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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1094

Filed 18 November 2026

Cabarrus County, Nos. 22CR363845-120, 23CR000478-120, 23CR000479-120

STATE OF NORTH CAROLINA

v.

LAMONT ALEXANDER BARRINO

Appeal by Defendant from judgments entered 9 December 2024 by Judge Michael D. Duncan in Cabarrus County Superior Court. Heard in the Court of Appeals 25 August 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General John R. Green, Jr., for the State.

Blau & Hynson, PLLC, by Daniel M. Blau, for the Defendant.

WOOD, Judge.

Lamont Alexander Barrino ("Defendant") appeals judgments entered 9 December 2024 upon a jury verdict finding him guilty of three counts of possession of a firearm by a felon. On appeal, Defendant argues: (1) he received ineffective assistance of counsel because his trial counsel failed to make a motion to suppress evidence obtained by an allegedly deficient search warrant; (2) the trial court erred

by denying his motions to dismiss and subsequently entering judgment on all three counts of possession of a firearm by a felon; (3) the trial court erred by giving ambiguous jury instructions that allowed the jury to convict based on theories not charged or supported by the evidence; and (4) the trial court erred by failing to intervene *ex mero motu* during the State's closing argument. After a careful review of the record and applicable law, we conclude Defendant received a fair trial free from prejudicial error.

I. Factual and Procedural Background

On 29 September 2022 and 22 November 2022, Defendant participated in video calls with an inmate at the Alamance County Detention Center. The video call system, HomeWAV, requires participants to provide their name and a profile picture when signing up for an account. These video calls are monitored and recorded; and if violations are observed, the videos are flagged. On 29 September 2022 and 22 November 2022, Defendant was a registered participant in video calls that were flagged for violations. These video call recordings showed Defendant, who was on supervised probation, in possession of what appeared to be firearms during the calls.

Officer Jason Bensavage ("Officer Bensavage") with the North Carolina Department of Adult Corrections viewed the video calls, noted the appearance and discussion of firearms, and contacted Defendant's probation officer, Jaxon Hale ("Officer Hale"). After speaking with Officer Bensavage and reviewing screenshots from the video calls, Officer Hale initiated a warrantless search of Defendant's home

on 14 December 2022; warrantless searches were a condition of Defendant's probation. Officer Bensavage also participated in the warrantless search of Defendant's home. Officers located an AR-15 under a dresser in Defendant's daughter's bedroom and a safe in Defendant's bedroom closet. The safe had a small hole through which they could see it contained firearms.

That same day, based on the information obtained from the warrantless search and video call recordings, Detective Paul Rodriguez ("Detective Rodriguez") of the Cabarrus County Sheriff's Office obtained and subsequently executed a search warrant on Defendant's home. During the search, Defendant's fiancée, Destini Kemrey ("Kemrey"), gave officers the passcode to the safe located in the bedroom closet; the passcode was Defendant's birthday. Ultimately, an AR-15, two black Glock handguns, a tan Polymer handgun, ammunition, and a P80 micro conversion kit were seized pursuant to the search warrant.

Defendant was arrested after the search and subsequently indicted on three counts of possession of a firearm by a felon arising from the alleged possessions of firearms on 29 September 2022, 22 November 2022, and 14 December 2022.[1] Each indictment identified a different firearm Defendant was accused of possessing.

[1] The original indictment on the charge ending in *478 listed the offense date of 22 November 2022; the trial court allowed the State to amend this offense date to 14 December 2022 just prior to the start of trial without objection from the defense and the amendment is not contested on appeal. For simplicity, we will refer to this charge as being indicted with the offense date of 14 December 2022.

Indictment *845 identified an "AR-15 style pistol" possessed on 29 September 2022; indictment *478 identified a "Glock 43 9mm pistol" possessed on 14 December 2022; and indictment *479 identified a "Polymer 80 9mm pistol" possessed on 22 November 2022.

Defendant's trial commenced in Cabarrus County Superior Court on 2 December 2024. Officer Shaunnise Brinege ("Officer Brinege") of the Alamance County Sheriff's Office testified first for the State regarding her role in monitoring activity inside of the Alamance County Detention Center including the HomeWAV video calls. The video call recordings from 29 September 2022 and 22 November 2022 were entered as State's Exhibits 2 and 3, respectively, and played for the jury during Officer Brinege's testimony. Officer Hale, Officer Bensavage, and Detective Rodriguez each also testified for the State. Officer Hale testified about conducting a transfer visitation at Defendant's former residence located on Sunderland Road prior to his move to Kirkland Court. Using his knowledge of the inside layout and appearance of the Sunderland Road home, Officer Hale was able to identify it as Defendant's location during the 29 September 2022 video call. In the 22 November 2022 video, Defendant begins the call in a vehicle and then goes inside his Kirkland Court home. Officer Bensavage testified that the AR-15 seized from Kirkland Court on 14 December 2022 appears to be the same as the firearm seen in Defendant's possession in the 29 September 2022 jail call video.

Although Defendant argues the firearms seen in the video calls were air soft guns or replicas, Officer Bensavage and Detective Rodriguez both testified that they believed the firearms seen in the video call recordings and the firearms seized from Defendant's residence were *not* air soft guns or replicas.

At the close of the State's evidence, Defendant made a motion to dismiss all charges on the grounds that the evidence was insufficient to support the submission of the charges to the jury and that there was a variance between the crime alleged in the indictment and the evidence presented to the jury. Also, Defendant made a motion to dismiss the charge ending in *478, because the State had not presented evidence that he possessed a Glock 43 on 14 December 2022. Defendant argued that because the evidence presented tended to demonstrate that the firearms were in the safe, there was insufficient evidence to support a determination that *he* had actual or constructive possession of it. The trial court denied the motions. Testifying for the defense, Kemrey asserted that the safe and the firearms contained in it were all legally registered to her, not Defendant, and that there were BB guns in the garage. Defendant renewed his motions to dismiss at the close of all evidence; the trial court again denied the motions to dismiss.

During the charge conference, there was extensive discussion about how to instruct the jury. Specifically, the parties discussed whether the trial court should read the possession of a firearm by a felon instruction just once and instruct the jury to apply it to each of the three charges or whether the instruction should be read in

full for each of the three charges of possession of a firearm by a felon. There was further discussion about whether the offense dates should be included on the verdict sheets. The parties ultimately agreed to include the offense dates for each charge on the verdict sheets.

On 6 December 2024, the jury returned verdicts finding Defendant guilty of all three counts of possession of a firearm by a felon. The trial court found Defendant to be a prior record level five and sentenced him to 19 to 32 months of imprisonment for each count to run consecutively. Defendant entered timely notice of appeal on 10 December 2024.

II. Analysis

Defendant asserts four arguments on appeal. First, Defendant argues he received ineffective assistance of counsel because trial counsel failed to make a motion to suppress evidence obtained by an allegedly deficient search warrant. Second, Defendant argues the trial court erred by denying his motions to dismiss and by subsequently entering judgment on all three counts of possession of a firearm by a felon. Third, Defendant argues the trial court erred by giving ambiguous jury instructions that allowed the jury to convict him based on theories not charged in the indictment or supported by the evidence. Lastly, Defendant argues the trial court erred by failing to intervene *ex mero motu* during the State's closing argument. For the reasons stated herein, we conclude Defendant received a fair trial free from prejudicial error.

A. Ineffective Assistance of Counsel

Defendant argues he received ineffective assistance of counsel because his trial counsel failed to make a motion to suppress the evidence collected pursuant to the search warrant. Specifically, Defendant argues that the failure to make a motion to suppress constitutes ineffective assistance of counsel because the search warrant application did not establish probable cause nor did it show any connection between the crime he was alleged to have committed and the premises to be searched.

In contrast, the State argues Defendant has failed to meet his burden of establishing ineffective assistance of counsel and, regardless, viewed in the totality of the circumstances, the search warrant application established probable cause. We agree.

This Court reviews whether a defendant received ineffective assistance under the *de novo* standard of review. *State v. Reber*, 296 N.C. App. 114, 118, 908 S.E.2d 410, 415 (2024). Under a *de novo* review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower court. *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008). To show ineffective assistance of counsel, a defendant must satisfy a two-prong test. *State v. Corrothers*, 295 N.C. App. 192, 197, 905 S.E.2d 237, 242 (2024).

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the

> deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Reber, 296 N.C. App. at 118, 908 S.E.2d at 415 (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)).

An objective reasonableness standard is used to measure the first prong and requires a defendant to overcome the presumption that the challenged action may have been a trial strategy. *Id.* at 118-19, 908 S.E.2d at 415. To establish prejudice under the second prong, a defendant must show "there is a reasonable probability that, absent the errors, the result of the proceeding would have been different." *Id.* at 119, 908 S.E.2d at 415 (cleaned up).

A search warrant application, pursuant to N.C. Gen. Stat. § 15A-244, must contain "a statement of probable cause and allegations of fact supporting the statement of probable cause. The statements must be supported by one or more affidavits particularly setting forth the facts and circumstances establishing probable cause." *Id.* at 119, 908 S.E.2d at 416 (quoting *State v. Eddings*, 280 N.C. App. 204, 209, 866 S.E.2d 499, 503 (2021)). This Court applies the totality of the circumstances test to determine whether probable cause exists which requires a "common-sense decision based on all the circumstances that there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* at 119-20, 908 S.E.2d at 416 (quoting *State v. McCoy*, 100 N.C. App. 574, 576, 397 S.E.2d 355,

357 (1990)). The issuing magistrate must make a practical, common-sense decision and "may draw such reasonable inferences as he will from the material supplied to him by applicants for a warrant." *Id.* at 120, 908 S.E.2d at 416 (quoting *State v. Riggs*, 328 N.C. 213, 221, 400 S.E.2d 429, 434 (1991)). This determination of probable cause is given great deference. *Id.* The elements of possession of a firearm by a felon are: "(1) defendant was previously convicted of a felony; and (2) thereafter possessed a firearm." *State v. Wiggins*, 210 N.C. App. 128, 133, 707 S.E.2d 664, 669 (2011) (quoting *State v. Wood*, 185 N.C. App. 227, 235, 647 S.E.2d 679, 686 (2007)).

In the case *sub judice*, the search warrant application stated that the "property / evidence to be seized" was:

> Property belonging to [Defendant] including firearms, firearm attachments, ammunition, and any controlled substances located in the residence.
>
> Indicia: Items of personal property showing constructive possession of the premises to be searched and the items to be seized. These items are to include, but are not limited to, photographs, addressed mail, receipts, cancelled checks, utility bills, telephone bills, and house and vehicle keys.

Additionally, the search warrant application included the following information: (1) "[t]his investigation concerns a convicted felon in possession of firearms" and that Detective Rodriguez, the applicant, "was contacted by Probation Officer [Bensavage] about [Defendant]. Probation Officer [Bensavage] stated that [Defendant] conducted a jail call and was holding guns in the jail call"; (2) screenshot photos from the jail call tending to show Defendant with firearms; (3) that a probationary search of the

residence was conducted to search for firearms and probation officers located a safe in the bedroom closet of the home and could see through the small hole what appeared to be the same firearm seen in the video; (4) the applicant believes there is evidence to support violations of N.C. Gen. Stat. § 14-415.1, the possession of firearms by a felon statute; and (5) the applicant asserts Defendant is in possession of firearms at his home on Kirkland Court, the residence that the warrant seeks to search.

The search warrant application clearly states Defendant is a felon not allowed to be in possession of firearms, includes screenshots from the video calls of him with firearms, and includes information from the warrantless search of his residence on Kirkland Court where firearms were found. Under the totality of the circumstances, we conclude probable cause existed to support the search warrant. Further, we conclude that because probable cause existed for the search warrant, trial counsel was not deficient for failing to make a motion to suppress. Therefore, we hold Defendant did not receive ineffective assistance of counsel.

B. Motions to Dismiss Two of Three Counts of Possession of Firearm by a Felon

Defendant argues the trial court erred by denying his motions to dismiss because the evidence presented supports only one charge of possession of a firearm by a felon, not three. Although Defendant maintains he was only ever in possession of air soft guns, he asserts that if he did possess the firearms he should have been charged with only one offense, not three, because there is no evidence he obtained the

firearms at different periods of time. In other words, Defendant argues he possessed all of the firearms in question at each date simultaneously even though not all can be seen in the videos. Alternatively, Defendant argues that *at most* the evidence could support two offenses provided his former Sunderland Road residence and his current Kirkland Court residence are determined to be materially different locations. In contrast, the State argues the evidence supports all three charges because Defendant was caught with firearms in distinct, separate locations weeks and months apart.

We review a trial court's denial of a motion to dismiss for insufficient evidence *de novo*, considering the matter anew and substituting our own judgment for that of the lower court. *State v. Lee*, 213 N.C. App. 392, 398, 713 S.E.2d 174, 179 (2011). When considering a motion to dismiss, "the court need only determine whether there is substantial evidence of each essential element of the offense charged and of the defendant's being the perpetrator of the offense." *Id.* "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Reaves*, 297 N.C. App. 877, 881, 911 S.E.2d 791, 794 (2025) (quoting *State v. Summey*, 228 N.C. App. 730, 733, 746 S.E.2d 403, 406 (2013)). The trial court must consider all evidence admitted in the light most favorable to the State, giving the benefit of every reasonable inference and contradiction in its favor. *Id.*

"It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm." N.C.

Gen. Stat. § 14-415.1(a). "[T]he State need only prove two elements to establish the crime of possession of a firearm by a felon: (1) defendant was previously convicted of a felony; and (2) thereafter possessed a firearm." *Wiggins*, 210 N.C. App. at 133, 707 S.E.2d at 669 (quoting *Wood*, 185 N.C. App. at 235, 647 S.E.2d at 686).

In *State v. Garris*, where the defendant's convictions of possession of a firearm by a felon stemmed from his simultaneous possession of multiple firearms, this Court held that

> a review of the applicable firearms statute shows no indication that the North Carolina Legislature intended for N.C. Gen. Stat. § 14-415.1(a) to impose multiple penalties for a defendant's simultaneous possession of multiple firearms. We hold that defendant should be convicted and sentenced only once for possession of a firearm by a felon based on his simultaneous possession of both firearms.

Id. at 134, 707 S.E.2d at 669 (cleaned up) (quoting *State v. Garris*, 191 N.C. App. 276, 285, 663 S.E.2d 340, 348 (2008)). In *State v. Wiggins* this Court relied on *Garris* when determining that the defendant's possession of firearms during three separate criminal acts over the course of a two-hour time period constituted a single possessory offense rather than three separate offenses. *Id.* at 134, 138, 707 S.E.2d at 670, 672. That determination hinged on "the extent to which the weapons in question were acquired and possessed at different times." *Id.* at 138, 707 S.E.2d at 672. Further, this Court reasoned that it believed

> the same logic utilized in *Garris* is clearly applicable to this case, leading us to conclude that, since simultaneous possession of more than one firearm supports only one

> conviction for possession of a firearm by a convicted felon, the fact that Defendant may have fired those weapons, which were obtained and possessed simultaneously, on more than one occasion during the commission of several substantive crimes does not support multiple possession-based convictions and sentences.

Id. at 134, 707 S.E.2d at 670.

However, just months following *Wiggins*, this Court determined in *State v. Lee* that "[i]f the evidence shows that the defendant possessed a weapon *on different days and in different locations*, the holding from *Wiggins* is not controlling, and the defendant can be charged with multiple offenses." *Lee*, 213 N.C. App. at 399, 713 S.E.2d at 179 (emphasis added). This Court in *Lee* distinguished itself from *Wiggins* and held the defendant could be convicted of multiple counts of possession of a firearm by a felon:

> In contrast to *Wiggins*, where the substantive offenses were committed in close geographic and temporal proximity, the offenses in the instant case were committed in nine different locations on ten different days over the course of a month. *While the evidence tended to show that defendant used the same weapon during each armed robbery, the robberies all occurred on different days in different locations.* Because each possession of the weapon was separate in time and location, we hold the trial court did not err in denying defendant's motion to dismiss the multiple weapons possession charges.

Id. (emphasis added).

In the case at bar, Defendant was charged with possessing a firearm while a felon on 29 September 2022, 22 November 2022, and 14 December 2022. While

Defendant argues there is no evidence that he obtained the firearms at different times or relinquished and then reacquired possession of them between 29 September 2022 and 14 December 2022, this fact is immaterial because the evidence, taken in the light most favorable to the State, tends to show that Defendant possessed at least one firearm in three separate and distinct locations, on three separate and distinct days, weeks and months apart. Just as this Court held in *Lee*, "we hold the trial court did not err in denying [D]efendant's motion to dismiss the multiple [possession of a firearm by a felon] charges." *Id.*

C. Ambiguous Jury Instruction

Defendant next argues the trial court erred by giving ambiguous jury instructions that allowed the jury to convict him on theories not charged in the indictments or supported by the evidence, thereby violating his right to a unanimous verdict of the jury pursuant to Article I, Section 24 of the North Carolina Constitution.

While Defendant raised several concerns about the jury instructions during the charge conference and deliberations, he concedes the issue raised on appeal is not among those concerns raised at trial. Defendant cites *State v. Wilson* as support for his contention that "where an error violates the right to a unanimous jury verdict under Article I, Section 24, it is preserved for appeal without any action by counsel"; however, in *State v. May,* our Supreme Court clarified that it was "specified in *Wilson* that when a violation of Article I, Section 24 involves *an instruction to less than all*

the jurors, that error is preserved as a matter of law." *State v. Wilson*, 363 N.C. 478, 484, 681 S.E.2d 325, 330 (2009); *State v. May*, 368 N.C. 112, 118, 772 S.E.2d 458, 462 (2015) (emphasis added). Such is not the case here; Defendant is misguided in his reliance on *Wilson*. Generally, constitutional issues not raised at trial are waived for appellate review; however, constitutional issues related to the trial court's instructions to the jury may be reviewed for plain error. *May*, 368 N.C. at 118, 772 S.E.2d at 462.

"Our plain error test requires the accused to show that (1) a fundamental error occurred at trial (2) that had a probable impact on the outcome and (3) is an exceptional case that warrants plain error review." *State v. Bowman*, 387 N.C. 509, 515, 915 S.E.2d 134, 139 (2025).

As discussed *supra*, there was extensive discussion regarding the instructions to the jury and verdict sheets. Prior to reading the substantive offense instruction, the trial court instructed the jury that although they would need to consider three separate charges, he would read the instruction only once:

> Ladies and gentlemen, the defendant has been charged with three separate counts of possessing a firearm after having been convicted of a felony. I could read to you the same instruction three separate times. I don't believe that's necessary. If you want me to, I can do that. But the same instruction will apply to the same three charges and three dates of offense, and I've gone over those with you, but I'll go over them again. September the 29th of 2022, November the 22nd of 2022, and December 14th of 2022. Those are the three separate dates of offense for the three separate charges. I'm only going to read the possession of

> firearm by felon instruction one time, but you have to make a decision on the three separate charges, although I'm reading it one time.

Defendant stipulated to the fact that he had a felony offense conviction prior to the dates at issue, 29 September 2022, 22 November 2022, and 14 December 2022. The trial court instructed that on each date, "the defendant was a convicted felon and had knowledge that he was not allowed to possess a firearm." The trial court then read the possession instruction one time and explained that the jury would receive a "straightforward" verdict sheet with the date of the offense on it.

During deliberations, the jury sent notes with questions on three separate occasions. In the first note the jury requested to view portions of the first video call recording and some of the physical evidence exhibits; the trial court allowed the request. After the jury left the courtroom, Defendant asked whether the verdict forms listed the weapon alleged for each date or whether just the date was listed. Defendant then argued it was important that the jury knew which firearm corresponded to each date because the indictment includes a specific firearm for each date. The trial court declined to change the verdict form and noted the objection. The trial court then received the second note from the jury.

The second note asked to view portions of the video from 22 November 2022 and to view additional physical evidence; the note stated in full:

> Jury would like to see the real Polymer 80 against the picture presented by the defense (toy).

> In addition - Jury would like to see the video of the Polymer 80 between the defendants legs & under the arm.
>
> Fast forward = watching from leaving the car into the house into the closest -> where conversion kit was located.

The trial court allowed the jury's request. Following the break and while the jury was out of the courtroom, the trial court informed counsel that it would agree to instruct the jury regarding which firearm Defendant was alleged to have possessed in each indictment. The trial court instructed the jurors:

> I want to make sure that I go over - - again, this is going back to the instructions I gave you earlier. I told you they were three separate charges. You've got the separate dates of offense.
>
> In 22 CRS 363845, that is date of offense September 29, 2022. The State alleges that the defendant was in possession of a firearm by felon AR-15 style pistol.
>
> In 23 CRS 478, with date of offense December the 14th of 2022, the State alleges possession of firearm by felon by having in defendant's possession a Glock 43 nine millimeter pistol.
>
> And then in 23 CRS 479, date of offense November 22, 2022 . . . the State alleges the defendant was in possession of firearm by felon, the Polymer 80, nine-millimeter pistol.

Shortly after resuming deliberations, the jury sent a third note which stated:

> The jury is confused!
>
> The verdict sheet stipulates possession of a firearm by felon.
>
> In the last instructions the Judge said specific firearms.
>
> For example for the 9/29/22 – is it any firearm or

> specifically for the AR 15
>
> Please review the verdict sheet.

The State argued it shouldn't matter which specific firearm on which date. In contrast, Defendant argued "we saw this coming," referenced his earlier objections, and reiterated his belief that in order for the jury to find him guilty of each charge, it must find that he was in possession of the specific firearm on the date specified in each indictment. The trial court asked whether the specific firearm indicated in each indictment was just surplusage. The State argued it was surplusage while Defendant argued it was not. Ultimately, the trial court agreed to read the stipulations to the jury again and to clarify the two elements of the offenses. The trial court instructed in relevant part:

> And the second element of the offense of possession of firearm by felon . . . [a]fter the defendant was convicted of a felony, [he] possessed a firearm. Let me read it to you one more time. The second element says, that after the defendant was convicted of a felony, the defendant possessed a firearm.

The jury returned their verdicts less than an hour later.

Defendant argues that the jury was instructed in a way that allowed him to be found guilty on different theories, causing a risk of a nonunanimous verdict because the trial court initially did not specify which firearms correlated to the offense dates at issue in its instructions but then later gave instructions which specified the firearms alleged in the indictments. We disagree.

Based on the holding in *Lee* as discussed *supra*, a defendant can be convicted of multiple charges of possession of a firearm by a felon even when the firearm is the same for each offense when the instances of possession have occurred on different days in different locations. *Lee*, 213 N.C. App. at 399, 713 S.E.2d at 179. Further, "the State need only prove two elements to establish the crime of possession of a firearm by a felon: (1) defendant was previously convicted of a felony; and (2) thereafter possessed a firearm." *Wiggins*, 210 N.C. App. at 133, 707 S.E.2d at 669 (quoting *Wood*, 185 N.C. App. at 235, 647 S.E.2d at 686). Therefore, which specific firearm the jury believed Defendant to have had in his possession relative to each charge is immaterial; the jury need only find that Defendant was in possession of *a firearm* on the date corresponding to each charge as indicated on the separate verdict sheets. Our Supreme Court has established,

> that "if the trial court merely instructs the jury disjunctively as to various alternative acts *which will establish an element of the offense*, the requirement of unanimity is satisfied." . . . In other words, a disjunctive instruction does not violate a defendant's right to a unanimous verdict if that instruction only involves alternative acts which will establish an element of an offense. The jury does not need to be unanimous in finding a particular act among two or more alternative acts that constitute an element of an offense.

Bowman, 387 N.C. at 516, 915 S.E.2d at 140 (quoting *State v. Lawrence*, 360 N.C. 368, 374, 627 S.E.2d 609, 612 (2006)). While we acknowledge the jury experienced some confusion, after a thorough review of the record and transcript, in accord with

the binding precedent set forth by our Supreme Court in *State v. Bowman,* we hold Defendant was not deprived of his right to a unanimous jury and the trial court did not err.

D. Failure to Intervene During Closing Argument

Defendant next argues the trial court erred by failing to intervene *ex mero motu* during the State's closing arguments. Specifically, Defendant argues the statements were crafted to prejudice him and lead the jury to a conclusion based not on the evidence before them, but on misleading characterizations crafted by the prosecution. Defendant further argues that a juror hearing the State's closing could only interpret it "one way: that [Defendant's] trial had been pointless, and that he had wasted the jurors' time by going to trial."

Because Defendant did not object to the State's closing argument, he "must establish that the remarks were so grossly improper that the trial court abused its discretion by failing to intervene *ex mero motu*. To establish such abuse, [D]efendant must show that the [State's] comments so infected the trial with unfairness that they rendered the conviction fundamentally unfair." *State v. Ball*, 292 N.C. App. 151, 163, 897 S.E.2d 20, 29 (2024) (quoting *State v. Tart*, 372 N.C. 73, 80-81, 824 S.E.2d 837, 842 (2019)). However, "[e]ven when an appellate 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.'" *Id.* (quoting *Tart*, 372 N.C. at 82,

824 S.E.2d at 843). To show the requisite prejudice, the "defendant has the burden to show a reasonable possibility that, had the errors in question not been committed, a different result would have been reached at trial." *State v. Goins*, 377 N.C. 475, 478, 858 S.E.2d 590, 593 (2021) (quoting *State v. Huey*, 370 N.C. 174, 185, 804 S.E.2d 464, 473 (2017)).

A prosecutor's closing argument is improper if it "becomes abusive, injects his personal experiences, expresses his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or makes arguments on the basis of matters outside the record except for matters concerning [that] which the court may take judicial notice." *State v. Hensley*, 277 N.C. App. 308, 312, 858 S.E.2d 138, 141 (2021) (quoting N.C. Gen. Stat. § 15A-1230(a)). "[P]rosecutors are given wide latitude in the scope of their argument and may argue to the jury the law, the facts in evidence, and all reasonable inferences drawn therefrom," and "on the basis of his analysis of the evidence, argue any position or conclusion with respect to a matter at issue." *Id.* (quoting *Huey*, 370 N.C. at 180, 804 S.E.2d at 469). When determining whether an argument is grossly improper, the context in which the remarks are made and their brevity to the argument as a whole is considered. *Id.* Further, "[t]he control of the arguments of counsel must be left largely to the discretion of the trial judge, and the appellate courts ordinarily will not review the exercise of the trial judge's discretion in this regard unless the impropriety of counsel's remarks is extreme and is clearly calculated to prejudice the jury in its deliberations." *Id.* (quoting *State v.*

Johnson, 298 N.C. 355, 368-69, 259 S.E.2d 752, 761 (1979)).

Defendant challenges the following statements made by the State:

> These are not weapons in society to show to your friends, grin ear to ear, and get that reaction. I am telling you [Defendant], and the legislature has said, he cannot have a gun because he had been proven unworth, unsafe, whatever. What I'm saying is that if he is doing that for that reaction, if he was not a felon, he should not have a gun if that is what he's looking to get from his friends, an enjoyment reaction out of these types of weapons.
>
> . . . .
>
> Now, you've got an instruction that just because somebody was charged with a crime, that that is not evidence of guilt. That is true. Coins have two sides. Just because someone decides to go to trial and plead not guilty does not mean there is any genuine issue in the case. Some people just refuse to plead guilty, and that is their right. But that does not mean that there is some kind of issue for you to find that they are presenting.

Irrespective of whether these statements were improper, we cannot conclude they rise to the magnitude of gross impropriety required to warrant a new trial because Defendant has not shown a reasonable possibility that a different result would have been reached at trial had they been excluded. *Goins*, 377 N.C. at 478, 858 S.E.2d at 593. Defendant asserts that the above statements influenced jurors to be "upset" with him and made it more likely for the jury to convict based on emotion. Further, Defendant asserts the statements were prejudicial because "this was not an overwhelming case for the State" because Kemrey testified that the guns were hers; fingerprint evidence was absent; the evidence regarding the air soft guns was

"ignored"; and the jury tendered multiple questions during deliberations.

After careful consideration of the brevity, timing, and context of the prosecutor's closing argument, we cannot conclude the statements were of the magnitude to warrant a new trial. As discussed *supra*, the jury asked multiple questions during deliberations and the trial court instructed the jury multiple times on their duty in reaching a verdict. In our view, the timing of the jury's clarifying questions after closing arguments tends to indicate the careful consideration of the evidence presented in reaching its verdict. *See State v. Parker*, 377 N.C. 466, 474, 858 S.E.2d 595, 600 (2021) (quoting *State v. Price*, 344 N.C. 583, 593, 476 S.E.2d 317, 323 (1996) ("Jurors are presumed to follow the instructions given to them by the court.")).

E. Clerical Errors on Judgments

The State notes clerical errors regarding the offense dates on judgments 22CR363845-120-51 and 23CR000478-120-51 and requests that both be remanded for correction. We agree.

> A clerical error is defined as 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. When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand for correction because of the importance that the record speak the truth.

State v. Gillespie, 240 N.C. App. 238, 245, 771 S.E.2d 785, 790 (2015) (cleaned up).

On remand, the trial court shall correct the offense date in judgment 22CR363845-120-51 from 14 December 2022 to 29 September 2022 to correspond to

the indictment and verdict sheet for that charge. The trial court shall correct the offense date in judgment 23CR000478-120-51 from 22 November 2022 to 14 December 2022 to correspond to the indictment and verdict sheet for that charge. Because these clerical errors do not affect the sentence imposed, we remand these judgments to the trial court for the sole purpose of correcting the offense dates.

III. Conclusion

For the foregoing reasons, we conclude Defendant's counsel was not ineffective because there was probable cause to support the search warrant. Further, we conclude the trial court did not err: (1) by denying the motion to dismiss for insufficient evidence; (2) by giving ambiguous jury instructions; or (3) by failing to intervene *ex mero moto* during closing arguments. We hold Defendant received a fair trial free from prejudicial error. We remand the judgments in 22CR363845-120-51 and 23CR000478-120-51 to the trial court for the sole purpose of correcting the offense dates.

NO PREJUDICIAL ERROR; REMANDED TO CORRECT CLERICAL ERRORS.

Judges CARPENTER and FREEMAN concur.

Report per Rule 30(e).