

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-889

Filed 21 October 2026

Anson County, Nos. 20CR050877-030, 20CR050878-030

STATE OF NORTH CAROLINA

v.

LATRAVIOUS JAMEER TYSON, Defendant.

Appeal by defendant from judgments entered 15 August 2024 by Judge Dawn McDonald Layton in Superior Court, Anson County. Heard in the Court of Appeals 25 March 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Julianne L. Bradshaw, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for defendant-appellant.

STROUD, Judge.

Defendant Latravious Tyson appeals from judgments entered upon jury verdicts finding him guilty of four sexual crimes against a minor. On appeal, he argues that the trial court erred in denying his motion to dismiss one of the statutory sexual offense charges because, under the *corpus delicti* rule, there was insufficient evidence of an essential element of that crime – the sexual act. Defendant also contends that the court erred when it failed to *ex mero motu* declare a mistrial based on the prosecutor’s improper questions and the investigating officer’s inadmissible

responses. Finally, Defendant argues—and the State agrees—that there is a clerical error in one of the judgments; however, they disagree as to which judgment contains the error.

We hold that the court did not err in denying Defendant’s motion to dismiss because there was sufficient evidence, including independent evidence supporting Defendant’s convictions for the sex offenses occurring immediately before and immediately after the sex offense at issue, corroborating Defendant’s confession to the sex offense at issue. We also hold that the court did not err in failing to declare a mistrial *ex mero motu*, as it ensured Defendant received a fair trial by carefully addressing the improper questions and non-responsive answers. Finally, we determine that the judgment in File No. 20CR050878-030 contains a clerical error and we remand that judgment to the trial court to correct the error.

I. Background

The evidence presented at trial tended to show that Defendant had been a close friend of Lea’s¹ father, who died when Lea was three years old. When Lea was about ten years old, she met Defendant through Defendant’s brother. Defendant began communicating with Lea daily on her cell phone, by messenger or Snapchat, to check on her and ask about her day. Lea referred to Defendant as her uncle; she thought Defendant “was going to care for [her] and be a support in [her] life.”

¹ We use a pseudonym to protect the identity of the juvenile.

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In the summer of 2020, Lea was eleven years old, and Defendant was twenty; they had known each other for about a year. Lea testified that in August, Defendant texted her and asked if she wanted to get ice cream with him. He picked Lea up from her house and they drove to a store called Peaches and Cream. Defendant bought Lea a milkshake. While sitting in Defendant's car drinking her milkshake, Defendant asked Lea to "suck his penis." She did not want to do this and told him no, but he insisted. Lea could not get away from Defendant, so she complied. He then asked Lea to get into the backseat of his car and take off her clothes below her waist. Defendant put on a condom and raped her. Lea was scared and confused. Defendant threw the used condom into the grass and told Lea not to tell anyone what had happened.

A few weeks later, Defendant picked Lea up at her house and took her to a dead-end road near the airport. Lea thought Defendant was just showing her the area where he and her father used to race cars; however, Defendant asked Lea to perform fellatio on him again. She was scared and complied with his request. Defendant then returned Lea home. He continued to text and asked her to call him when she was naked or in the shower. Lea testified that she kept communicating with Defendant because she "just wanted to feel loved and cared about from [her] dad's side. And [she] just thought that was the only way that [she] could get love and support from" them.

A few weeks later, as punishment for sneaking out of the house, Lea's mom

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and stepfather took away her cell phone. When they went through her phone, they found messages from Defendant asking Lea to send him nude photos. Lea's parents took Lea and her phone to the Anson County Sheriff's Department (Sheriff's Department). At that time, Lea did not tell the officers what Defendant had done to her because she "was scared" and "didn't know what would happen next."

Due to a potential conflict with the Sheriff's Department, the North Carolina State Bureau of Investigation was called to investigate Lea's allegations. Special Agent Deemus Pulliam and Agent Scott Bassett visited the Sheriff's Department and acquired Lea's phone, which her mom had left with the officers. Lea's phone contained Defendant's location, as he had previously shared it with her. As a result, on 29 September 2020, Agents Pulliam and Bassett tracked Defendant's location and went to talk to him.

The agents found Defendant in his car in a parking lot. They pulled up beside Defendant's car, rolled down their passenger side window, and asked Defendant to pull into a nearby parking lot to talk. Defendant agreed and parked his car. Agent Pulliam began recording the interview. He asked Defendant if there was "someone [Defendant] was like an uncle to," and Defendant responded with Lea's name. Defendant "indicated that he knew why [the officers] were there." Defendant agreed to talk in Agent Pulliam's car. Agent Pulliam informed Defendant that he was free to leave.

During the conversation, Defendant admitted that he engaged in sexual

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intercourse with Lea, directed Lea to perform oral sex on him, and digitally penetrated Lea. Agent Pulliam questioned Defendant about his actions in his car outside of Peaches and Cream in detail. Although he could not remember the exact date, Defendant told Agent Pulliam that around “the last week in August in 2020,” he had taken Lea to Peaches and Cream. After he bought her ice cream, Lea “us[ed] her mouth to perform fellatio on his penis.” According to Defendant, “he had to teach her how to do that.” Defendant proceeded to explain that he “had vaginal intercourse with [Lea], which happened in the back seat of his SUV.” Defendant told Agent Pulliam that “right before they had sex, he used his fingers and inserted them into her vagina.” Agent Pulliam asked, “Did you insert your fingers first to get her used to it?” Defendant replied, “Somewhat yeah.” Defendant traced the outline of his right hand on a piece of paper and indicated “which finger” and “how far” that finger “penetrated her vagina.” In fact, Defendant “actually shaded in an area to be specific about how far [his finger] penetrated, and then he signed that at the bottom.” The State entered the picture of Defendant’s shaded hand into evidence.

Defendant also told the officers about another incident with Lea, which happened approximately two to three weeks after the first encounter, on a road by the airport. After the agents spoke with Defendant, they dropped him off at his friend’s house. Not long after, the officers returned to the house and arrested Defendant.

On 6 October 2020, Lea was interviewed at the Child Advocacy Center. During

the interview, she disclosed more details of the sexual assaults. However, she did not state that Defendant had penetrated her vagina with his finger before he had intercourse with her on the day he took her to Peaches and Cream.

Defendant was charged with: “Statutory Rape of a Child by Adult (Peaches & Cream)” (statutory rape); “Statutory Sex Offense (fellatio) with Child by Adult (Peaches & Cream)” (sex offense by fellatio); “Statutory Sex Offense with Child by Adult (Peaches & Cream)” (sex offense by digital penetration); and “Statutory Sex Offense with Child by an Adult (road near Airport)” (sex offense at airport). The jury convicted Defendant of all four charges. The convictions for statutory rape, sex offense by fellatio, and sex offense by digital penetration all stemmed from the events in Defendant’s car on the day he took Lea to Peaches and Cream. The conviction for sex offense at airport stemmed from the incident in Defendant’s car a few weeks later, on the day he took Lea to a dead-end road.

Defendant filed a petition for certiorari (PWC) with this Court on 21 November 2025.

II. Appellate Jurisdiction

Defendant’s PWC recognizes that in “his haste to remedy the failure to give notice of appeal at the conclusion of the trial, counsel failed to give proper oral or written notice of appeal” under Rule 4 of the North Carolina Rules of Appellate Procedure. As a result, on 21 November 2025, Defendant filed a PWC under Rule 21 of the North Carolina Rules of Appellate Procedure, seeking review of all four

convictions. *See* N.C. R. App. P. 21(a)(1) (“The writ of certiorari may be issued in appropriate circumstances by either appellate court to permit review of the judgments and orders of trial tribunals when the right to prosecute an appeal has been lost by failure to take timely action . . .”). Defendant asserts that because “he was represented by counsel who failed to enter proper notice of appeal, this defect should not deprive him of his right to appeal because his intent was clear, and the State has not been misled by the improper notice.”

Rule 4 of the North Carolina Rules of Appellate Procedure provides that a criminal defendant can appeal a judgment by: (1) “giving oral notice of appeal at trial” or (2) “filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment or order.” N.C. R. App. P. 4(a)(1)-(2). A written notice of appeal “shall specify the party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.” N.C. R. App. P. 4(b).

In his PWC, Defendant explains that after his trial had concluded and he had left the courtroom, his attorney “realized he failed to give notice of appeal on the record as is his normal practice.” Thereafter, defense counsel “ran down to the clerk’s office and said he forgot to put it on record.” The clerk “noted the appeal on her minutes from trial” and “checked the box on the judgment indicating that notice of

appeal had been given.” Thus, Defendant’s purported notice of appeal violates Rule 4, as it was neither written and filed with the clerk of superior court, N.C. R. App. P. 4(a)(1), nor given orally in open court, N.C. R. App. P. 4(a)(2). The notice was relayed to the clerk, not the trial court, and it was given after the trial’s conclusion.

“Our Supreme Court has said that a jurisdictional default, such as a failure to comply with Rule 4, precludes the appellate court from acting in any manner other than to dismiss the appeal.” *State v. Hammonds*, 218 N.C. App. 158, 162, 720 S.E.2d 820, 823 (2012) (citation and quotation marks omitted). However, “[a]bsent specific statutory language limiting the Court of Appeals’ jurisdiction, the court maintains its jurisdiction and discretionary authority to issue the prerogative writs, including certiorari.” *State v. Ledbetter*, 371 N.C. 192, 197, 814 S.E.2d 39, 43 (2018). We exercise our discretion and allow Defendant’s PWC under Rule 21.

III. Motion to Dismiss

Defendant first argues that the trial court erred by denying his motion to dismiss the charge of sex offense by digital penetration because the State failed to establish the *corpus delicti* of that crime. Defendant contends that there was “insufficient evidence of digital penetration” because the State relied only on his confession, which “lacked sufficient corroboration.” Defendant only challenges the conviction for sex offense by digital penetration; he does not challenge the convictions for sex offense by fellatio or statutory rape, which happened on the same date, nor does he challenge the conviction for sex offense by airport, which happened on a later

date.

A. Standard of Review

This Court reviews the trial court's ruling with respect to a motion to dismiss for insufficient evidence on a de novo basis. The question for the trial court is whether there is substantial evidence of each essential element of the offense charged, or of a lesser included offense, and of the defendant's being the perpetrator of such offense. Substantial evidence is relevant evidence that a reasonable person might accept as adequate, or would consider necessary to support a particular conclusion. The evidence can be circumstantial or direct, or both. However, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor. In considering such motions, the trial court is concerned only with the sufficiency of the evidence to take the case to the jury and not with its weight. Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve. If, however, the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator the motion to dismiss must be allowed.

State v. English, 241 N.C. App. 98, 104, 772 S.E.2d 740, 744-45 (2015) (citations, quotation marks, and ellipses omitted).

B. *Corpus Delicti* Rule

Defendant argues that the court erred in denying his motion to dismiss the sex offense by digital penetration charge because his "confession to digital penetration was not strongly corroborated."

"A person is guilty of statutory sexual offense with a child by an adult if the

person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.” N.C. Gen. Stat. § 14-27.28(a) (2025). “Sexual act” is defined as “[c]unnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person’s body.” N.C. Gen. Stat. § 14-27.20(4) (2025). Defendant challenges the sufficiency of the evidence regarding the “sexual act” of digital penetration.

“As a modern doctrine, the *corpus delicti* rule states no criminal conviction can be based upon [a] defendant’s extrajudicial confession or admission, although otherwise admissible, unless there is other evidence tending to establish the corpus delicti.” *State v. Messer*, 255 N.C. App. 812, 820, 806 S.E.2d 315, 321 (2017) (citation and quotation marks omitted). Since the eighteenth century, *corpus delicti* has been present in North Carolina case law. *Id.* at 820–21, 806 S.E.2d at 322. “For almost two hundred years the rule stood, ‘a conviction cannot be sustained upon a naked extrajudicial confession. There must be independent proof, either direct or circumstantial, of the *corpus delicti* in order for the conviction to be sustained.’” *Id.* at 821, 806 S.E.2d at 322. In 1985, however, our Supreme Court “loosened the ‘quantum and quality’ of corroborative evidence needed to satisfy *corpus delicti*” in *State v. Parker*, 315 N.C. 222, 337 S.E.2d 487 (1985). *Id.* The *Parker* Court “adopted a version of *corpus delicti* known as “the ‘trustworthiness’ doctrine, which focuses on

the reliability of a defendant's confession rather than independent evidence of the *corpus delicti*.” *Id.* (citations omitted).

In *Parker*, the defendant was convicted of two counts of first-degree murder and two counts of armed robbery. 315 N.C. at 224, 337 S.E.2d at 488. On appeal, the defendant argued that the armed robbery conviction of one of the murdered men had to be vacated because, apart from the defendant’s extrajudicial confession that he “‘took \$10.00 off the guy,’ there was no evidence of the *corpus delicti* of that armed robbery.” *Id.* at 227, 337 S.E.2d at 490. After reviewing the history of the *corpus delicti* rule and the versions applied in different jurisdictions, the Supreme Court adopted our *corpus delicti* rule:

We adopt a rule in non-capital cases that when the State relies upon the defendant’s confession to obtain a conviction, it is no longer necessary that there be independent proof tending to establish the *corpus delicti* of the crime charged if the accused’s confession is supported by substantial independent evidence tending to establish its trustworthiness, including facts that tend to show the defendant had the opportunity to commit the crime.

We wish to emphasize, however, that when independent proof of loss or injury is lacking, there must be *strong* corroboration of *essential* facts and circumstances embraced in the defendant’s confession. Corroboration of insignificant facts or those unrelated to the commission of the crime will not suffice. We emphasize this point because although we have relaxed our corroboration rule somewhat, we remain advertent to the reason for its existence, that is, to protect against convictions for crimes that have not in fact occurred.

Id. at 236, 337 S.E.2d at 495 (emphasis in original).

The Court noted that the case presented a new consideration: in prior cases addressing the *corpus delicti* rule, the defendant was charged with one offense; however, the defendant in *Parker* was convicted of two crimes. *Id.* at 238, 337 S.E.2d at 496. In those prior cases, “the question for the [C]ourt was whether there were sufficient facts and circumstances corroborative of the defendant’s confession to that *single crime* to warrant a belief in the trustworthiness of his admissions.” *Id.* (emphasis in original). The Supreme Court found a case from Missouri, *State v Hunt*, 570 S.W.2d 777 (Mo. App.1978), *conviction vacated on other grounds*, 441 U.S. 901, 60 L.Ed.2d 370 (1979),² which presented a “similar” factual situation. In *Hunt*, “the defendant was accused of more than one crime, the *corpus delicti* plainly was established as to one, and the issue was whether the defendant’s confession to the other crime was sufficiently corroborated by independent evidence so as to engender a belief in its truth.” *Parker*, 315 N.C. at 238, 337 S.E.2d at 496. The *Hunt* Court determined that the independent evidence supporting one conviction (kidnapping) was sufficient to corroborate the defendant’s confession to the other crime (sodomy) he committed during the kidnapping. *Id.*

Returning to the facts of its own case, the Court in *Parker* held that

under the particular facts presented in this case, where the defendant was charged with multiple crimes; the *corpus*

² The defendant in *Hunt* was convicted of kidnapping and sodomy of a four-year-old child; he conceded that there was independent evidence of the kidnapping, but he argued that his confession was the only evidence of the act of sodomy he committed during the kidnapping. *Hunt*, 570 S.W.2d at 779 (Mo. App. 1978).

delicti as to the more serious offenses was established independently of the defendant's confession; an element of the crime, use of a deadly weapon, was also established by independent evidence; and the State's evidence closely paralleled the defendant's statements as to the manner in which he committed the offenses, there was sufficient corroborative evidence to bolster the truthfulness of the defendant's confession and to sustain a conviction as to the [one of the victims] armed robbery even though there was no independent evidence tending to prove the *corpus delicti* of that crime.

Id. at 238–39, 337 S.E.2d at 496–97.

The same is true here. Lea's testimony "closely paralleled" Defendant's "statements as to the manner in which he committed the offenses." *Id.* The *corpus delicti* of the sex offense by fellatio and the statutory rape was established by independent evidence, Lea's testimony. Defendant was convicted of sex offense by fellatio, which occurred immediately before the sex offense by digital penetration; he was convicted of a statutory rape, which occurred immediately after the sex offense by digital penetration. According to his confession, he digitally penetrated Lea, an eleven-year-old virgin, to prepare her for the statutory rape.

Citing *State v. Smith*, 362 N.C. 583, 669 S.E.2d 299 (2008), Defendant argues that his confession to the sex offense by digital penetration "was not strongly corroborated." Defendant contends that although he had "the opportunity to digitally penetrate [Lea] during the incident at Peaches and Cream, [Lea] did not say he penetrated her with anything but his penis." We disagree.

In *Smith*, the defendant was charged with several sexual offenses; he was convicted of first-degree sexual offense and indecent liberties with a child and was acquitted of first-degree rape. *Id.* at 584, 669 S.E.2d at 301. The charged offenses did not all occur on the same date or place. *Id.* at 585–87, 669 S.E.2d at 301–02. The first-degree sexual offense charge was based on fellatio on the defendant by the victim. *Id.* at 586, 669 S.E.2d at 302. In his confession, the defendant claimed that on the night in question, he had “passed out in a drunken stupor on [a] bed, and [was] later awakened to find [the victim] between his legs, attempting to fellate him. [The d]efendant testified he immediately pushed her away.” *Id.* at 586, 669 S.E.2d at 302. The victim, however, consistently denied having any sexual contact with the defendant on that occasion. *Id.* at 593, 669 S.E.2d at 306. The defendant’s confession was the *only* evidence to support the first-degree sexual offense conviction. *Id.* The Supreme Court noted how the *corpus delicti* rule should apply based on the “unique situation” in that case:

A critical fact exists that necessarily bears upon our analysis: the victim twice denied that a first-degree sexual offense ever occurred. When interviewed by Detective Arrowood six weeks after the alleged events transpired, [the victim] stated that there was no sexual contact between [the] defendant and her on the night of the first visit. Additionally, [the victim] testified at trial that during the first visit, she was alone with [the] defendant in Jonathan’s bedroom, and while [the] defendant made inappropriate comments to her, no sexual contact occurred on the night of the first visit. A victim of sexual violence, especially a minor victim, is not required to testify to the sexual offense in order for a conviction to stand. *However*,

in this unique situation, in which the victim explicitly denies that the offense ever occurred, we believe it is imperative to adhere to Parker's emphasis that "strong" corroboration evidence supporting [the] defendant's extrajudicial confession must be shown when proof of injury or loss is otherwise lacking.

Id. at 593, 669 S.E.2d at 306 (emphasis added) (citations omitted).

That "critical fact" is not present here. *See, e.g., id.* Although Lea did not testify about digital penetration, she also never denied (at the Child Advocacy Center or during trial testimony) that it had happened. Additionally, Defendant was convicted of two other crimes from that same date; one occurred immediately before and one occurred immediately after the sex offense by digital penetration. Defendant does not argue that his motion to dismiss should have been allowed as to the charge of sex offense by fellatio or statutory rape. So, under *Parker*, the evidence supporting these offenses strongly corroborates Defendant's confession. 315 N.C. at 238–39, 337 S.E.2d at 496–97.

Defendant also argues that his confession needs particularly strong corroboration because "he argued at length" to the trial court "that his statement to Agent Pulliam was coerced." He contends that under the circumstances, he likely "felt pressured to agree with the suggestions of the officers about what happened." Defendant's suggestion of a coerced confession does not change our analysis. Defendant filed a motion to suppress his interview, and some of the facts he asserted in that motion are the same facts he contends are coercive here: several officers were

present during his interview, the officers were “armed with firearms in plain view or sight,” and he was in an isolated area. The trial court denied Defendant’s motion to suppress the interview after making detailed findings of fact. Defendant has not challenged the trial court’s ruling on the motion to suppress or its ruling on objections relevant to this issue.

We hold that the trial court did not err in denying Defendant’s motion to dismiss the charge of sex offense by digital penetration.

IV. Failure to Declare Mistrial

Defendant next argues that the trial court erred by “not declaring a mistrial after repeated improper questions by the prosecutor and inadmissible statements by Agent Pulliam.”

A. Standard of Review

Defendant did not request a mistrial at trial. A trial judge may declare a mistrial upon his own motion if it “is impossible for the trial to proceed in conformity with law” or “it appears there is no reasonable probability of the jury’s agreement upon a verdict.” N.C. Gen. Stat. § 15A-1063(1)-(2) (2025). Upon a defendant’s motion

or with his concurrence the judge may declare a mistrial at any time during the trial. The judge 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.

N.C. Gen. Stat. § 15A-1061 (2025). “It is well settled that a motion for a mistrial and

the determination of whether [a] defendant's case has been irreparably and substantially prejudiced is within the trial court's sound discretion." *State v. Shore*, 258 N.C. App. 660, 678, 814 S.E.2d 464, 475 (2018) (citation and quotation marks omitted).

B. Analysis

Defendant contends that the "prosecutor's numerous improper questions and [Agent] Pulliam's non-responsive and prejudicial answers made it impossible for the trial to continue in conformity with the law, resulting in substantial prejudice to [his] right to a fair trial by an unprejudiced jury."

First, Defendant argues the prosecutor demonstrated a pattern of asking improper questions. Defendant characterizes these improper questions as: "[s]takeout questions in jury selection; [q]uestions designed to elicit inadmissible responses; [q]uestions stating her personal beliefs and characterizations; [q]uestions that were leading; and [q]uestions that were irrelevant." According to Defendant, the "improper questions started in jury selection," when the prosecutor stated that she "d[id] not expect to present DNA or fingerprints in th[e] case" and asked if any of the jurors would "require the presentation of DNA or fingerprints in th[e] case." Defendant objected, and the trial court sustained the objection. Defendant also points to when the State questioned Lea, near the beginning of her testimony, "Why are we here?" and she responded: "Because I was sexually assaulted by Mr. Tyson." The court sustained the objection, directed the jury to disregard the answer, and

instructed the prosecutor to rephrase her question.

Next, Defendant argues that Agent Pulliam's answers to several questions were inadmissible. Specifically, Agent Pulliam "offered testimony that exceeded the scope of the question and improperly opined on the credibility of both [Defendant's] and [Lea's] statements." Defendant gives several examples; we note one. At trial, Agent Pulliam gave a non-responsive answer that also commented on Lea's credibility:

[PROSECUTOR]: Now, after your interaction with . . . Defendant concluded on September 20th of 2020, did you take any steps to speak with [Lea]?

[AGENT PULLIAM]. To directly speak with her? No.

[PROSECUTOR]: And why -- why was that?

[AGENT PULLIAM]: As part of this process and trying to remain fair and impartial, and especially when it comes to children who were abused and have been through stuff, we would typically try to use a Child Advocacy Center. And that's -- so that people who have specialized training and it's -- it's an environment where they typically -- and I think [Lea] testified she felt more comfortable in and that there is maybe not this pressure to try to say something or not say something. So because of that I didn't go interview her. We typically would just wait and then schedule an interview and let her talk with kind of that whole independent entity. So they aren't law enforcement officers at the Child Advocacy Center. Most of them are counselors or have background in that or social work, and they have their own process that they'll go through that's the same for everyone that comes through. And it's -- so we get the best, most accurate information, and that it's in an

environment that is not overly traumatic.³

THE COURT: I'm sorry, sustained to accurate information. That's — if the — if the jury will disregard the characterization of it being accurate.

In sum, Defendant argues that the prosecutor and Agent Pulliam's conduct "during the trial should have resulted in a mistrial."

The State's brief does not respond directly to any of the multiple questions and answers addressed in Defendant's brief; the State simply contends that "none of the questions rose to the level of prejudice that should have prompted a trial court to declare a mistrial *ex mero muto*." We take the State's response to mean that it does not deny Defendant's contention that the prosecutor did ask many improper questions, to which Defendant objected and the trial court sustained, or that the trial court *sua sponte* sustained and directed the jury to disregard. And we agree—the prosecutor asked many improper questions and Agent Pulliam gave testimony that was not responsive to questions and included inadmissible information.

In *State v. Edmonds*, 236 N.C. App. 588, 763 S.E.2d 552 (2014), this Court addressed the defendant's argument that "the State's line of questioning 'appear[ed]

³ We will not include large portions of the testimony but, upon review of the transcript, it appears that many of the alleged inappropriate questions and answers may have been the State's attempt to elicit evidence which would have properly come from a witness from the Child Advocacy Center. The State had expected this witness to be available, but she was not available at the time of the trial. Additionally, the trial court sustained Defendant's objections to the State's attempts to introduce Lea's interview from the Child Advocacy Center, so it was not in evidence. Defendant consistently objected to the State's attempts to get this evidence in through the backdoor, and the trial court consistently sustained the objections and instructed the jury to disregard the offending question or testimony.

to have been a deliberate tactic to inform the jury through questions what could not be proved through admissible evidence.” *Id.* at 596, 763 S.E.2d at 558 (citations omitted). We explained that:

the crux of [the] defendant[’s] . . . argument is best summarized as follows: [the] defendant contends that the trial court erred in failing to declare a mistrial *ex mero motu* in response to acts of prosecutorial misconduct during his trial. We disagree.

A trial court’s decision not to intervene *ex mero motu* to declare a mistrial on the basis of a prosecutor’s questions to a witness will not be disturbed on appeal unless the trial court clearly has abused its discretion. Where a prosecutor’s questions are improper, the trial court has the authority to provide a curative instruction to the jury or to declare a mistrial.

Id. at 594, 763 S.E.2d at 557 (citations and quotation marks omitted). The Court rejected the defendant’s argument because “the prosecutor did not place inadmissible information before the jury,” and the court “had sustained the [defendant’s] objections, struck one question from the record, and issued a curative instruction.” *Id.* at 596, 763 S.E.2d at 558.

The trial court did the same here – it sustained many objections and issued curative instructions, both at the time of the questions and in its final instructions to the jury. *See id.* Defendant does not argue that the prosecutor was asking improper questions in bad faith. *See id.* (“Our Supreme Court has held that questions asked on cross-examination will be considered proper unless the record shows they were asked in bad faith.” (citation, quotation marks, and brackets omitted)). The trial

court was in the best position to address the potential prejudicial effect of the improper questions and non-responsive answers, and it is apparent that the court took care to address each one and to uphold its responsibility to prevent Defendant from being prejudiced by the improper questions or answers.

Defendant has not demonstrated that the improper questions and responses rise to the level of “such serious improprieties as would make it impossible to attain a fair and impartial verdict under the law.” *State v. Blackstock*, 314 N.C. 232, 243–44, 333 S.E.2d 245, 252 (1985). We reject Defendant’s argument.

V. Clerical Error

Defendant argues, and the State agrees, that the trial court made a clerical error in one of its judgments. However, they disagree as to which judgment contains the error. Defendant contends that the judgment identified as File No. 20CR050878-030 contains the error; the State argues that the error is present in the judgment identified as File No. 20CR050877-030. We agree with Defendant and remand the judgment in File No. 20CR050878-030 to the trial court for correction of the clerical error.

“When, on appeal, a clerical error is discovered in the trial court’s judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record ‘speak the truth.’” *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) (citation and quotation marks omitted). A clerical error is “an error resulting from a minor mistake or inadvertence” especially “in

writing or copying something on the record, and not from judicial reasoning or determination.” *State v. Taylor*, 156 N.C. App. 172, 177, 576 S.E.2d 114, 117–18 (2003) (citation and quotation marks omitted).

Defendant was charged in File No. 20CR050877-030 with statutory rape, sex offense by fellatio, and sex offense by digital penetration; in File No. 20CR050878-030, he was charged with sex offense by airport. The judgment in File No. 20CR050877-030 only lists one offense—statutory rape—and the offense’s corresponding file number is accurately identified as File No. 20CR050877-030. The judgment in File No. 20CR050878-030 includes three offenses⁴ and each offenses’ corresponding file number: statutory sex offense with child by adult (File No. 20CR050878-030), statutory rape (File No. 20CR050877-030), and statutory rape (File No. 20CR050877-030).

The judgment identified as File No. 20CR050877-030 accurately identifies the offense of statutory rape and its corresponding file number (File No. 20CR050877-030). The judgment identified as File No. 20CR050878-030 accurately identifies the offense of sex offense by airport and its corresponding file number (File No. 20CR050878-030). However, the judgment identified as File No. 20CR050878-030 also includes two other offenses from File No. 20CR050877-030: two counts of

⁴ Although the judgment identified as File No. 20CR050878-030 includes three offenses, only one offense’s file number is File No. 20CR050878-030, the other two offenses’ file numbers are listed as File No. 20CR050877-030.

statutory rape of child by adult. This is error, as Defendant was neither charged nor convicted of three counts of statutory rape. Instead, the judgment identified as File No. 20CR050878-030 should include, in addition to the sex offense by airport conviction in File No. 20CR050878-030, sex offense by fellatio (File No. 20CR050877-030) and sex offense by digital penetration (File No. 20CR050877-030). We therefore remand to the trial court the judgment identified as File No. 20CR050878-030 for correction of this clerical error.

VI. Conclusion

For the reasons discussed above, we hold that Defendant received a fair trial, free from prejudicial error.

NO ERROR; REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges HAMPSON and FLOOD concur.