendant's conviction for First-Degree Murder under a theory of premeditation and deliberation.

Defendant also argues the testimony had a probable impact on the jury's verdict finding him guilty of First-Degree Murder under a theory of felony murder. A person is guilty of felony murder where a killing is done while in the perpetration or attempted perpetration of a "felony committed or attempted with the use of a deadly weapon[.]" N.C. Gen. Stat. § 14-17(a).

Here, Defendant was convicted of Discharging a Weapon into Occupied Property. A person is guilty of discharging a weapon into an occupied property if "he intentionally, without legal justification or excuse, discharges a firearm into occupied property with knowledge that the property is then occupied by one or more persons or when he has reasonable grounds to believe that it is occupied." *State v. Jackson*, 189 N.C. App. 747, 752 (2008); N.C. Gen. Stat. § 14-34.1.

The evidence showed Defendant shot into the Buick knowing it was occupied. Fredria testified Lakiyah, Raekwon, and Sa’Nadiyah had not gotten out of the vehicle. Defendant saw Latasha get into the vehicle and attempted to open its door. When he could not open the door, he began shooting into the car. Latasha was shot and killed before she had an opportunity to exit the vehicle.

Defendant argues Vashawn’s testimony could have led the jury to assume Defendant’s prior incarceration was due to a firearms-related offense, meaning he had a propensity to use a firearm. We find this argument without merit. The Record is replete with evidence Defendant shot into the occupied Buick. Thus, Defendant has not shown he was prejudiced by the admission of Vashawn’s testimony as it relates to his conviction for First-Degree Murder on a theory of felony murder. Therefore, the trial court did not plainly err by admitting this testimony.

B. Curative instruction

Defendant argues, without a curative instruction, the jury “could freely speculate regarding the seriousness of [Defendant’s] prior federal conviction(s) and the length of his prior federal prison sentence[.]” However, our Supreme Court has held “[a] trial court does not err by failing to give a curative jury instruction when, as here, it is not requested by the defense.” *State v. Williamson*, 333 N.C. at 139, 423 S.E.2d at 772 (citing *State v. Locklear*, 322 N.C. 349, 359, 368 S.E.2d 377, 383 (1988)).

Thus, even presuming admission of the testimony was error, the trial court did not err by not providing a curative instruction.⁵

III. Evidence of Black Eye

Defendant argues the trial court erred by admitting testimony Defendant had punched Latasha, giving her a black eye, shortly before the events at issue. However, we conclude this alleged error was not preserved for appellate review.

Fredria was the first witness to testify Latasha had a black eye. When the State began to question Fredria about whether Defendant had harmed Latasha before, the trial court removed the jury from the courtroom.

[The State]: So are you aware of any time that the Defendant physically assaulted your mother before August the 31st?

[Fredria]: Can you say that one more time?

[The State]: Are you aware of any times that [Defendant] put his hands on your mom?

[Fredria]: Yes. It was one night where I was in my room and my brother was there as well and –

[Trial Court]: [Fredria], let me stop you right this moment. Ladies and gentlemen, there's a matter we need to take up outside of your presence and I'm going to ask you to briefly step into the jury room please.

The parties then debated the admissibility of the evidence:

⁵ Indeed, “[d]efense counsel could well conclude that a curative instruction would do more harm than good by highlighting the matter in the jury’s eyes.” *Williamson*, 333 N.C. at 139, 423 S.E.2d at 772 (citing *Locklear*, 322 N.C. at 359, 368 S.E.2d at 383).

STATE V. HORNE

Opinion of the Court

[Trial Court]: . . . Madam D.A., I interrupted your witness and just wanted to inquire out of an abundance of caution, I know the State had filed a motion relating to 404(b) type evidence, and I'm inquiring if that's where, are we headed down that road?

[The State]: Yes, Your Honor, we are headed down that road. She's about to testify about a prior incident where she saw her mom with a black eye.

The trial court allowed Fredria to present her testimony on voir dire outside the presence of the jury. Defendant objected to its admission on hearsay grounds. The trial court overruled Defendant's objection and brought the jury back in.

Now in the presence of the jury, Fredria testified Defendant had punched Latasha:

[The State]: Fredria, right before that little break, I was asking you if you had ever seen any injuries on your mother. And I think your answer was yes.

[Fredria]: Yes.

[The State]: Is there something specific that stands out in your mind?

[Fredria]: Yes, as far as the black eye.

[The State]: Did you see your mom with a black eye before she was murdered?

[Fredria]: Yes.

[The State]: And approximately how many days before the murder did you see the black eye on your mom?

[Fredria]: Four days prior. A few days prior to the incident.

[The State]: How did you first learn that she had a black eye?

[Fredria]: Once she gave me – well, I gave her a call and I was just checking up on her. And I was wondering when I was going to see her and she let me know that she may not see me for my birthday and I was wondering why and she let me know that she had a black eye and she barely wanted to even tell me that.

[The State]: Did your mom say how she got the black eye?

[Fredria]: Yes.

[The State]: What did she tell you?

[Fredria]: She let me know that [Defendant] punched her in her face.

Defendant did not object to the testimony in the presence of the jury.

Similarly, when Shirley was on the stand, the trial court removed the jury from the courtroom and conducted a voir dire of her testimony. Shirley testified to three prior incidents where Defendant allegedly physically harmed Latasha. Defendant objected to the admission of the testimony as hearsay. The trial court allowed Defendant's objection as to two of the incidents but overruled it as to Shirley's testimony Defendant had given Latasha a black eye.

Back in the presence of the jury, Shirley testified to the following:

[The State]: Before the murder about a week or so prior, did you see any injuries on Latasha?

[Shirley]: Yes, I seen Latasha with a big black eye, and they didn't specify how her eye were for real. My daughter eye was so big and so red on the inside and closed up. That's how my daughter eye were. It was, it was red on the inside and he punched her hard. She had a nasty black eye.

[The State]: And did Latasha tell you how she got it?

[Shirley]: Yes, she did.

[The State]: What did she tell you about the circumstances under which she got that black eye?

[Shirley]: She said [Defendant] accusing her of messing with my nephew and she, he punched her in her face.

Defendant also did not object to this testimony before the jury.

In *State v. Ray*, our Supreme Court held “to preserve for appellate review a trial court’s decision to admit testimony, objections to [that] testimony must be contemporaneous with the time such testimony is offered into evidence and not made only during a hearing out of the jury’s presence prior to the actual introduction of the testimony.” 364 N.C. 272, 277, 697 S.E.2d 319, 322 (2010) (alteration in original) (citation and quotation marks omitted). Here, although Defendant raised hearsay objections outside the presence of the jury, he did not object at the time the testimony was offered into evidence.

Defendant, conceding he “technically” objected outside the jury’s presence, nonetheless argues he did object at the time the evidence was introduced. He contends “[t]he only reason” his objections were outside the jury’s presence was “because the trial court removed the jury as the State was trying to introduce” the evidence (emphasis removed). However, Defendant has not attempted to explain how this prevented him from objecting again in front of the jury at the time the testimony was offered into evidence. *Ray* is clear evidence is introduced at trial when it is

presented to the jury. *Id.* Defendant did not object in front of the jury at the time the evidence was introduced; thus, Defendant's objections are not preserved for our review. *Id.*

Moreover, Defendant has not argued plain error. Failure to argue plain error waives plain error review. *State v. Braxton*, 352 N.C. 158, 196, 531 S.E.2d 428, 450-51 (2000) (citations omitted); N.C. R. App. P. 10(a)(4) (a criminal defendant must "specifically and distinctly contend[]" an error "amount[ed] to plain error"). Therefore, Defendant's argument is not preserved for our review. Consequently, the trial court did not err in entering its Judgments.

Conclusion

Accordingly, for the foregoing reasons, we conclude there was no error at Defendant's trial and affirm the Judgments.

NO ERROR.

Chief Judge DILLON and Judge ZACHARY concur.

Report per Rule 30(e).