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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-817

Filed 4 November 2026

Wake County, Nos. 19CR216789-910,19CR216786-910

STATE OF NORTH CAROLINA

v.

CARL DUVEE BARKLEY

Appeal by Defendant from judgments entered on 28 October 2024 by Judge Robert C. Roupe in Wake County Superior Court. Heard in the Court of Appeals 13 August 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Tanner J. Ray, for the State.

Sean P. Vitrano, for the Defendant.

WOOD, Judge.

Carl Duvee Barkley ("Defendant") appeals from judgments entered upon a jury verdict finding him guilty of four counts of assault with a deadly weapon with intent to kill inflicting serious injury ("AWDWIKISI"). Defendant argues the trial court erred by denying his pretrial motion to dismiss for lack of speedy trial and by failing to intervene *ex mero motu* during the State's closing argument. After careful review

of the record and applicable law, we hold Defendant received a fair trial free from prejudicial error.

I. Factual and Procedural Background

On the night of 8 September 2019, Defendant got into an argument with his wife and three children, which testimony tends to show was the result of Defendant bringing a woman, with whom he was having an affair, to church with him that morning. This argument culminated in Defendant stabbing his wife and children multiple times with a kitchen knife in and around their home. Defendant's wife and children suffered severe injuries which would have been fatal if they had not been treated by emergency services expeditiously. After the stabbing, Defendant left the scene and traveled to Rocky Mount where he sought mental health treatment at Nash General Hospital.

On 9 September 2019, Defendant was arrested and charged with four counts of AWDWIKISI; Defendant was indicted on 24 September 2019 on the four counts of AWDWIKISI. On 11 February 2020, attorney Abraham Jones ("Attorney Jones") filed a general appearance to represent Defendant. Between 23 May 2020 and 27 August 2020, Defendant contacted his wife 103 times, violating the conditions of his pretrial release. On 27 August 2020, the trial court granted the State's motion to set a secured bond on the violation of pretrial conditions in the amount of five million dollars.

On 14 October 2020, the trial court reduced Defendant's bond to $2.5 million but denied Defendant's motion to restore his phone privileges and ordered the State to turn over Defendant's recorded phone calls to Attorney Jones. Between March 2020 and November 2020, Wake County courts did not conduct jury trials due to the COVID-19 pandemic. Once trials resumed, Wake County courts prioritized cases older than Defendant's case.

On 17 March 2022, Attorney Jones filed a motion requesting a capacity evaluation for Defendant and a motion to withdraw as Defendant's counsel. The trial court allowed both motions, and Defendant was assigned Public Defender Margaret Lumsden ("Attorney Lumsden"), on the same day. On 10 May 2022, Attorney Lumsden filed a motion to reduce Defendant's bond, and on 23 May 2022, Attorney Lumsden filed a motion to withdraw as counsel for Defendant due to medical issues. The trial court granted Attorney Lumsden's motion to withdraw and assigned Public Defender Charles Christopher ("Attorney Christopher") to Defendant. On 7 July 2022, the trial court reviewed the capacity evaluation and found Defendant capable to proceed.

On 14 November 2022, Defendant requested Attorney Christopher be removed as his appointed counsel. On 2 February 2023, the trial court restored Defendant's phone and mail privileges based on a motion filed by Attorney Christopher. On 21 September 2023, the trial court granted Defendant's motion for new counsel, appointing attorney Renee Jordan ("Attorney Jordan"), and on 11 October 2023,

attorney O. Josiah Fapojuwo ("Attorney Fapojuwo") entered a limited appearance for the purpose of requesting a bond modification.

At the bond modification hearing held on 14 December 2023, the trial court reduced Defendant's bond to $1 million, and the following day, 15 December 2023, the trial court scheduled a plea or arraignment for 22 January 2024. Defendant rejected a plea offer and was arraigned on 22 January 2024, where the trial court set four possible trial dates within the months of August, September, or October of 2024. On 9 July 2024, Attorney Jordan moved to continue Defendant's case due to scheduling conflicts, and the trial court allowed the motion on 22 July 2024, setting a trial date of 14 October 2024. On 9 August 2024, the trial court moved the trial date to 21 October 2024 because of a scheduling conflict with the annual superior court judge's conference.

Attorney Jordan filed a motion to dismiss for lack of a speedy trial on 17 October 2024; the trial court entered its order denying the motion on 25 October 2024. Prior to Attorney Jordan's motion to dismiss for lack of a speedy trial, Defendant wrote nineteen letters, some containing *pro se* motions, to the trial court. Within these letters, Defendant invoked his constitutional right to a speedy trial. On three separate occasions, the trial court informed Defendant by letter that he could not file *pro se* motions because he was represented by counsel.

On 28 October 2024, the jury returned its verdict finding Defendant guilty on all four counts of AWDWIKISI. Defendant was sentenced to four consecutive

sentences of 110 to 144 months of imprisonment, with credit for all the time he served awaiting trial. Defendant gave oral notice of appeal following sentencing.

II. Analysis

Defendant argues the trial court violated his Sixth Amendment right to a speedy trial and failed to intervene *ex mero motu* in response to several statements made by the prosecutor during closing arguments.

A. Right to a Speedy Trial

Defendant argues the trial court erred by denying his motion to dismiss for violation of his right to a speedy trial because the length of the delay in bringing the case to trial, the reason for the delay, Defendant's assertion of his right to a speedy trial, and the purported prejudice to Defendant all weigh in favor of a determination that his constitutional right to a speedy trial was violated. We disagree.

An alleged violation of a criminal defendant's constitutional right to a speedy trial is reviewed *de novo*; considering the matter anew and substituting our own judgment for that of the lower court. *State v. Spinks*, 277 N.C. App. 554, 561, 860 S.E.2d 306, 314 (2021). When reviewing the trial court's denial of a motion to dismiss for a speedy-trial violation, "we review the superior court's order to determine whether the trial judge's underlying findings of fact are supported by competent evidence and whether those factual findings in turn support the judge's ultimate conclusions of law." *Id.* (quoting *State v. Wilkerson*, 257 N.C. App. 927, 929, 810 S.E.2d 389, 391 (2018)). Unlike other constitutional rights, the right to a speedy trial

is different in that,

> among other things, deprivation of a speedy trial does not *per se* prejudice the ability of the accused to defend himself; it is impossible to determine precisely when the right has been denied; it cannot be said precisely how long a delay is too long; there is no fixed point when the accused is put to a choice of either exercising or waiving his right to a speedy trial; and dismissal of the charges is the only possible remedy for the denial of the right to a speedy trial.

State v. McKoy, 294 N.C. 134, 140, 240 S.E.2d 383, 388 (1978). In *Barker v. Wingo*, the U.S. Supreme Court "laid out a four-factor balancing test to determine whether a defendant's Sixth Amendment right to a speedy trial has been violated. These factors are: (1) the length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant." *Spinks*, 277 N.C. App. at 562, 860 S.E.2d at 314-15 (discussing *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972)). This Court must consider and weigh each factor to determine whether a violation has occurred; "none of the four factors identified above [are] either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such circumstances as may be relevant." *Barker*, 407 U.S. at 533, 92 S. Ct. at 2193. Therefore, "we consider each factor and engage in this difficult and sensitive balancing process below." *Spinks*, 277 N.C. App. at 562, 860 S.E.2d at 315 (cleaned up).

1. Length of Delay

The first *Barker* factor, length of delay, "is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *Barker*, 407 U.S. at 530, 92 S. Ct. at 2192.

Although there is no bright line, our U.S. Supreme Court has stated,

> the lower courts have generally found post-accusation delay presumptively prejudicial at least as it approaches one year. We note that, as the term is used in this threshold context, presumptive prejudice does not necessarily indicate a statistical probability of prejudice; it simply marks the point at which courts deem the delay unreasonable enough to trigger the *Barker* enquiry.

State v. Boyd, 297 N.C. App. 624, 630, 912 S.E.2d 178, 184 (2025) (quoting *Doggett v. United States*, 505 U.S. 647, 652 n.1, 112 S. Ct. 2686, 2691 n.1 (1992)). Our Supreme Court has held that while a delay of one year is "not enough in itself to conclude that a constitutional speedy trial violation has occurred, this delay is clearly enough to cause concern and to trigger examination of the other factors." *State v. Webster*, 337 N.C. 674, 679, 447 S.E.2d 349, 351 (1994). Here, Defendant was arrested on 8 September 2019 and his trial began on 21 October 2024, a period of sixty-one months; thus, an inquiry into the remaining *Barker* factors had been triggered.

2. Reason for Delay

In proving the second *Barker* factor, reason for delay, Defendant bears the burden of showing that the reason for "the delay was the *neglect* or *willfulness* of the prosecution." *Spinks*, 277 N.C. App. at 563, 860 S.E.2d at 315. "[A] 'particularly

lengthy' delay 'creates a prima facie showing that the delay was caused by the negligence of the prosecutor.'" *Id.* (quoting *State v. Strickland*, 153 N.C. App. 581, 586, 570 S.E.2d 898, 902 (2002)). This Court has previously held delays of thirty-one months and thirty-five months sufficient to create a *prima facie* showing of negligence. *Strickland*, 153 N.C. App. at 586, 570 S.E.2d at 902; *State v. Chaplin*, 122 N.C. App. 659, 664, 471 S.E.2d 653, 656 (1996).

Here, Defendant's trial was delayed sixty-one months, exceeding the length of delays previously found sufficient to create a *prima facie* showing of negligence on the part of the prosecution. This *prima facie* showing of negligence on the part of the prosecution shifted the burden to the State to "rebut and offer explanations for the delay." *Spinks*, 277 N.C. App. at 564, 860 S.E.2d at 316. However,

> [t]he State is allowed good-faith delays which are reasonably necessary for the State to prepare and present its case, but is proscribed from purposeful or oppressive delays and those which the prosecution could have avoided by reasonable effort. Different reasons for delay are assigned different weights, but only valid reasons are weighed in favor of the State.

Wilkerson, 257 N.C. App. at 930-31, 810 S.E.2d at 393.

> Deliberate delay is weighted heavily against the State. A more neutral reason such as negligent delay or a valid administrative reason such as the complexity of the case or a congested court docket is weighted less heavily against the State than is a deliberate delay. A valid reason for delay, such as delay caused by difficulty in locating witnesses, serves to justify appropriate delay. Finally, delays occasioned by acts of the defendant or on his or her behalf are heavily counted against the defendant and will

> generally defeat his or her speedy trial claim.

State v. Crisp, 297 N.C. App. 400, 403, 910 S.E.2d 726, 732 (2024) (quoting *State v. Farook*, 381 N.C. 170, 180, 871 S.E.2d 737, 747-48 (2022)). "[D]elay caused by defense counsel's scheduling conflicts, by a defendant's waiver of appointed counsel and failure to retain counsel, and by a defendant's motion to remove counsel and appoint new counsel will not be attributed to the State." *Spinks*, 277 N.C. App. at 564, 860 S.E.2d at 316 (cleaned up).

Here, the trial court made findings regarding the seven attorneys that represented Defendant during the sixty-one months prior to trial. Defendant's first attorney, Attorney Alan Briones ("Attorney Briones") withdrew due to personal matters unrelated to Defendant. Appointed attorney, Assistant Public Defender Michael Howell, represented Defendant beginning on 28 August 2020 for only twelve days before withdrawing as counsel on 9 September 2020 because Defendant had already retained Attorney Jones following Attorney Briones' withdraw. Attorney Jones continued to represent Defendant until his motion to withdraw was allowed on 17 March 2022. Next, Appointed Attorney Lumsden represented Defendant for approximately two months before the trial court allowed her to withdraw for personal matters unrelated to Defendant. Attorney Christopher was appointed to represent Defendant on 26 May 2022. Attorney Chrisopher represented Defendant until Defendant requested his removal, which was granted on 21 September 2023. At that time, Attorney Jordan was appointed and eventually tried the case which began on

21 October 2024. Additionally, Defendant retained Attorney Fapojuwo for the sole purpose of representing him at an October 2023 bond hearing. Although the trial court did not make findings explaining how Defendant's representation by seven attorneys contributed to the delay in trial, the record appears to support attributing responsibility to both Defendant and the State. Defendant requested the removal of the two attorneys who had represented him for the longest periods. The trial court further found that Defendant violated his pretrial release conditions 103 times between 23 May 2020 and 27 August 2020 and was committed to Central Regional Hospital for a capacity evaluation on 17 March 2022. Defendant's case was scheduled for plea or arraignment on 22 January 2024. As of that date, trial was set for 26 August 2024, with a backup date of 14 October 2024. Attorney Jordan moved to continue the trial to 14 October 2024 because she had murder trials scheduled during the weeks immediately before and after 26 August 2024. The trial was later continued to 21 October 2024 because a judges' conference prevented superior court from being held the week of 14 October 2024.

Additionally, while the trial court did not make findings regarding COVID-19, discussion of trial delays resulting from COVID-19 closings was discussed at the hearing and both parties now on appeal note the affect COVID-19 had on trial proceedings throughout the course of this case. At the hearing, the State noted that jury trials were not held from March 2020 to November 2020 and there was "a specific priority to murders who were in custody, who were reaching a certain age of the case

that [Defendant's] case at that point in time had not yet reached." The trial court took judicial notice of the pause in all trials from March 2020 to November 2020. Delays caused by the COVID-19 pandemic were the result of closures "required by Executive Orders issued by the Governor of North Carolina and by Emergency Directives issued by the Chief Justice of the Supreme Court of North Carolina." *State v. Ambriz*, 286 N.C. App. 273, 301, 880 S.E.2d 449, 471 (2022). The pandemic "caused significant shutdowns and backlogs in our judicial system" and delays caused by the pandemic were not "purposeful" on the part of the prosecution nor could the prosecution have avoided them by "reasonable effort." *Id.*; *Wilkerson*, 257 N.C. App. at 930-31, 810 S.E.2d at 393.

3. Assertion of Right to Speedy Trial

The third *Barker* factor, assertion of the right to a speedy trial, "is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Barker*, 407 U.S. at 532-33, 92 S. Ct. at 2192-93. Our courts have long held "[a] criminal defendant who vigorously asserts his right to a speedy trial will be considered in a more favorable light than a defendant who does not." *Strickland*, 153 N.C. App. at 587, 570 S.E.2d at 903. Although the defendant's assertion of his right to a speedy trial is entitled to strong evidentiary weight, "assertion of the right, by itself, [does] not entitle [Defendant] to relief." *Spinks*, 277 N.C. App. at 566, 860 S.E.2d at 317.

Here, Defendant's counsel filed a motion to dismiss for a speedy trial violation on 17 October 2024, four days before trial and nearly five years after Defendant's arrest. The trial court's findings and record reflect that Defendant had previously attempted to file several *pro se* motions asserting his right to a speedy trial; however, the trial court informed Defendant on three separate occasions that because he was represented by counsel he could not file *pro se* motions. A defendant may choose to appear *pro se* or be represented by counsel, but not both. *State v. Thomas*, 331 N.C. 671, 677, 417 S.E.2d 473, 477 (1992). A defendant has no constitutional or statutory right to appear both *pro se* and by counsel. *Id.* Because a defendant must choose one or the other, it has been long established that trial courts may disregard motions filed *pro se* by defendants who are represented by counsel at the time they filed the motions. *Farook*, 381 N.C. at 184-85, 871 S.E.2d at 750. Accordingly, the trial court here was able to properly disregard the *pro se* motions asserting Defendant's right to a speedy trial because he was represented by counsel at that time they were filed.

Although "Defendant's failure of process does not equate to an absence of intent to assert his constitutional right to a speedy trial," the "*pro se* assertion of his right to a speedy trial is not determinative of whether he was denied the right." *State v. Kpaeyeh*, 246 N.C. App. 694, 698, 784 S.E.2d 582, 585 (2016); *State v. Spivey*, 357 N.C. 114, 121, 579 S.E.2d 251, 256 (2003).

In *State v. Spinks*, the defendant filed three *pro se* motions asserting his right to a speedy trial while represented by counsel, he filed two additional *pro se* motions

when no longer represented by counsel, all of which were dismissed. *Spinks*, 277 N.C. App. at 565-66, 860 S.E.2d at 317. When weighing the defendant's assertion of his right to a speedy trial against the other *Barker* factors, this Court found, "[e]ven considering both the improper motions filed when Defendant was represented by counsel and his *pro se* motions, and 'assuming arguendo that Defendant properly asserted his rights through his pro se motions, this assertion of the right, by itself, did not entitle him to relief.'" *Id.* at 566, 860 S.E.2d at 317 (quoting *Spivey*, 357 N.C. at 121, 579 S.E.2d at 256).

4. Prejudice

For the fourth *Barker* factor, prejudice to the defendant, the defendant "must show actual, substantial prejudice." *Spivey*, 357 N.C. at 122, 579 S.E.2d at 257. *Barker* provides guidelines for assessing "actual, substantial prejudice." *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193. Specifically, *Barker* encourages courts to assess three interests when deciding whether a defendant was prejudiced. *Id.*

> Prejudice, of course, should be assessed in the light of the interests of the defendants which the speedy trial right was designed to protect. [The United States Supreme Court] has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.

Id.

Here, the trial court concluded that Defendant did not make the requisite showing of prejudice because there was no evidence showing Defendant's ability to defend his case was harmed by the delay. Defendant argues the trial court did not assess the other two interests identified by the United States Supreme Court—prevention of oppressive pretrial incarceration and minimization of anxiety and concern of the accused—because they are not mentioned in the findings. While our Supreme Court has stated that courts *should* analyze all three of these interests identified by *Barker*, it has further clarified that the possibility of impairment of the ability to mount a defense is the most serious component of prejudice under *Barker*. *Farook*, 381 N.C. at 189, 871 S.E.2d at 753. Failure to make a written finding on the other interests does not equate to the trial court having failed to assess and consider their impact and further demonstrate error. *Cf. Ambriz*, 286 N.C. App. at 287, 880 S.E.2d at 463 (discussing that "[t]rial courts are not always required to enter written findings when analyzing speedy trial motions" or even conduct an evidentiary hearing before ruling).

In his brief on appeal, Defendant identifies the revocation of his phone, mail, and tablet privileges while he was in custody and his $5 million bond (which was increased from the original $2.5 million and eventually reduced back to $2.5 million) as evidence of "oppressive pretrial incarceration." Defendant also argues that the "human impact of [his] isolation during his five years of pretrial incarceration" is evidence of the "anxiety and concern of the accused." However, at the pretrial

hearing, defense counsel did not present any direct evidence that Defendant was prejudiced by the delay. Defense counsel mentioned that Defendant could not post bond, was in continuous custody, and had lost his job while incarcerated prior to trial, but it was not asserted that these hardships were the result of prejudice caused by delay, nor did defense counsel specify whether these hardships supported a finding of any of the three interests identified in *Barker*.

In *State v. Ambriz*, the defendant could not prove the first two interests identified by the United States Supreme Court weighed in his favor because "the first two interests protected by the right to a speedy trial are evident in nearly all incarcerations." *Ambriz,* 286 N.C. App. at 304, 880 S.E.2d at 473. The defendant had been incarcerated for five years and three months before his trial and alleged he was prejudiced by the separation from his family. *Id.* at 295, 304, 880 S.E.2d at 468, 473. Because the defendant made only generalized concerns about detention causing him prejudice, this Court held the argument fell short of actual, substantial prejudice. *Id.* at 304-05, 880 S.E.2d at 473.

Similarly, here, Defendant was incarcerated for just over five years awaiting trial. Although Defendant may have experienced anxiety because of the incarceration, both "oppressive pretrial conditions" and "anxiety and concern of the accused" are "evident in nearly all incarcerations." *Id.* at 304, 880 S.E.2d at 473. Additionally, the revocation of Defendant's phone, mail, and tablet privileges and his

increase in bond were disciplinary measures taken after Defendant violated his pretrial release conditions by contacting his wife 103 times.

Lastly, Defendant fails to demonstrate his defense was impaired by the delay, the final, and most important, interest identified by the United States Supreme Court. *Barker*, 407 U.S. at 532, 92 S. Ct. at 2193. In the pretrial hearing and in his brief, Defendant fails to point to any evidence relevant to the impact of the delay on his defense. The trial court explicitly found that no evidence was presented showing that any witness had become unavailable, any evidence had spoliated, or any other event had occurred to inhibit Defendant's ability to proceed. The fourth *Barker* factor, prejudice to Defendant, weighs in favor of the State because Defendant cannot demonstrate he was subjected to "actual, substantial prejudice." *Spivey*, 357 N.C. at 122, 579 S.E.2d at 257.

Considering that none of the four factors are "'either a necessary or sufficient condition to the finding of a deprivation of the right to speedy trial,' and further, that because these factors 'have no talismanic qualities,' they must be considered together with the relevant circumstances set forth in each case," we conclude that the trial court did not err in denying Defendant's motion to dismiss for a speedy trial violation because the only factor found to weigh in favor of Defendant is length of delay and length of delay weighs in favor of Defendant only because any delay over one year is considered presumptively prejudicial to the accused and triggers an inquiry into the

other *Barker* factors. *Farook*, 381 N.C. at 189, 871 S.E.2d at 753 (quoting *Barker*, 407 U.S. at 533, 92 S. Ct. at 2193).

B. Closing Argument

Next, Defendant argues the trial court erred by failing to intervene *ex mero motu* during the State's closing argument because the prosecutor made grossly improper statements implying Defendant and his counsel "colluded" to establish a defense of assault, argued facts not in evidence, and urged the jury to avoid compromise verdicts on the basis of anger and sympathy for the victims. We disagree.

In closing arguments, a lawyer is to "provide the jury with a summation of the evidence, which in turn serves to sharpen and clarify the issues for resolution by the trier of fact and should be limited to relevant legal issues." *State v. Jones*, 355 N.C. 117, 127, 558 S.E.2d 97, 103 (2002) (cleaned up).

Our General Assembly describes the limitations on closing arguments for counsel:

> During a closing argument to the jury an attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record except for matters concerning which the court may take judicial notice. An attorney may, however, on the basis of his analysis of the evidence, argue any position or conclusion with respect to a matter in issue.

N.C. Gen. Stat. § 15A-1230(a).

Additionally, closing arguments must "(1) be devoid of counsel's personal opinion; (2) avoid name-calling and/or references to matters beyond the record; (3) be premised on logical deductions and not appeals to passion or prejudice; and (4) be constructed from fair inferences drawn only from evidence properly admitted at trial." *Jones*, 355 N.C. at 135, 558 S.E.2d at 108. When the defendant's attorney fails to object to the State's closing argument, "the standard of review for assessing alleged improper closing arguments . . . is whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*." *Id.* at 133, 558 S.E.2d at 107. "Even when a reviewing court determines that a trial court erred in failing to intervene *ex mero motu*, a new trial will be granted only if 'the remarks were of such a magnitude that their inclusion prejudiced defendant, and thus should have been excluded by the trial court.'" *State v. Tart*, 372 N.C. 73, 82, 824 S.E.2d 837, 843 (2019) (quoting *Jones*, 355 N.C. at 131, 558 S.E.2d at 106). To meet the high standard of gross impropriety, "[a] defendant must show that the prosecutor's comments so infected the trial with unfairness that they rendered the conviction fundamentally unfair." *State v. Davis*, 349 N.C. 1, 23, 506 S.E.2d 455, 467 (1998). "Generally, counsel is allowed wide latitude in the scope of jury arguments." *State v. Hill*, 347 N.C. 275, 298, 493 S.E.2d 264, 277 (1997).

Defendant argues the trial court failed to intervene *ex mero motu* three times during the State's closing arguments.

First, Defendant argues the prosecutor "insinuated that [Defendant] lied and colluded with defense counsel to establish a defense of assault" with the following statements,

> The defenses in this case. This jury instruction packet is long. It's very long. It is long because of these defenses, not because this case is complicated, not because the State has to prove some enormous amount of evidence to you. It's long because of these defenses. Self-defense for all four of them, you'll have to consider, and accident for Brenda. This does not come from the State's evidence. This comes from what [Defendant] got up here and said to you all. That's why he gets these instructions, because he said this happened. That's why these instructions are there. That's why you consider self-defense.
>
> . . . .
>
> His attorney had to feed him this line, that he was in - - that he was in fear, right? He didn't talk about being in fear until [defense counsel] said, you were in fear for your life? Were you in fear for your life? Oh, yes, I was in fear for my life. He didn't even have that belief, because that story he told you is not real. That did not happen.

"A prosecutor is not permitted to insult a defendant or assert the defendant is a liar"; however, "a prosecutor can argue to the jury that they should not believe a witness, but [the prosecutor] should not call him a liar." *State v. Huey*, 370 N.C. 174, 182, 804 S.E.2d 464, 471 (2017). Likewise, a "prosecutor is not permitted to make 'uncomplimentary' statements about defense counsel when 'there is nothing in the record to justify it.'" *Id.* at 184, 804 S.E.2d at 472 (quoting *State v. Miller*, 271 N.C. 646, 659, 157 S.E.2d 335, 345 (1967)).

In *State v. Huey*, the prosecutor's remarks were found to be improper because the prosecutor's insinuations that the defendant was a liar appeared to be the "theme" of the argument. *Id.* at 182, 804 S.E.2d at 471. While never directly referring to the defendant as a liar, "the prosecutor used some variation of [the word] 'lie' at least thirteen times." *Id.* at 181, 804 S.E.2d at 470. At one point, the prosecutor stated the defendant, "engaged in the act of lying" and "tried to hide the truth from [the jury]." *Id.* at 182, 804 S.E.2d at 471. Our Supreme Court identified the prosecutor's argument as "overwhelmingly focus[ed] on attacking defendant's credibility through the prosecutor's personal opinion" and found the statements at issue improper. *Id.* at 182, 804 S.E.2d at 471. However, the prosecutor's statements did not rise to the level of gross impropriety because the case did contain evidence "support[ing] a permissible inference that defendant's testimony lacked credibility." *Id.*

Here, the prosecutor's statements are not improper because the prosecutor did not refer to Defendant as a "liar" nor did she "theme" her argument around an insinuation that Defendant was a liar. Defendant points only to the quoted material above as evidence of an insinuation by the prosecution that Defendant was untruthful and provides no evidence that the prosecution called Defendant a "liar." Defendant does not demonstrate that such an insinuation was the "theme" of the prosecution's argument; therefore, we do not conclude the quoted material was improper. *See Huey*, 370 N.C. at 182, 804 S.E.2d at 471; *see also State v. Wright*, 300 N.C. App. 229, 238, 920 S.E.2d 249, 257 (2025) (stating that this Court considers the brevity of the

remarks at issue in relation to the entire closing argument to conclude remarks are not grossly improper).

Even if the statements at issue were improper, they do not rise to the level of gross impropriety because the trial transcript offers evidence "support[ing] a permissible inference that defendant's testimony lacked credibility." *Huey*, 370 N.C. at 182, 804 S.E.2d at 471. Namely, each of the four victims presented largely identical testimony recounting the night of the assault, while Defendant's testimony differed significantly from the victims' accounts.

Next, Defendant claims the State argued "facts not in evidence and misapplied the law to those facts" with the following statement:

> They need there to be more knives that's why we get so many questions about knives, right? If there aren't more knives in this story, his story doesn't make any sense. It's two knives. One we've got, one we think we've got, but if we don't, he ditched it when he was fleeing, right? That guilty conscience. That's why the law accounts for that.

Our General Assembly allows a prosecutor, "on the basis of his analysis of the evidence, [to] argue any position or conclusion with respect to a matter at issue." N.C. Gen. Stat. § 15A-1230. "Counsel is permitted to argue the facts which have been presented, as well as reasonable inferences which can be drawn therefrom." *Hill*, 347 N.C. at 298, 493 S.E.2d at 277.

Defendant's daughter's testimony and Defendant's testimony presented evidence tending to show the existence of two knives during the incident. Only one

knife was recovered from the scene of the incident, and Defendant confirms he left the scene of the incident. Therefore, the State made a reasonable inference as to what may have happened to the second knife based on evidence that a second knife existed and that Defendant left the scene of the incident.

Finally, Defendant argues "the prosecutor urged the jury to avoid compromise verdicts based not on the evidence, but on anger and sympathy for the alleged victims" with the following statement:

> The lesser included assault of assault with a deadly weapon inflicting serious injury is a cop-out. It is a compromise. It is settling. This family, Brenda Barkley, Aaliyah Barkley, Adonnas Barkley, and Aaron Barkley, deserve better than a cop-out, than a compromise. Think about intent, talk about intent, but do not compromise in this case.
>
> . . . .
>
> That night, they fought for themselves, they fought for each other, they are the reason that they sit here today together as a family, is because of them. And he almost took that from them. They fought for each other, and I'm asking you all to go back there, think seriously about these charges, and to fight for them. If you believe so, fight for them. They fought for each other that night.

In *State v. Jones*, the prosecutor's remarks in his closing argument were found to appeal to passion because they "exceed[ed] the boundaries of proper argument by incorporating personal conclusions that ultimately amounted to little more than name-calling." *Jones*, 355 N.C. at 134, 558 S.E.2d at 108. In his closing argument, the prosecutor stated to the jury, "You got this quitter, this loser, this worthless piece

of—who's mean. He's as mean as they come. He's lower than the dirt on a snake's belly." *Id.* at 133, 558 S.E.2d at 107. Our Supreme Court found these remarks grossly improper and prejudicial to the defendant because they "improperly [led] the jury to base its decision not on the evidence relat[ed] to the issues submitted, but on misleading characterizations, crafted by counsel, that [were] intended to undermine reason in favor of visceral appeal." *Id.* at 134, 558 S.E.2d at 108.

In *State v. Reber*, the prosecutor's remarks were found to have appealed to passion and prejudice but were not considered grossly improper because of the "higher standard requiring the trial court to intervene on its own." *State v. Reber*, 386 N.C. 153, 164, 900 S.E.2d 781, 790 (2024). Without any evidence supporting a conclusion that the defendant sexually assaulted a child, the prosecutor stated to the jury, "You think about that. You think about an eight- or nine-year-old walking around pregnant. You think about an eight- or nine-year-old poking around with herpes or gonorrhea or syphilis or Aids." *Id.* Although our Supreme Court agreed with this Court that this was an "improper attempt" to portray the defendant negatively, our Supreme Court concludes, "this isolated statement during closing argument does not meet the 'grossly improper' standard as it has developed in case law." *Id.* at 165, 900 S.E.2d at 790.

Here, unlike *State v. Jones*, the prosecutor did not appeal to passion or prejudice because the prosecutor did not "incorporate personal conclusions that [amount] to little more than name-calling" or "undermine reason in favor of visceral

appeal." *Jones*, 355 N.C. at 134, 558 S.E.2d at 108. Likewise, unlike in *State v. Reber*, the prosecutor's statement does not "improper[ly] attempt" to portray Defendant negatively. *Reber*, 386 N.C. at 165, 900 S.E.2d at 790. Even if the prosecutor did improperly portray Defendant negatively, Defendant points to only one statement that purportedly appealed to passion or prejudice, indicating this was an "isolated statement" and, therefore, not grossly improper. *Id.*

III. Conclusion

For the reasons stated herein, we conclude the trial court did not err by denying Defendant's motion to dismiss for a speedy trial violation or by failing to intervene *ex mero motu* during the State's closing argument. Thus, we hold Defendant received a fair trial free from prejudicial error.

NO ERROR.

Judges ZACHARY and GORE concur.

Report per Rule 30(e).