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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-34

Filed 21 October 2026

Union County, No. 21CR051223-890

STATE OF NORTH CAROLINA

v.

JUSTIN LAMAR RICHARDSON

Appeal by defendant from judgment entered 14 March 2025 by Judge Adam Elkins in Union County Superior Court. Heard in the Court of Appeals 22 September 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Steven Armstrong, for the State.

Caryn Strickland for defendant-appellant.

ARROWOOD, Judge.

Justin Lamar Richardson (“defendant”) appeals from judgment entered 14 March 2025 upon his conviction of first-degree murder. For the following reasons, we find no prejudicial error in his conviction but remand on the issue of restitution.

I. Background

A. Events of 5 April 2025

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On 5 April 2025, defendant shot and killed his friend of eight years, Dustin Rape (“Mr. Rape”). The testimony presented at defendant’s trial generally showed that on the morning of 5 April 2025, defendant visited Mr. Rape’s house. While there, defendant offered to buy an AR-15 and a Sig Sauer handgun from Mr. Rape. Defendant gave Mr. Rape \$200.00 as partial payment for the firearms and requested that Mr. Rape ride with him to the ATM to fulfill the rest of the payment. Defendant stated that he did not trust Mr. Rape alone with his money. Mr. Rape objected, an argument ensued, and Mr. Rape shoved defendant and kicked and punched him several times, leaving multiple injuries. Defendant did not fight back and left the residence.

Shortly thereafter, defendant returned to Mr. Rape’s home with his fiancé to retrieve two cell phones that he left behind. Mr. Rape’s girlfriend, Regina King, met defendant in the driveway and gave him his phones. While defendant was by his car, Mr. Rape came outside, jumped off his porch, and came towards defendant while shouting “What, did you come back . . . to get your ass beat again,” and, seemingly referring to a firearm, “[a]re you going to pull it out and not use it.” Defendant then shot Mr. Rape several times. Defendant left without calling 911 and was later apprehended by law enforcement. Mr. Rape was transported to the hospital where he died.

While the above facts are agreed upon by both parties, the details of the two altercations significantly differed in Ms. King’s and defendant’s testimony. According

to Ms. King's trial testimony, during defendant's first visit to Mr. Rape's home, Mr. Rape was focused on his phone and defendant kept interrupting him. During their conversation, defendant, a Black man, referred to Mr. Rape, a white man, using the n-word. After Mr. Rape pushed defendant, Ms. King initially laughed but then told Mr. Rape to stop. Mr. Rape only stopped after hitting and kicking defendant a few more times. Ms. King agreed that defendant did not fight back but said that defendant also refused to leave and Mr. Rape had to push him out the front door.

Ms. King also testified that defendant invited himself back to the house to retrieve his phones. When defendant arrived, Ms. King walked out alone to give him the phones. Defendant was standing outside of his vehicle but behind the open driver's side door. She described defendant as acting angry and "a little aggressive." After handing the phones to defendant, she told him, "here, just go." In her words, defendant then responded, "No, tell that P-U-S-S-Y N-word to come outside, I'm not mad." He then continued to say "Tell him to come outside. I'm not mad at him." She believed defendant spoke loud enough for Mr. Rape to hear him from inside the house. Ms. King testified that she saw Mr. Rape yell, approach defendant, and stand in front of defendant's car. She denied seeing either defendant or Mr. Rape with a weapon. Ms. King turned her back to walk inside and did not see the shooting, but she heard three gunshots.

In contrast, defendant's testimony about his initial visit to Mr. Rape's house described an intense beating that felt like Mr. Rape was going to break his neck and

kill him. Defendant also stated that Ms. King had to pull Mr. Rape off defendant in order to stop the beating. Additionally, defendant stated he left the house willingly once he was able to get up.

As to his second visit to Mr. Rape's house, defendant testified that Ms. King invited him to come back to the house to get his two phones. After receiving his phones, defendant started to leave and had his right leg in his car and the rest of his body between the car and the driver's side door. Defendant specifically denied saying "tell that p***y n-word to come out." When describing how Mr. Rape approached him, defendant said Mr. Rape was walking quickly with his left hand behind his back. Mr. Rape told defendant that he better have his gun. Then Mr. Rape made a movement with his left hand and it "was so quick," defendant grabbed his gun and "started firing." Defendant claimed he knew at the time that Mr. Rape frequently carried a gun, was "unpredictable," and had a "violent reputation in the community." However, he did not actually see a gun before he fired. Defendant testified that he was in fear for his life when he shot Mr. Rape. Defendant recalled telling police "I mean you come into my car and then my wife is in the car, bro. I ain't letting that happen."

Defendant also testified that after the shooting, he did not call 911 or help Mr. Rape because he was in shock and afraid. Defendant stated that though he left the scene, he planned to turn himself in. However, the police stopped him before he had the chance. When he was stopped, defendant had a duffle bag and clothes in his vehicle, which defendant said was from a recent trip to Atlanta. Defendant was tried

on an indictment alleging first-degree murder.

B. Investigation and Trial

At trial, the State also presented evidence from the crime scene investigator and the medical examiner. The crime scene investigator testified that there were at least five spent shell casings found in Mr. Rape's yard, all belonging to the Luger brand. However, her report from the investigation indicated that some casings had been labeled differently and at least one came from a rifle, while defendant used a Smith and Wesson handgun. Officers also searched inside Mr. Rape's home following the incident and found two firearms in the living room: an SNR 357 revolver laying between two couches and a Sig Sauer on an ottoman. The revolver had a live round in it that was jammed. Officers also found a camera on the exterior corner of the house. It had wires that went into the home, but the wires were not connected to any power supply or storage. Ms. King believed the cameras were decoys.

The medical examiner testified that based on the presence of stippling on his body, Mr. Rape was likely within two feet of defendant's gun when he was shot. Mr. Rape also had multiple wounds in his chest and back. The medical examiner explained that the entrance wounds in Mr. Rape's back did not necessarily mean he was leaving the confrontation because the wounds were also consistent with Mr. Rape turning his back in the middle of the shooting. It was also not possible to tell from the location of exit and entry wounds exactly how many shots were fired, but the medical examiner estimated it was between four to seven shots.

The State also introduced videos or audio recordings of police interviews with both defendant and Ms. King. Defendant testified that he was not always honest with authorities due to his shock and fear. For example, he originally wanted authorities to believe that his fiancé shot Mr. Rape but later confessed it was him. Defendant's police interviews revealed the following discrepancies emphasized by the State: he never mentioned having one foot inside of his car at the time of the shooting; he originally said he only had a knife on him during Mr. Rape's assault but later admitted he had a gun; he claimed that after he returned to get his cell phones, he told Mr. Rape "f**k you, it's all good"; and immediately after the shooting, defendant drove home to pack his belongings in order to take them to a storage unit before planning to turn himself in.

After the shooting, Ms. King was interviewed on the scene by Deputy Barrett and, shortly thereafter, Detective Plattenberger. The interview with Deputy Barrett was disclosed to the defense during discovery, but the State only recovered and disclosed the audio recording of the interview with Detective Plattenberger on the fifth day of the trial, after Ms. King's testimony had concluded. The State also turned over newly discovered photographs showing blood on Ms. King's hands following the incident.

The audio tapes contradicted portions of Ms. King's testimony and revealed the following: Ms. King originally stated that the incident was provoked by a "little argument" that she knew nothing about; she did not originally disclose Mr. Rape's

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beating defendant earlier that day; even after further questioning about the beating, she did not disclose the extent of it; she did not see either Mr. Rape or defendant with a gun; she claimed that Mr. Rape's Sig Sauer might not be a real gun; and she stated that defendant left after the beating and never said he had to be pushed out the door. The defense argued that the photos of blood on Ms. King's hands also contradicted her testimony that she did not touch Mr. Rape after the shooting.

In response to the discovery violation, defendant moved for dismissal or, alternatively, a mistrial and additional time to investigate the new evidence. The trial court denied the request, instead offering to re-open Ms. King's cross-examination and call Detective Plattenberger to the stand to admit the photos into evidence. The defense did not want to re-open Ms. King's cross-examination because she had already been released from sequestration, so she could have tailored her testimony based on what she heard. The State called Detective Plattenberger to testify and played the audio recordings for the jury. In the audio recordings, Detective Plattenberger told Ms. King not to wash her hands, which Detective Plattenberger testified was because she needed to follow up to see if anything needed to be done about the blood on Ms. King's hands first.

On cross-examination, the defense questioned Detective Plattenberger about the photos of Ms. King's hands. Detective Plattenberger testified that she took the photos, had recently looked them over, and recalled seeing blood on Ms. King's hands. She further testified that Ms. King did not explain how she got blood on her hands.

However, when the defense later called Detective Plattenberger for the purpose of admitting the photos of Ms. King's hands, Detective Plattenberger testified that she did not personally remember taking the photos. Based on Detective Plattenberger's testimony, the trial court did not allow the defense to admit the photos into evidence or ask any additional questions about the contents of the photos.

Following the close of evidence, the trial court held a charge conference and indicated that it planned to instruct the jury on self-defense, defense of habitation, and the aggressor doctrine. Defendant objected to the aggressor instruction, and the objection was overruled. During the jury charge, the trial court instructed on self-defense and the aggressor doctrine. However, instead of the habitation instruction previously agreed upon, the trial court instructed:

[T]he Defendant has no duty to retreat in a place where the Defendant has a lawful right to be. The Defendant would have a lawful right to be in the Defendant's motor vehicle.

...

If the Defendant was not the aggressor and the Defendant was in Defendant's motor vehicle, the Defendant could stand the Defendant's ground and repel force with force regardless of the character of the assault being made upon the Defendant. However, the Defendant would not be excused if the Defendant used excessive force.

The jury convicted defendant of first-degree murder. During sentencing, the trial court heard unsworn testimony from Mr. Rape's mother. She briefly mentioned Mr. Rape's funeral. The State then submitted a restitution worksheet reflecting funeral and medical expenses totaling \$23,590.15. Defendant was sentenced to life

in prison without the possibility of parole. The trial court also ordered defendant to pay restitution to Mr. Rape's mother in the amount of \$23,590.15. Defendant orally noticed appeal to this Court.

II. Discussion

Defendant presents four issues on appeal: 1) whether the trial court erred by failing to instruct the jury on the affirmative defense of habitation as promised during the charge conference; 2) whether the trial court erred by instructing the jury on the aggressor doctrine; 3) whether the trial court erred by denying the defense's motion to dismiss, or alternatively for a mistrial where the State admitted material discovery violations; and 4) whether the trial court's restitution order was unsupported by evidence. We address each issue in turn.

A. Jury Instructions

1. Preservation

As a preliminary matter, we address the preservation of defendant's challenges to the trial court's jury instructions. At trial, defendant objected to the instruction on the aggressor doctrine, and the State does not contest the preservation of that issue. However, the State argues that because defendant did not object to the trial court's instructions concerning defense of habitation, that issue is unpreserved and may only be reviewed for plain error. Defendant concedes that he did not object to the trial court's deviation from the pattern defense of habitation instruction but contends the issue is nevertheless preserved because the trial court indicated that it would provide

the pattern instruction and then failed to do so without any notice to the parties. Alternatively, defendant asserts plain error and ineffective assistance of counsel if either challenge to the trial court's jury instructions is deemed unpreserved.

“When a trial court agrees to give a requested pattern instruction, an erroneous deviation from that instruction is preserved for appellate review without further request or objection.” *State v. Lee*, 370 N.C. 671, 676 (2018). Here, the trial court agreed to provide the pattern instruction “308.80 defense of habitation, workplace, motor vehicle” but later deviated from that instruction during the jury charge. The State asserts that in between the charge conference and the jury charge, the trial court emailed an updated final list of instructions to both parties. However, that email is not included in the record. Indeed, nothing in the record suggests that defendant had notice the trial court would deviate from the pattern defense of habitation instruction and opportunity to object. Thus, defendant's challenges to the trial court's jury instructions are preserved for appellate review. Accordingly, we proceed to the merits and do not reach defendant's alternative plain error or ineffective assistance of counsel arguments.

2. Standard of Review

“‘Assignments of error challenging the trial court's decisions regarding jury instructions are reviewed *de novo* by this Court.’” *State v. Clagon*, 279 N.C. App. 425, 433 (2021) (quoting *State v. Osorio*, 196 N.C. App. 458, 466 (2009)). Under *de novo* review, this Court “‘considers the matter anew and freely substitutes its own

judgment’ for that of the lower tribunal.” *State v. Wright*, 388 N.C. 225, 229 (2025) (quoting *State v. Biber*, 365 N.C. 162, 168 (2011)). “If the trial court erred, appellate reversal and remand for a new trial is appropriate only upon a defendant’s demonstration of prejudice” *State v. Williams*, 933 S.E.2d 736, 743 (N.C. 2026).

3. Defense of Habitation

Defendant argues that there was sufficient evidence to support a defense of habitation instruction and the trial court’s deviation from the pattern instruction was prejudicial. In response, the State argues that the evidence did not support the instruction, defendant is not entitled to the defense of habitation because he was the aggressor, and that the trial court’s instructions were not prejudicial. For the reasons below, we conclude that there was insufficient evidence to support a defense of habitation instruction, so the trial court did not err.

“‘To resolve whether a defendant is entitled to a requested instruction,’ ” this Court reviews “ ‘whether each element of the defense is supported by the evidence, when taken in the light most favorable to defendant.’ ” *Williams*, 933 S.E.2d at 743 (quoting *State v. Mercer*, 373 N.C. 459, 462 (2020)). The elements of the defense of habitation, also known as the castle doctrine, are provided in N.C.G.S. § 14-51.2 (2025):

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if

both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

If these requirements are not met, then the defense of habitation does not apply, the defendant is not entitled to the presumption of reasonable fear, “and the jury must determine the defendant’s culpability under section 14-51.3, the general self-defense statute.” *State v. Allison*, 388 N.C. 664, 673 (2025).

Accordingly, to support a defense of habitation instruction, there must be sufficient evidence of an unlawful and forceful entry or an unlawful and forceful attempted entry. N.C.G.S. § 14-51.2(b)(1); *see also State v. Dilworth*, 274 N.C. App. 57, 63 (2020); *Allison*, 388 N.C. at 678 (concluding that the defendant qualified for instruction where the record contained “some evidence of an unlawful and forceful entry, or an unlawful and forceful attempted entry.”). Our Supreme Court has considered this requirement to be satisfied where there was evidence that the victim opened the defendant’s vehicle door without consent and attacked the defendant, *Williams*, 933 S.E.2d at 742–45, and where the victim prevented the defendant from closing his home’s front door, remained on the front porch after being asked to leave, and then moved forward towards the home, *Allison*, 388 N.C. at 666–67.

In contrast, this Court has held that a defendant had not qualified for a defense of habitation instruction where the defendant testified that the victim was creeping along a hill in “very close proximity of [his] household” and defendant “felt like” the victim was on his property, but in fact the victim was outside the bounds of the defendant’s property. *Dilworth*, 274 N.C. App. at 63–64. In *Dilworth*, we concluded that “even if the evidence could support a determination [the defendant] ‘had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred[,]’ ” defense of habitation did not apply because there was “simply no evidence [the victim] was in fact ‘in the process of unlawfully and forcefully entering, or had unlawfully and forcefully entered, a home[.]’ ”

Here, even if we assume defendant was a lawful occupant of his motor vehicle¹ at the time of the shooting, there is insufficient evidence that Mr. Rape was in the process of unlawfully or forcefully entering defendant’s vehicle or attempting to remove anyone from defendant’s vehicle. The evidence viewed in the light most favorable to defendant shows: defendant was invited back to Mr. Rape’s residence and parked in the driveway; after retrieving his phones, defendant returned to his car and stood behind the driver’s door; defendant had one foot in and one foot out of

¹ The parties presented arguments concerning where defendant was standing, whether defendant had a lawful right to remain on the driveway after he retrieved his phones, and the significance of defendant being parked and standing in the curtilage of Mr. Rape’s home. Because we determine there was insufficient evidence of any unlawful or forceful entry, attempted entry, or removal of another from defendant’s car, we do not reach these issues.

the car; while defendant was in the car, Mr. Rape quickly approached him; Mr. Rape yelled that defendant better have his gun and “what did you come back here to get your ass beat again?”; Mr. Rape reached behind him as if grabbing a gun; defendant feared that Mr. Rape would harm defendant or his fiancé inside defendant’s car; Mr. Rape was within two feet of defendant and his car when defendant shot him three times.

Neither defendant nor Ms. King’s testimony described Mr. Rape taking any action to enter defendant’s car or remove anyone from the car. Ms. King stated that she saw Mr. Rape standing near the front of defendant’s car. Defendant’s own testimony described Mr. Rape “coming towards [him]” and defendant agreed that Mr. Rape was standing within two feet of defendant’s gun. The only mention of an entry was where defendant testified that he recalled telling the police “I mean you come into my car and then my wife is in the car, bro. I ain’t letting that happen.” In context, this statement is not an assertion that Mr. Rape did come into defendant’s car but rather that defendant feared that Mr. Rape may do so. Indeed, in his police interviews defendant also described where Mr. Rape had stopped in front of his car. Notably, while Mr. Rape stood near defendant’s car, he was also standing in his own driveway, where he had a legal right to be.

Similar to *Dilworth*, even if there is evidence that defendant feared or believed Mr. Rape would forcefully enter his car, that is not sufficient to qualify for a defense of habitation instruction where there is no evidence that Mr. Rape was actually in

the process of unlawfully and forcefully entering defendant's vehicle. Accordingly, the trial court did not err by failing to provide the pattern defense of habitation instructions. Because we conclude the trial court did not err, we do not reach defendant's argument that he was prejudiced by the deviation.

4. Aggressor Doctrine

Defendant next argues that the trial court erred by instructing the jury on the aggressor doctrine. Specifically, defendant contends that it is error to provide a common-law aggressor instruction where defense of habitation applies, and that there was insufficient evidence to support an aggressor instruction. Because we have determined that defendant did not qualify for a defense of habitation instruction, we do not reach the issue of whether the trial court's aggressor instruction was compatible with that defense. As to defendant's second argument, we conclude that there was sufficient evidence to support an aggressor instruction and accordingly, the trial court did not err.

"Simply stated, the aggressor doctrine denies a defendant 'the benefit of self-defense if he was the aggressor in the situation.'" *State v. Corbett*, 269 N.C. App. 509, 566 (2020), *aff'd*, 376 N.C. 799 (2021) (quoting *State v. Juarez*, 369 N.C. 351, 358 (2016)). "Someone may be considered the aggressor if they aggressively and willingly enter into a fight without legal excuse or provocation." *State v. Hicks*, 385 N.C. 52, 60 (2023) (cleaned up). Our courts consider a variety of factors in determining whether the defendant was the aggressor, "including the circumstances that

precipitated the altercation; the presence or use of weapons; the degree and proportionality of the parties' use of defensive force; the nature and severity of the parties' injuries; or whether there is evidence that one party attempted to abandon the fight." *Corbett*, 269 N.C. App. at 566.

"In determining whether a self-defense instruction should discuss the 'aggressor' doctrine, the relevant issue is simply whether the record contains evidence from which the jury could infer that the defendant was acting as an 'aggressor' at the time that he or she allegedly acted in self-defense." *State v. Mumma*, 372 N.C. 226, 239 n.2 (2019). In making the determination, "[t]he State must be given the benefit of every reasonable inference to be drawn from the evidence and any contradictions in the evidence are to be resolved in favor of the State." *Hicks*, 385 N.C. at 61 (quoting *State v. Bell*, 338 N.C. 363, 388 (1994)).

Here, the record contains enough evidence from which the jury could infer defendant was acting as the aggressor when he shot Mr. Rape. The evidence viewed in the light most favorable to the State shows: defendant was beaten by Mr. Rape but refused to leave and had to be pushed out the door; defendant returned shortly thereafter, armed with a handgun; defendant invited himself to return to the residence; defendant acted and spoke in an aggressive tone; defendant used vulgar language and repeatedly urged Mr. Rape to "come outside"; Mr. Rape was unarmed; Mr. Rape was standing two feet away from defendant; defendant shot Mr. Rape five times, including in the back; and defendant left without calling 911 or otherwise

helping Mr. Rape.

Defendant provides several arguments for why each of the above facts do not indicate that he was the aggressor. However, his arguments fail when construing the evidence in favor of the State and considering their combined effect. Defendant first argues that his alleged comments toward Mr. Rape were at most an “immature taunting” and that words alone do not justify violence. Accepting Ms. King’s testimony that defendant was aggressive and angry, the jury could infer that defendant was intending to provoke Mr. Rape by repeatedly urging him to “come outside.” Additionally, outside of defendant’s own testimony that Mr. Rape reached behind his back, which the jury was free to disbelieve, there is also no evidence in the record that Mr. Rape himself went beyond verbal threats and attempted to use any physical force against defendant immediately prior to the shooting. Thus, the jury could reasonably infer that defendant was the first to become violent during the interaction.

Defendant also argues that he had a legal right to return to the property to retrieve his phones and the fact he was armed does not point to him being the aggressor. However, even if these factors individually would not support an aggressor instruction, they still contribute to the State’s overall argument. Cumulatively, the State’s evidence that defendant was beaten, returned to the residence armed, urged Mr. Rape to come outside, then shot Mr. Rape five times while Mr. Rape was unarmed, and that defendant himself suffered no physical injuries from the

interaction is sufficient for the jury to infer that defendant was acting as the aggressor. Therefore, the trial court did not err by instructing the jury on the aggressor doctrine.

B. Discovery Violations

Defendant next argues that the State's discovery violations violated his constitutional due process rights and the trial court erred by denying his motion to dismiss, or alternatively, for a mistrial. For the following reasons, we conclude that defendant has not sufficiently demonstrated that the State's discovery violation was prejudicial, so the trial court did not err by denying defendant's motion to dismiss the prosecution or order a mistrial.

"We review a ruling on discovery matters for an abuse of discretion." *State v. Pender*, 218 N.C. App. 233, 240 (2013) (citation omitted). However, "[w]hen the Court reviews an alleged violation of a defendant's constitutional rights, the appropriate standard of review is *de novo*." *State v. Glenn*, 220 N.C. App. 23, 25 (2012) (citation omitted); *cf. State v. Williams*, 362 N.C. 628, 634–36 (2008) (reviewing *de novo* whether the State's discovery violation was a flagrant violation of constitutional rights requiring dismissal under N.C.G.S. § 15A-954(a)(4)).

Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, " 'the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.' "

Williams, 362 N.C. at 636 (quoting *Brady v. Maryland*, 373 U.S. 83, 87 (1963)). “Evidence favorable to an accused can be either impeachment evidence or exculpatory evidence.” *Id.* (citing *United States v. Bagley*, 473 U.S. 667, 676 (1985)). However, nondisclosure of favorable evidence does not automatically constitute reversible error. *State v. Tirado*, 358 N.C. 551, 589 (2004). Rather, “ ‘prejudicial error must be determined by examining the materiality of the evidence.’ ” *Id.* (quoting *State v. Howard*, 334 N.C. 602, 605 (1993)).

To establish prejudice, “a defendant must show that ‘there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’ ” *State v. Best*, 376 N.C. 340, 348 (2020). “A reasonable probability is one ‘sufficient to undermine confidence in the outcome’ of the proceeding. ” *Id.* (quoting *State v. Byers*, 375 N.C. 386, 400 (2020)). A defendant’s burden to show reasonable probability “is more than showing that withheld evidence *might* have affected the verdict, but less than showing that withheld evidence *more likely than not* affected the verdict.” *Id.* (emphasis added).

Here, it is uncontested that the State committed a discovery violation by failing to disclose the audio recordings of Ms. King’s interview with Detective Plattenberger and the photos showing blood on her hands. Nevertheless, defendant has not met his

burden of establishing prejudice.² The interviews and photos were favorable to defendant as impeachment evidence against Ms. King. However, the jury was presented with other impeachment evidence concerning Ms. King including a different interview with authorities taken around the same time. Moreover, the jury still heard the recordings of the interviews with Detective Plattenberger as evidence, and the defense was able to highlight the discrepancies in Ms. King's interviews and testimony during closing arguments. Under these circumstances, defendant's diminished ability to effectively cross-examine Ms. King about the newly discovered interviews is not so significant it undermines confidence in the outcome of the proceeding.

As to the photos of Ms. King's hands, the State's nondisclosure had a greater effect to the extent that it contributed to the inadmissibility of the photos themselves. However, the jury still got to hear from the interview recording and Detective Plattenberger's testimony that there was blood on Ms. King's hands. Moreover, other than discrediting Ms. King's testimony, the photos would have limited impact on the outcome of the trial. The photos were most relevant to support the defense's theory

² Defendant argues that at trial, the State conceded the evidence was material, and therefore that its nondisclosure was violative of defendant's constitutional rights. The State did tell the trial court that it "concedes this is a material subject" because the evidence "goes to what actually happened." However, the State also argued that the discovery violation was not so prejudicial to warrant dismissal. Defendant is correct to point out that the two arguments are contradictory as the standard for materiality and prejudice are the same. *See Williams*, 362 N.C. at 636 ("Evidence is considered 'material' if there is a 'reasonable probability' of a different result had the evidence been disclosed."). Due to the misapprehension of law, we do not consider the State's concession of "material subject matter" as establishing prejudice or a violation requiring dismissal.

that Ms. King tampered with the scene to remove a firearm from Mr. Rape's person and throw it in the living room. The jury could have easily believed that theory and still found that defendant did not act in self-defense or was the aggressor. Indeed, defendant's own testimony that he did not see Mr. Rape carrying a gun at the time demonstrates that whether Mr. Rape actually possessed a gun would not have affected defendant's state of mind. Thus, there is not a reasonable probability that the admission of the photos themselves, or even greater time for the defense to examine them, would have affected the verdict. Therefore, we conclude defendant did not meet his burden of demonstrating prejudice and the trial court did not err by denying his motion to dismiss or order a mistrial and instead providing alternative remedies for the discovery violation.

C. Restitution

Finally, defendant argues that the trial court's restitution order was unsupported by the evidence. For the following reasons, we agree.

This Court reviews the issue of whether a restitution order was supported by evidence *de novo*. *State v. Wright*, 212 N.C. App. 640, 645 (2011). "[T]he issue of restitution is preserved for appellate review" even "where there was no objection at trial." *State v. Blount*, 209 N.C. App. 340, 347 (2011).

"[T]he amount of restitution recommended by the trial court must be supported by evidence adduced at trial or at sentencing.'" *State v. Moore*, 365 N.C. 283, 285 (2011) (quoting *State v. Wilson*, 340 N.C. 720, 726 (1995)). "[T]he quantum

of evidence needed to support a restitution award is not high.” *Id.* However, “[a] restitution worksheet, unsupported by testimony, documentation, or stipulation, ‘is insufficient to support an order of restitution.’ ” *Blount*, 209 N.C. App. at 348 (quoting *State v. Mauer*, 202 N.C. App. 546, 552 (2010)).

Here, there is no evidence outside of the restitution worksheet to support the trial court’s order. The State points to Mr. Rape’s mother’s statement that “one of the sheriffs was a pallbearer at [Mr. Rape’s] funeral” as the only evidence supporting the restitution worksheet. However, this testimony was unsworn and did not contain any information supporting the actual amount of restitution. Therefore, the trial court’s restitution award of \$23,590.15 is not supported by the evidence. Accordingly, we vacate the trial court’s restitution order and remand for rehearing on the issue.

III. Conclusion

For the foregoing reasons, we hold that the trial court did not commit prejudicial error in its jury instructions or by denying defendant’s motion to dismiss, or alternatively for a mistrial due to the State’s discovery violations. However, we vacate the trial court’s restitution order and remand for a rehearing on the issue.

NO PREJUDICIAL ERROR IN PART; VACATED AND REMANDED IN PART.

Judges GORE and MURRY concur.

Report per Rule 30(e).