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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1138

Filed 18 November 2026

Forsyth County, Nos. 24CR228221-330, 24CR228222-330, 24CR000366-330

STATE OF NORTH CAROLINA

v.

IAN NOYOLA GARCIA, Defendant.

Appeal by defendant from judgments entered 3 March 2025 by Judge Aaron Jay Berlin in Forsyth County Superior Court. Heard in the Court of Appeals 15 September 2026.

Attorney General Jeff Jackson, by Assistant Attorney General Lisa B. Finkelstein, for the State.

Blau & Hynson, PLLC, by Daniel Micah Blau and Emily C. Maggio, for defendant-appellant.

FLOOD, Judge.

Defendant Ian Noyola Garcia appeals his convictions for fleeing to elude arrest, possession of drug paraphernalia, possession of a firearm by felon, and attaining habitual felon status. On appeal, Defendant argues (1) the trial court erred in denying his motion to dismiss his fleeing to elude arrest charge; (2) he received ineffective

assistance of counsel when his counsel failed to move to dismiss the possession of drug paraphernalia charge; (3) he received ineffective assistance of counsel when his attorney failed to move for a mistrial when the trial court inadvertently revealed a specific felony in his conviction history in contravention of a stipulation he had agreed to; (4) the trial court erred in failing to declare a mistrial *sua sponte* under the same circumstances; and (5) the trial court impermissibly compromised its neutrality in favor of the State in violation of his constitutional rights during trial. For the reasons explained in greater detail below, we hold that the trial court neither erred nor abused its discretion, nor did Defendant receive ineffective assistance of counsel, with respect to any of the first four issues, and the fifth was unpreserved.

I. Factual and Procedural Background

This case arises from an attempted traffic stop initiated by Winston-Salem Sheriff's Deputy Brian Gatewood on 6 February 2024. According to Deputy Gatewood's testimony at Defendant's trial, on the night of the incident, Deputy Gatewood was conducting a routine patrol when he noticed an "older Nissan Maxima with a Georgia plate on it." Upon looking up the plate in a law enforcement database, he discovered that the plate did not belong to the Nissan and that the tag was expired. It was at this point that Deputy Gatewood attempted to initiate a stop.

According to Deputy Gatewood's testimony, the Nissan initially came to a stop, but it pulled away as he exited his vehicle. He then returned to his vehicle, initiated his sirens, and pursued the Nissan. Deputy Gatewood described the vehicle as driving

"in an abrupt manner[,]" taking an immediate left, and "doing approximately 15 to 35" on that street before turning into a residential area. When asked if he was "gaining[] [or] losing on" the Nissan while "going about 50 miles an hour in a 35-mile-an-hour zone," he responded "[n]ot at this time, no." He then described that the pursuit continued out of the residential area and onto main roads, where he pulled up alongside the Nissan, and both vehicles stopped again. Once more, the Nissan took off as soon as Deputy Gatewood exited his vehicle. After resuming pursuit, Deputy Gatewood successfully used a PIT maneuver[1] to stop the Nissan, and its occupants—three individuals wearing hoodies—attempted to flee on foot. Deputy Gatewood initially attempted to give chase, but he returned to the abandoned Nissan after other law enforcement units confirmed they were in pursuit of the suspects.

When he returned to the Nissan, Deputy Gatewood looked into the vehicle and saw an ID card with Defendant's information and a digital scale, which he testified was "typically used in narcotics with selling." Having discovered an item affiliated with narcotics sales, he conducted a probable cause search of the vehicle. Within, he found, *inter alia*, "two firearms" on the floor of the passenger seat, "as well as some marijuana cartridges, which are like vapes but it has the cannabis inside of it."

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[1] Deputy Gatewood described a PIT maneuver as follows:

> So utilizing the front of my vehicle, I put pressure on the rear of the suspect's vehicle, which then causes it to spin out of control, hopefully stalling the vehicle, which would cut off the motor so they could not continue or giving us the opportunity to be able to, since it's stopped at the time, block it in so the procedure is locked in.

Ultimately, Defendant was arrested. He was indicted on 24 June 2024, and his trial started on 10 February 2025. The State proceeded upon charges of felony fleeing to elude arrest, which included the aggravating factor that Defendant "was speeding in excess of 15 miles per hour over the legal speed limit"; possession of drug paraphernalia, "an electronic scale"; possession of a firearm by felon; and attaining habitual felon status.

At trial, the State moved to admit video footage from the pursuit to the jury; however, while the State was setting the video up, the trial court briefly excused the jury from the courtroom. During this recess, the trial court sought clarification from the State in the presence of Defendant regarding the testimony as to the involved vehicles' speed during the pursuit:

> THE COURT: Good afternoon, [Defendant].
>
> [Defendant], what I was just saying, we talked about the speed limit and I was asking the court reporter to pull back up her notes what she had because your attorney had said 15 to 35. I had heard 50 in a 35, which got me to 15, and there's some confusion over whether that's 15 to 35 miles an hour over the speed limit because for felony flee to elude it has to be in excess of 15 miles an hour, so 16 miles an hour or more, so that has to be clarified, what was it.
>
> I don't know if it was just 15 to 35 or if it was more than that, but just to clarify because as of right now, I don't know. The jury could take it as 15 to 35 miles an hour over the speed limit or they could take it as 15 to 35, and I don't -- so I was just asking for clarification so your attorney could know how to effectively question the officer and the jury would understand that information.

> All right. So [State's attorney], at some point in time did you want to ask the officer any additional questions or just come back to it?
>
> [STATE'S ATTORNEY]: We'll come back to it.
>
> THE COURT: There's a lot of time on the video the speed actually shows up.
>
> [STATE'S ATTORNEY]: Right. I actually was looking for that and I don't think I saw it.
>
> THE COURT: All right. Anything before we bring the jury in, then, from the State or defense?
>
> [STATE'S ATTORNEY]: Not from the State.
>
> THE COURT: [Defendant's trial attorney]?
>
> [DEFENDANT'S TRIAL ATTORNEY]: No.

After this exchange, the jury returned to the courtroom.

Upon reentering the courtroom, the video evidence of the pursuit was played for the jury, after which the State sought clarification from Deputy Gatewood as to the speed at which he was traveling:

> Q. All right. Now, Deputy Gatewood, while you were listening or watching that video, did you hear any of the things you were calling out to the communications?
>
> A. Yes, I did.
>
> Q. And at a couple points it sounded like you called out the speeds that you kind of were driving. Did you hear that?
>
> A. Yes, I did.
>
> Q. And what speeds did you say or tell the communications

> that you were traveling at?
>
> A. The first one when we took a left onto . . . Conley Street, I called out 60, and that is a 35-mile-per-hour zone.
>
> Q. You said 60, as in six zero?
>
> A. Yes.

Deputy Gatewood then resumed the remainder of his testimony.

Prior to trial, Defendant had stipulated to the existence of a prior felony in his criminal record provided that the trial court read the following instruction regarding the stipulation to the jury:

> [D]efendant, Ian Noyola Garcia, admits that on October 3, 2022, in Forsyth County Superior Court, he was convicted of a felony. [] Defendant agrees that this fact may be deemed admitted for purposes of this prosecution. [] Defendant further stipulates that the element of the charge requiring the State to prove beyond a reasonable doubt that [] [D]efendant has been convicted of a felony offense shall be removed from the jury's consideration by stipulation of [] Defendant.

The stipulation was to a conviction for possession of a firearm by felon; however, the instruction was to omit description of the specific felony in Defendant's history. At trial, however, after the State's witnesses presented their testimony, the trial court presented the stipulation to the jury with the inclusion of the identification of the underlying felony:

> Members of the jury, in this case there has been a stipulation by both parties. In regards to the stipulation, it reads: The undersigned Assistant District Attorney representing the State of North Carolina and the attorney

> for [] [D]efendant in the above-entitled case hereby stipulate and agree to the following for the purpose of the trial.
>
> That on October 3rd, 2022, in Forsyth County Superior Court, [D]efendant, Ian Garcia Noyola, was convicted of possession of a firearm by a felon in case number 20-CRS-051002 in violation of North Carolina General Statute 14-415.1.
>
> For the purposes of representing the stipulation to the jury, the Court will read the following. Defendant, Ian Noyola Garcia, admits that on October 3rd, 2022, in Forsyth County Superior Court he was convicted of a felony. Defendant agrees this fact may be deemed admitted for the purposes of this prosecution.
>
> Defendant further stipulates that the element of the charge requiring the State to prove beyond a reasonable doubt that [] [D]efendant has been convicted of a felony offense shall be removed from the jury's consideration by a stipulation of [D]efendant, which has been signed by the State, [] [D]efendant's attorney, and [] [D]efendant.

Outside the presence of the jury, the parties alerted the trial court to the erroneous instruction. Defendant's trial counsel expressed that the disclosure to the jury placed Defendant in an unfavorable position, but he ultimately acquiesced to a corrective instruction in which the trial court instructed the jury to disregard the previous instruction and heed only the accurate stipulation. When the jury returned from recess, the trial court provided the corrective instruction.

At the close of the State's evidence, Defendant moved to dismiss the fleeing to elude arrest charge for insufficiency of the evidence, and again at the close of all evidence. The trial court denied both motions.

Ultimately, Defendant was convicted on all counts. Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction to hear Defendant's appeal from a final judgment of a superior court pursuant to N.C.G.S. § 7A-27(b)(1) (2025).

III. Analysis

On appeal, Defendant argues (1) the trial court erred in denying his motion to dismiss his fleeing to elude arrest charge; (2) he received ineffective assistance of counsel when his counsel failed to move to dismiss the possession of drug paraphernalia charge; (3) he received ineffective assistance of counsel when his attorney failed to move for a mistrial when the trial court inadvertently revealed that the prior felony to which he had stipulated was possession of a firearm by felon; (4) the trial court erred in failing to declare a mistrial *sua sponte* under the same circumstances; and (5) the trial court impermissibly compromised its neutrality in favor of the State in violation of his constitutional rights during trial. As discussed below, Defendant has not shown error, abuse of discretion, or the ineffective assistance of counsel in any of the first four respects, and we dismiss the fifth issue as unpreserved.

A. Motion to Dismiss – Fleeing to Elude Arrest

First, Defendant argues the trial court erred when it denied the motion to dismiss his fleeing to elude arrest charge. Specifically, he argues the charge should have been dismissed because the offense, as subject to the aggravating factor the

State pursued at trial, required the State to show that Defendant was traveling more than fifteen miles per hour over the speed limit, and the evidence only showed definitively that Defendant was traveling *exactly* fifteen miles per hour over the speed limit. We disagree.

According to our Supreme Court,

> [i]n ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator. Substantial evidence is the amount necessary to persuade a rational juror to accept a conclusion. In evaluating the sufficiency of the evidence to support a criminal conviction, the evidence must be considered in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom. In other words, if the record developed at trial contains substantial evidence, whether direct or circumstantial, or a combination, to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied. Whether the State presented substantial evidence of each essential element of the offense is a question of law; therefore, we review the denial of a motion to dismiss de novo.

State v. Blagg, 377 N.C. 482, 487–88 (2021) (quoting *State v. Golder*, 374 N.C. 238, 249–50 (2020)).

Pursuant to N.C.G.S. § 20-141.5, "[i]t shall be unlawful for any person to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties." N.C.G.S. § 20-141.5(a) (2025). While the basic offense is a Class 1

misdemeanor, *id.*, if certain aggravating factors are present, the violation instead becomes a Class H felony. N.C.G.S. § 20-141.5(b) (2025). These factors include, *inter alia*, "[s]peeding in excess of 15 miles per hour over the legal speed limit" and "[r]eckless driving . . . ." N.C.G.S. § 20-141.5(b)(1), (3) (2025). Here, Defendant challenges only the sufficiency of the evidence to establish the aggravating factor that he was "speeding *in excess of* 15 miles per hour over the legal speed limit[,]" N.C.G.S. § 20-141.5(b)(1), (2025) (emphasis added), because he alleges the evidence presented at trial only established, at best, that he was traveling exactly fifteen miles per hour over the speed limit.

We disagree. Testimony that Deputy Gatewood was traveling at the same speed as Defendant, together with testimony that Deputy Gatewood was at one point traveling at 60 miles per hour during the pursuit, was sufficient to establish in the mind of a rational juror that Defendant was traveling at 60 miles per hour during part of the pursuit, which would be "in excess of 15 miles per hour over" the 35 mile-per-hour speed limit. Likewise, Deputy Gatewood's testimony that he and Defendant were "doing approximately 15 to 35" could have reasonably been interpreted to mean Defendant was traveling "15 to 35" *over the speed limit*—an ambiguity the jury was in a better position than this Court to resolve given the benefit of tone, body language, and other indicia of meaning uniquely present during live testimony. *State v. Miller*, 270 N.C. 726, 730 (1967) ("[T]he credibility of witnesses and the proper weight to be given their testimony is to be determined by the jury[.]").

Accordingly—and in light of the fact that Defendant has not challenged the sufficiency of the evidence as to this charge on any other grounds on appeal—we hold the trial court did not err in denying Defendant's motion to dismiss.

B. Ineffective Assistance of Counsel – Drug Paraphernalia

Defendant next argues he was denied the effective assistance of counsel because his trial counsel did not move to dismiss the drug paraphernalia possession charge. We disagree.

Our Supreme Court has exposited the standards governing ineffective assistance of counsel claims as follows:

> When challenging a conviction on the basis that counsel was ineffective, a defendant must show that counsel's conduct fell below an objective standard of reasonableness. In *Strickland* the United States Supreme Court set forth a two-pronged test for determining whether a defendant has received ineffective assistance of counsel. *Strickland* requires that a defendant first establish that counsel's performance was deficient. This first prong requires a showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, a defendant must demonstrate that the deficient performance prejudiced the defense, which requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Thus, both deficient performance and prejudice are required for a successful ineffective assistance of counsel claim.

State v. Todd, 369 N.C. 707, 710–11 (2017) (citation modified); *see also State v. Fair*, 354 N.C. 131, 166 (2001) ("[Ineffective assistance of counsel] claims brought on direct review will be decided on the merits when the cold record reveals that no further

investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing.").

Here, Defendant argues his trial counsel was deficient in that he failed to move to dismiss the drug paraphernalia possession charge, and he further argues he was prejudiced because the trial court would have granted such a motion on the basis that the evidence was insufficient to show the electronic scale was drug-related. While it is indeed the case that the State is required to prove that a scale forming the basis for a drug paraphernalia possession charge has a relationship to illegal drugs, *see State v. Jones*, 96 N.C. App. 389, 398–99 (1989), the evidence here was not so clearly insufficient that we can say Defendant's counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. *Todd*, 369 N.C. at 710. Notably, the electronic scale was discovered in a vehicle containing at least some illegal drugs,[2] and whose occupants had, immediately prior, taken great pains to flee from law enforcement. *See State v. Garrett*, 246 N.C. App. 651, 657 (2016) (evidence of a defendant's avoidant behavior, such as that the defendant "did not immediately show his hands at the officer's request[,]" is relevant to the sufficiency of a drug paraphernalia possession

[2] We note, however, that the State charged Defendant under N.C.G.S. § 90-113.22(a), which provides that "[i]t is unlawful . . . to knowingly . . . possess . . . drug paraphernalia to . . . analyze . . . a controlled substance *other than marijuana* . . . ." N.C.G.S. § 90-113.22(a) (2025) (emphasis added). Given that the drugs found in the vehicle were presumed to be marijuana cartridges, it is not apparent that the nexus between the drugs found in the vehicle and the scale was strong enough to significantly bolster the sufficiency of the evidence. Nonetheless, for the reasons discussed in the rest of this section, we still hold that Defendant's counsel was not ineffective within the meaning of our Sixth Amendment jurisprudence.

charge to survive a motion to dismiss). Moreover, Deputy Gatewood's testimony at trial indicated that the scale was of a type typical in narcotics sales. *State v. Bryant*, 298 N.C. App. 566, 571 (2025) (testimony from law enforcement that an item is "consistent with narcotic use" is analytically relevant to whether an item's identification as paraphernalia was sufficient to survive a motion to dismiss). While a motion to dismiss may have merited the trial judge's consideration in light of the unusual assemblage of circumstantial evidence the State used to show the scale was drug-related, it is not apparent that, under these circumstances, the failure to make such a motion reflected deficient professional judgment. Accordingly, Defendant's trial counsel was not ineffective in this respect.

C. Ineffective Assistance of Counsel – Motion for Mistrial

Defendant next argues he received ineffective assistance of counsel when his trial counsel failed to move for a mistrial because the trial court inadvertently revealed the specific felony that was the subject of his stipulation. We disagree.

Under N.C.G.S. § 15A-1061, "[u]pon motion of a defendant or with his concurrence[,] the judge may declare a mistrial at any time during the trial"; however, "[t]he judge *must* declare a mistrial upon the defendant's motion if there occurs during the trial an error or legal defect in the proceedings, or conduct inside or outside the courtroom, resulting in substantial and irreparable prejudice to the defendant's case." N.C.G.S. § 15A-1061 (2025) (emphasis added). Despite the mandatory nature of mistrial upon a defendant's motion in the event of substantial and irreparable

prejudice, we have still said that whether to declare a mistrial "is a matter which rests in the sound discretion of the trial judge." *State v. Allen*, 141 N.C. App. 610, 617 (2000) (citing *State v. Blackstock,* 314 N.C. 232, 243 (1985)). Moreover, our Supreme Court has cautioned that "[a] mistrial is appropriate only when there are such serious improprieties as would make it impossible to attain a fair and impartial verdict under the law." *Blackstock*, 314 N.C. at 243–44.

In this case, we are cognizant that, especially in light of the recognition by Defendant's trial counsel that a curative instruction may not have erased the effects of the trial court's disclosure of Defendant's previous possession of a firearm by felon conviction to the jury, it likely would have constituted more effective advocacy to have moved for a mistrial under the circumstances. We cannot say, however, that Defendant was prejudiced by his trial counsel's omission, *see Todd*, 369 N.C. at 710–11, for two reasons. First, the prejudice posited by Defendant with respect to this argument relates primarily to the jury's propensity to convict him of the current charge of possession of a firearm by felon. While Defendant alludes to the "weakness of the State's case" with respect to that charge by virtue of the weapons being discovered on the passenger-side floorboard, this argument appears to presuppose that the potentially closer physical proximity of the firearms to one of the other occupants of the vehicle would have naturally tended to show that a different occupant possessed the firearm to the exclusion of Defendant. In actuality, the State need not prove a defendant has actual, or even exclusive, control of an item to prove

possession. *State v. Miller*, 363 N.C. 96, 99 (2009) ("A defendant constructively possesses contraband when he or she has the intent and capability to maintain control and dominion over it. The defendant may have the power to control either alone or jointly with others." (citations and internal quotation marks omitted)); *see also State v. McLaurin*, 320 N.C. 143, 146 (1987) ("[C]onstructive possession is sufficient for purposes of the statute[,] . . . [and] [i]t is not necessary to show that an accused has exclusive control of the premises where paraphernalia are found[.]"). In light of the apparent coordination between the occupants of the vehicle, we consider it unlikely a jury would have viewed the positioning of the firearms upon their discovery as a testament to the most proximate occupant's exclusive possession.

Second, the trial court acted within its discretion in pursuing corrective action other than declaring a mistrial, and the Record indicates the trial court's preferred mode of correction was a curative instruction—so much so that it suggested the measure on its own initiative immediately upon being informed of the incorrect instruction. Especially in light of the principle that we "presume[] that jurors follow the trial court's instructions" and the absence of any conduct from the jury indicating otherwise, *State v. Steen*, 352 N.C. 227, 249 (2000), we cannot say the use of a corrective instruction in this case was inadequate, or that it was "impossible to attain a fair and impartial verdict" without declaring a mistrial. *Blackstock*, 314 N.C. at 244. Given that the trial court was both permitted and did utilize a measure other than a mistrial to correct the erroneous instruction, then, the likelihood that the trial court

would have declared a mistrial in the event Defendant's trial counsel had moved for one is minimal. Thus, Defendant cannot show prejudice and therefore has not shown that he received ineffective assistance of counsel.

D. Failure to Declare a Mistrial *Sua Sponte*

Defendant also argues the trial court erred in failing to declare a mistrial *sua sponte* under the same circumstances identified in his second ineffective assistance of counsel argument. As stated in the previous section, whether to declare a mistrial is a matter within the discretion of the trial court. *Allen*, 141 N.C. App. at 617; *State v. Shore*, 258 N.C. App. 660, 677 (2018). "An abuse of discretion occurs only upon a showing that the judge's ruling was so arbitrary that it could not have been the result of a reasoned decision." *State v. Salentine*, 237 N.C. App. 76, 81 (2014) (citation and internal quotation marks omitted).

For the reasons discussed in the prejudice prong of Defendant's related ineffective assistance of counsel claim, declaring a mistrial is an extreme measure, and the trial court selected a presumptively effective alternative method to address the disclosure of his specific prior felony. *See Blackstock*, 314 N.C. at 243–44; *Steen*, 352 N.C. at 249. While we are cognizant that this disclosure was disadvantageous to Defendant's interests at trial in view of the benefit he sought to gain by stipulating to the fact of his having committed a prior felony, we cannot say the failure to declare a mistrial constituted an abuse of discretion in light of the presumptively effective alternative of a curative instruction.

E. Unconstitutional Breach of Neutrality

Finally, Defendant argues the trial court violated his constitutional rights by allegedly abdicating its role as a neutral to aid the State in its case. Defendant acknowledges that he has not properly preserved this issue for appeal with an appropriate objection; therefore, he requests we invoke Rule 2 to review the issue. Under Rule 2,

> [t]o prevent manifest injustice to a party, or to expedite decision in the public interest, either court of the appellate division may, except as otherwise expressly provided by these rules, suspend or vary the requirements or provisions of any of these rules in a case pending before it upon application of a party or upon its own initiative, and may order proceedings in accordance with its directions.

N.C. R. App. P. 2 (2025). "While an appellate court has the discretion to alter or suspend its rules, exercise of this discretion should only be undertaken with a view toward the greater object of the rules"; therefore, "Rule 2 must be applied cautiously." *State v. Hart*, 361 N.C. 309, 315 (2007).

Here, we discern no manifest injustice on the Record before us. Indeed, the interaction Defendant represents as a show of judicial favoritism to the State—namely, the inquiry by the trial court seeking clarification from the State as to the "15 to 35" statement, reproduced in the statement of facts above—could just as easily be said to be a measure taken to ensure Defendant's rights were protected and the State was not proceeding upon insufficient evidence. As such, we decline to invoke Rule 2 and dismiss this issue as unpreserved.

IV. Conclusion

As the State's evidence was sufficient to establish the requisite margin over the speed limit Defendant must have traveled to substantiate Defendant's charge of fleeing to elude arrest with the associated aggravating factor, the trial court did not err in denying Defendant's motion to dismiss that charge. Furthermore, Defendant did not receive ineffective assistance of counsel with respect to either the failure to move to dismiss the drug paraphernalia possession charge or the failure to move for a mistrial, nor did the trial court abuse its discretion in failing to declare a mistrial *sua sponte*. Finally, Defendant failed to preserve his constitutional argument, and we decline to invoke Rule 2 under circumstances where the Record reflects no manifest injustice occurred at trial.

NO ERROR IN PART; DISMISSED IN PART.

Judges ZACHARY and FREEMAN concur.

Report per Rule 30(e).