IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-823

No. COA21-665

Filed 6 December 2022

New Hanover County, Nos. 16CRS59540-41, 17CRS102-03

STATE OF NORTH CAROLINA

v.

TITUS NAFIS LEE, Defendant.

Appeal by Defendant from judgments entered 12 May 2021 by Judge Frank Jones in New Hanover County Superior Court. Heard in the Court of Appeals 20 September 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sherri Horner Lawrence, for the State.

Marilyn G. Ozer for Defendant-Appellant.

INMAN, Judge.

¶ 1 Defendant appeals from judgments entered upon jury verdicts finding him guilty of offenses including kidnapping, burglary, rape, and assault of two college students in one of their apartments. On appeal, he challenges the admissibility of an expert's testimony related to trauma and memory and contends the trial court abused its discretion by denying his motion for a mistrial based on a detective's improper and

incurable testimony over sustained objections. After careful review of the record, including ample evidence independent of the challenged testimony, we hold Defendant's trial was free from prejudicial error.

I. FACTUAL & PROCEDURAL BACKGROUND

¶ 2 The record below discloses the following:

¶ 3 Around midnight on 22 November 2016, two college students, Heidi[1] and Jacob Hedgecock, were sitting on the patio of Heidi's first floor apartment in Wilmington, when a tall, thin Black man with dreadlocks, wearing a hoodie and blue bandana to cover his face and holding a revolver, emerged from the bushes and confronted them. The man forced the couple into the apartment at gunpoint and demanded money; the two did not have any cash so they offered items of value. The masked assailant then threatened to kill them.

¶ 4 After ordering Jacob to remove his clothes, the man locked Jacob in a closet in the main bedroom and made Heidi tie Jacob's hands with a laptop computer cord. Once Jacob was secured, the assailant forced Heidi to perform fellatio on him at gunpoint twice—once in the bedroom and then again in the closet in front of Jacob. Jacob broke free momentarily and fought the assailant in an attempt to take his gun. During the altercation, Jacob ripped out some of the man's dreadlocks, which the man

[1] Following Indigent Defense Services' policy, we use a pseudonym to protect the identity of a victim of sexual crimes and for ease of reading.

put in his pocket, and then the assailant repeatedly beat Jacob on the head with his gun, causing several lacerations which required staples. The assailant sustained a laceration on his right index finger. He then ordered Heidi to retie Jacob in the closet and vaginally raped her, without a condom and at gunpoint, on the bed. He again forced her to perform fellatio on him at gunpoint.

¶ 5 After the assailant made Heidi bind Jacob with duct tape, he forced Jacob into the trunk of Jacob's car and ordered Heidi back into the apartment, where he forced her to perform fellatio yet another time. He then forced Heidi to drive Jacob's car to pick up a woman from a house known for drugs and sex-work and then on to a Wells Fargo ATM to withdraw $1,500 in cash. Back at the apartment, the man forced Heidi to perform cunnilingus on the other woman. He then made Heidi clean the apartment by wiping surfaces with Lysol, pouring fabric softener on the carpet, walls, and floors, washing the bed's comforter, and brushing her teeth. After more than six hours, the man left, taking with him valuables from Heidi's apartment such as the laptop computer cord used to restrain Jacob, a Vera Bradley bag, laptops, two televisions, a ring, lamps, an Xbox and its controllers, iPhones, clothing, including a black Nike jacket, and shoes.

¶ 6 One week later, law enforcement released a photo of the man captured by a camera at the ATM, showing him in the passenger seat of Jacob's car with a cut on his right index finger, and offered a reward. An anonymous tip led detectives to an

apartment near the crime scene where officers spoke with Defendant's mother and requested Defendant contact them. He never did.

¶ 7 U.S. Marshalls ultimately located and arrested Defendant in Philadelphia, where he was hiding in a family member's basement. On 9 January 2017, a grand jury indicted Defendant on eleven charges: two counts of first-degree kidnapping; two counts of first-degree forcible rape; one count of first-degree burglary; two counts of robbery with a dangerous weapon; two counts of first-degree sexual offense; and two counts of sexual offense.

¶ 8 Defendant's case came on for trial on 19 April 2021. Outside the presence of the jury, the trial court heard Defendant's pre-trial motion to exclude the testimony of Dr. Mindy Mechanic, a clinical psychologist. On *voir dire*, the State explained Dr. Mechanic would testify about "what trauma does to the brain, what it does to memory, [and] what it does to the ability of the person who experienced it to chronologically disclose what happened to them," and how it can "impact[] a person who has experienced a traumatic event to later disclose that at trial, or in front of other people." Dr. Mechanic clarified her testimony would not directly address the facts of this case. Defendant objected to the testimony based upon the United States Supreme Court's decision in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 125 L. E. 2d 469 (1993) and Rule 702(a) of the North Carolina Rules of Evidence, arguing, in part, the proffered testimony failed to apply principles and methods reliably to the

facts of the case. The trial court denied Defendant's motion to exclude the testimony, concluding that it satisfied Rule 702's reliability standard and the probative value of the testimony was not substantially outweighed by a danger of unfair prejudice under North Carolina Rule of Evidence 403.

¶ 9 Heidi and Jacob testified consistent with the above recitation of facts. Although the victims first identified another man, an inmate in a New Hanover County jail, as the assailant from a police line-up, they identified Defendant as the perpetrator at trial.

¶ 10 Sergeant Odham also testified that he discovered a law enforcement alert for "violent tendencies" associated with Defendant when he ran a background check on Defendant in the police database. Defense counsel objected and moved to strike the testimony, and the trial court sustained the objection. But the State again asked Sergeant Odham to explain the alert, to which he responded "I found that he was a violent—" before defense counsel objected and moved to strike a second time. On this basis, Defendant moved for a mistrial. After hearing arguments from defense counsel and the State outside the presence of the jury, the trial court instructed the jury to disregard the testimony, confirmed they would, and subsequently denied Defendant's motion.

¶ 11 The State also presented evidence that Defendant received medical care for an injury on his right index finger the morning after the crimes and that Defendant

posted a video of himself holding Heidi's Vera Bradley bag full of money to Facebook Live. Executing a search warrant at Defendant's residence, police found the laptop computer cord with Jacob's blood on it, Jacob's black Nike jacket, a blue bandana, dreadlocks, and several televisions. ATM surveillance video from the night of the assault corroborated the victims' descriptions of Defendant. Bank records and a traffic camera also corroborated testimony about movements by Defendant and the victims in Jacob's car. Data extracted from Jacob's stolen iPhone, found in Defendant's possession at the time of his arrest, revealed Defendant's iCloud user login with a cover photo of Defendant and his girlfriend and activity related to what happened on 22 November, including dozens of messages between Defendant and his girlfriend and Defendant and his mother, relating to the case and how to avoid law enforcement. Defendant and his mother testified on Defendant's behalf.

¶ 12 On 12 May 2021, the jury found Defendant guilty of all charges. The trial court arrested judgment on the jury's conviction of Defendant for first-degree kidnapping of Heidi and instead entered judgment convicting Defendant of second-degree kidnapping. The trial court consolidated the kidnapping charges and sentenced Defendant to 73 to 100 months, followed by consecutive sentences of 240 to 348 months for one count of first-degree forcible rape, 240 to 348 months on the consolidated charges of a second count of first-degree forcible rape, first-degree burglary, and robbery of Heidi with a dangerous weapon, 240 to 348 months for the

consolidated charges of first-degree forcible sexual offense and robbery of Jacob with a dangerous weapon, and 240 to 348 months each on the remaining counts of first-degree forcible sexual offense. The North Carolina Department of Public Safety calculated Defendant's total sentence as 182 years and 4 months. The trial court also ordered Defendant to register as a sex offender and enroll in satellite-based monitoring for his natural life. Defendant gave oral notice of appeal.

II. ANALYSIS

A. Admissibility of Expert Testimony

¶ 13 Defendant contends Dr. Mechanic's testimony was inadmissible under Rule 702(a) and *Daubert* because the testimony failed to: "(1) apply the [research] principles and methods reliably to the facts of the case; (2) support its thesis concerning the ignorance of lay persons with sufficient facts or data; or (3) provide insight beyond the conclusions that jurors could draw from their own experiences."

¶ 14 We review a trial court's decision regarding whether proffered expert testimony satisfies Rule 702(a)'s requirements of qualification, relevance, and reliability for abuse of discretion. *State v. McGrady*, 368 N.C. 880, 893, 787 S.E.2d 1, 11 (2016). A trial court abuses its discretion where "its ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision," *id.* (citation and quotation marks omitted), or when it misapprehends the law, *State v. Nunez*, 204 N.C. App. 164, 170, 693 S.E.2d 223, 227 (2010).

¶ 15 Rule 702(a) provides:

> (a) If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion, or otherwise, if all of the following apply:
>
> (1) The testimony is based upon sufficient facts or data.
>
> (2) The testimony is the product of reliable principles and methods.
>
> (3) The witness has applied the principles and methods reliably to the facts of the case.

N.C. Gen. Stat. § 8C-1, Rule 702(a) (2021). Our Supreme Court has interpreted North Carolina Rule of Evidence 702 to mirror the federal standard for the admission of expert witness testimony articulated in the *Daubert* line of cases. *McGrady*, 368 N.C. at 884, 787 S.E.2d at 5. *Daubert* required trial courts to ensure that "any and all scientific testimony or evidence admitted is not only relevant, but reliable." 509 U.S. at 589, 125 L. Ed. 2d. at 480. First, as part of the relevance inquiry, "the area of proposed testimony must be based on 'scientific, technical or other specialized knowledge' that 'will assist the trier of fact to understand the evidence or to determine a fact in issue.'" *McGrady*, 368 N.C. at 889, 787 S.E.2d at 8 (quoting Rule 702(a)). To assist the trier of fact, the testimony "must provide insight beyond the conclusions that jurors can readily draw from their ordinary experience." *Id.* Second, the witness must be qualified as an expert in the proposed field of his or her proposed testimony

such that the witness is "in a better position than the trier of fact to have an opinion on the subject." *Id.*, 787 S.E.2d at 9. Finally, to establish reliability, the testimony must satisfy a three-pronged test: "(1) the testimony must be based upon sufficient facts or data[;] (2) the testimony must be the product of reliable principles and methods[;] and (3) the witness must appl[y] the principles and methods reliably to the facts of the case." *Id.* at 890, 787 S.E.2d at 9 (cleaned up) (quoting Rule 702(a)).

¶ 16 Generally, the admissibility of evidence of post-traumatic stress disorder ("PTSD") or rape trauma syndrome depends on "the purposes for which such evidence is offered." *State v. Hall*, 330 N.C. 808, 821, 412 S.E.2d 883, 890 (1992). In *Hall*, our Supreme Court held that "evidence that a prosecuting witness is suffering from [PTSD] should not be admitted *for the substantive purpose of proving that a rape has in fact occurred*." *Id.* (emphasis added). However, evidence of traumatic disorders in rape victims is admissible "for certain *corroborative* purposes" such as "corroborating the victim's story, or it may help to explain delays in reporting the crime or to refute the defense of consent." *Id.* at 821-22, 412 S.E.2d at 890-91 (emphasis added).

1. Applying Research and Methods Reliably to Facts of Case

¶ 17 Dr. Mechanic testified generally about the neurobiology of trauma, which she described as the biochemical and physiological changes that occur in the human body in response to traumatic events and which impair the brain's ability to process, sequence, and recall those events, as well as other common, "counterintuitive," post-

traumatic behavioral patterns in victims of sexual violence. The trial court determined her testimony was admissible because: "[o]ne, the evidence, the proffered testimony of Dr. Mechanic, does pass the Rule 702 relevancy test; secondly, Dr. Mechanic is qualified as an expert by knowledge, skill, experience, training, or education; third, that the proffered testimony of Dr. Mechanic does pass Rule 702's three-prong reliability test."

¶ 18 Although Dr. Mechanic had reviewed the victims' interviews and portions of the case file including police reports, on cross-examination at trial, she expressly testified that she had not applied her research to the facts of the case:

> Q: And you said and wrote in this proffer that, I will not offer any diagnoses or any opinions on the parties to this case; is that correct?
>
> A: That's correct.
>
> Q: And you have not, and you put in caps not, interviewed any parties involved in this case, correct?
>
> A: I've never met them.
>
> *Q: So you have no opinion that relates to the facts of this case or the parties to this case, correct?*
>
> *A: Correct.*
>
> *Q: And you have no diagnosis of the parties to the case or anything to do with the facts of the case?*
>
> *A: That's right.*

(Emphasis added).

¶ 19 We agree with the State that Dr. Mechanic was not required to interview or examine Heidi or Jacob to render her testimony admissible. *See Barefoot v. Estelle*, 463 U.S. 880, 903, 77 L. Ed. 2d. 1090, 1110 (1983) (rejecting the petitioner's argument that psychiatric testimony on the issue of "future dangerousness" must be based on *personal examination*); *State v. Daniels*, 337 N.C. 243, 268-69, 446 S.E.2d 298, 314 (1994) (applying *Barefoot* to conclude Rule 702 "does not require that an expert personally interview a defendant in order to express an opinion about that defendant's mental condition"). We further agree that the subject of Dr. Mechanic's testimony, namely the neurobiological impact trauma may have on the memory and behavior of victims of sexual crimes, is the very type of testimony that would "assist the trier of fact to understand the evidence or to determine a fact in issue" by "provid[ing] insight beyond the conclusions that jurors can readily draw from their ordinary experience." *McGrady*, 368 N.C. at 889, 787 S.E.2d at 8. *See, e.g., State v. Stancil*, 355 N.C. 266, 267, 559 S.E.2d 788, 789 (2002) ("[A]n expert witness may testify, upon a proper foundation, as to the profiles of sexually abused children and whether a particular complainant has symptoms or characteristics consistent therewith."); *Hall*, 330 N.C. at 822, 412 S.E.2d at 891 ("Testimony that the complainant suffers from [PTSD] may therefore cast light onto the victim's version of events and other, critical issues at trial."); *State v. Kennedy*, 320 N.C. 20, 32, 357 S.E.2d 359, 366 (1987) ("The testimony of [experts], if believed, could help the jury

understand the behavior patterns of sexually abused children and assist it in assessing the credibility of the victim.").

¶ 20 However, the State ignores Rule 702(a)(3)'s requirement that an expert witness "appl[y] the principles and methods reliably *to the facts of the case*." Defendant cites *State v. McPhaul*, 256 N.C. App. 303, 808 S.E.2d 294 (2017), in which we held the trial court abused its discretion in admitting a fingerprint expert's testimony because the expert "failed to demonstrate that she 'applied the principles and methods reliably to the facts of the case,' as required by Rule 702(a)(3)." 256 N.C. App. at 316, 808 S.E.2d at 305. We described deficiencies in the expert's testimony:

> [The expert] previously testified that during an examination, she compares the pattern type and minutia points of the latent print and known impressions until she is satisfied that there are 'sufficient characteristics and sequence of the similarities' to conclude that the prints match. However, [the expert] provided no such detail in testifying how she arrived at her actual conclusions *in this case*. Without further explanation for her conclusions, [the expert] implicitly asked the jury to accept her expert opinion that the prints matched.

Id. (emphasis in original). Applying the third reliability prong of Rule 702(a), we explained "an expert witness must be able to explain not only the abstract methodology underlying the witness's opinion, *but also that the witness reliably applied that methodology to the facts of the case*." *Id.* (emphasis added).

¶ 21 Defendant argues that because she wholly failed to connect her general

research to this case, in particular, Dr. Mechanic's testimony was inadmissible under Rule 702.[2] *See id.* Since Dr. Mechanic failed to demonstrate that she "applied the principles and methods reliably to the facts of the case," as required by Rule 702(a)(3), we hold that the trial court misapprehended the law and thereby abused its discretion in admitting this testimony. *See Nunez*, 204 N.C. App. at 170, 693 S.E.2d at 227. Because we hold the testimony failed to meet the criteria for admissibility under Rule 702(a)(3), we need not address Defendant's other challenges to the admissibility of the expert's testimony.

2. Expert Testimony Did Not Prejudice Defendant

¶ 22 Concluding that Dr. Mechanic's testimony was inadmissible does not end our inquiry. Defendant is entitled to relief only if he demonstrates that he was prejudiced by the trial court's error. "An error is not prejudicial unless there is a reasonable probability that, had the error in question not been committed, a different result

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[2] Defendant also suggests that Dr. Mechanic should have applied her research to draw conclusions about whether the sexual crimes alleged did, in fact, occur against Heidi and Jacob. The use of such testimony for that purpose is contrary to law. *See Hall*, 330 N.C. at 822, 412 S.E.2d at 891; *Stancil*, 355 N.C. at 266-67, 559 S.E.2d at 789 ("In a sexual offense prosecution involving a child victim, the trial court should not admit expert opinion that sexual abuse has in fact occurred because, absent physical evidence supporting a diagnosis of sexual abuse, such testimony is an impermissible opinion regarding the victim's credibility." (citations omitted)); *State v. Dixon*, 150 N.C. App. 46, 52, 563 S.E.2d 594, 598 (2002) ("Expert opinion testimony is not admissible to establish the credibility of the victim as a witness. . . . [I]n the absence of physical evidence to support a diagnosis of sexual abuse, expert testimony that sexual abuse has in fact occurred is not admissible because it is impermissible opinion regarding the victim's credibility.").

would have been reached at trial." *McPhaul*, 256 N.C. App. at 316, 808 S.E.2d at 305 (quotation marks and citation omitted). Defendant contends that absent Dr. Mechanic's testimony, there was a reasonable probability the jury would have found him not guilty because: (1) the victims initially failed to identify Defendant as the assailant in a police line-up; (2) Heidi's statements to police and medical personnel were, in some ways, inconsistent with her testimony at trial; and (3) Defendant's DNA was absent from the scene of the crimes. In light of other evidence presented at trial, we disagree.

¶ 23 The State presented ample other evidence to assist the jury: (1) Defendant matched the victims' initial description of the assailant; (2) ATM surveillance, a traffic camera, and bank records locate Defendant, with a laceration on his right index finger, in Jacob's vehicle the night and early morning of the crimes; (3) police recovered items stolen from the apartment at Defendant's residence; (4) messages between Defendant and his family members discussed the crimes and his need to flee law enforcement; (5) social media posts published after the assaults, robbery, and Heidi's forced withdrawal of cash from the ATM, depict Defendant holding items belonging to the victims along with cash; (6) cellular data from an iPhone reported stolen from the apartment revealed its user accessed Defendant's Facebook page, followed police activity in the area that the crimes occurred, read articles identifying Defendant as a suspect, and searched for signs of HIV/Aids; and (7) Defendant

received medical care for an injury to his right index finger the morning after the crimes.

¶ 24 In light of all the evidence pointing to Defendant's guilt, we conclude he was not prejudiced by the erroneous admission of Dr. Mechanic's testimony. *See id.* (concluding improperly admitted testimony was not prejudicial where the State offered "abundant additional evidence to assist the jury" in determining guilt including that the defendant matched the description of the assailant and possessed stolen items). *Cf. Hall*, 330 N.C. at 813-14, 412 S.E.2d at 885-86 (holding expert testimony that a victim suffered from PTSD was prejudicial to the defendant where the State's case that defendant raped the victim lacked any physical evidence whatsoever).

¶ 25 To the extent Defendant lodges other constitutional due process and fair trial challenges to the expert testimony, he waived appellate review of those arguments because he failed to object to the testimony on those grounds below. *See State v. Jones*, 216 N.C. App. 225, 230, 715 S.E.2d 896, 900 (2011) ("Constitutional issues not raised and passed upon at trial will not be considered for the first time on appeal, not even for plain error." (quotation marks and citation omitted)); N.C. R. App. P. 10(a)(1) (2022) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were

not apparent from the context.").

B. Motion for Mistrial

¶ 26 Defendant argues the trial court abused its discretion in denying Defendant's motion for a mistrial pursuant to Sergeant Odham's testimony that there was an alert for "violent tendencies" associated with Defendant because: (1) the erroneous admission of testimony was incurable where "[t]he jurors could not erase that accusation from their minds;" and (2) the denial substantially and irreparably prejudiced Defendant's case where the testimony led the jury to believe that Defendant had a propensity for violence and the bad character to commit these crimes. Again, we disagree.

¶ 27 "The trial court *may* declare a mistrial at any time during the trial, but the court *must* declare a mistrial upon the defendant's motion if there occurs during the trial an error . . . resulting in substantial and irreparable prejudice to the defendant's case." *State v. McDougald*, 279 N.C. App. 25, 2021-NCCOA-424, ¶ 8 (quotation marks and citation omitted) (emphasis and ellipsis in original). "Whether a defendant's case has been irreparably and substantially prejudiced is a decision within the 'sound discretion' of the trial court and will not be disturbed absent an abuse of discretion." *Id.* (citation omitted). In determining the prejudicial effect of evidence, we consider "the nature of the evidence and its probable influence upon the minds of the jury in reaching a verdict." *State v. Aycoth*, 270 N.C. 270, 272, 154 S.E.2d 59, 60 (1967).

"Where a trial court sustains an objection to incompetent evidence and instructs the jury to disregard it, the refusal to grant a mistrial based on the introduction of the evidence will ordinarily not constitute an abuse of discretion." *State v. Barts*, 316 N.C. 666, 684, 343 S.E.2d 828, 840 (1986). "When the trial court withdraws incompetent evidence and instructs the jury not to consider it, any prejudice is ordinarily cured," *State v. Black*, 328 N.C. 191, 200, 400 S.E.2d 398, 404 (1991) (citation omitted), and [j]urors are presumed to follow the instructions given to them by the court," *State v. Johnson*, 341 N.C. 104, 115, 459 S.E.2d 246, 252 (1995). "Whether the erroneous admission of . . .evidence . . . should be deemed cured and held nonprejudicial . . . depend[s] largely upon the nature of the evidence and the circumstances of the particular case." *State v. Aldridge*, 254 N.C. 297, 300, 118 S.E.2d 766, 768 (1961).

¶ 28 At trial, the State elicited testimony from Sergeant Odham about what background information police had on Defendant:

> A. Well, the first thing I noticed was an alert.
>
> Q. What does that mean?
>
> A. Well, it's built into the system. If someone has *violent tendencies*—

(Emphasis added). Defense counsel immediately objected and moved to strike, and the trial court sustained the objection "as to status of an alert" and instructed the jury to disregard the testimony. The State resumed its direct examination of Sergeant Odham:

> Q. Sir, when you see an alert, is it information for law enforcement?
>
> A. Yes.
>
> Q. And what was the alert regarding this defendant, Titus Lee?

Before the detective could respond, defense counsel again objected, and the trial court sustained the objection. The prosecutor continued:

> Q. What did you find?
>
> A. I found that he was a violent—

Defense counsel interrupted, objected to the line of questioning a third time, moved to strike, and requested to be heard outside the presence of the jury.

¶ 29 Outside the presence of the jury, defense counsel argued that the prosecutor and State's witness intentionally and prejudicially ignored the trial court's ruling about the testimony regarding Defendant's "violent tendencies" and the police alert associated with him and moved for a mistrial. After hearing further argument from the State and defense counsel and reviewing the transcript of the testimony, the trial court resolved to inquire with the jury and instruct the jury to disregard the testimony because "the investigation of violent . . . tendencies is improper." The trial court addressed the jurors:

> Ladies and gentlemen: In my discretion I have stricken testimony concerning the status and/or interpretation of an alert. My question to each of you, will you disregard and not consider any testimony regarding the status or

> interpretation of a law enforcement alert?
>
> If you will disregard and not consider, please signify by raising your hand at this time. Keep them up, please.

All jurors indicated they would "disregard and not consider" the previous testimony about "an interpretation of an alert." After additional argument on the motion for a mistrial, the trial court determined the jurors understood the trial court's inquiry and provided an "informed response." The trial court then denied Defendant's motion for mistrial because "the questions and partial responses in light of the Court's instructions and inquiry do not constitute substantial and irreparable prejudice to defendant's case."

¶ 30 Arguing he was substantially and irreparably prejudiced by Sergeant Odham's improper testimony, Defendant compares this case to *State v. Aldridge*, but that case is inapposite. In the context of a child support dispute, the prosecutrix in that case testified she had "nonaccess" to her husband—a man other than the defendant—for two years, and the trial court instructed the jury to disregard her testimony. 254 N.C. at 299-301, 118 S.E.2d at 767-68. Because other evidence about nonaccess was far less probative than the prosecutrix's testimony and the incompetent testimony bore "directly on the critical issue" that the defendant was the father, our Supreme Court held the defendant was entitled to a new trial. *Id.*, 118 S.E.2d at 768. Here, unlike in *Aldridge*, the State presented other more probative evidence for the jury to find

Defendant guilty, and the jury's verdict was not based in substantial part on the detective's testimony. Further, though not dispositive in *Aldridge*, in this case the trial court provided a curative instruction to the jurors and further confirmed each juror was capable of disregarding Sergeant Odham's testimony.

¶ 31 We conclude the trial court did not abuse its discretion in denying Defendant's motion for mistrial where it sustained an objection, provided a curative instruction to the jury, instructed the jurors to indicate that they would disregard the testimony, and all jurors confirmed they would ignore the detective's testimony about the alert. *See McDougald*, ¶¶ 3, 6-18 (holding a detective's testimony that the defendant's line-up photo came from the jail archives was alleviated by a curative instruction and did not warrant a new trial); *State v. Morgan*, 164 N.C. App. 298, 302, 595 S.E.2d 804, 808 (2004) (holding no abuse of discretion where the trial court immediately sustained the defendant's objection to testimony about the defendant's potential prior crimes, gave a curative instruction for the jury to disregard the statement, asked the jurors to indicate whether they could not follow its instructions by raising their hands, and noted for the record that none of the jurors raised their hand).

¶ 32 As with the erroneously admitted expert testimony discussed above, even if the trial court abused its discretion in denying Defendant's motion for mistrial, Defendant cannot demonstrate prejudice because the State provided abundant evidence of his guilt independent of Sergeant Odham's testimony, the basis for the

mistrial motion. *See State v. Carr*, 61 N.C. App. 402, 411, 301 S.E.2d 430, 436 (1983) ("Even when it is error to deny defendant's motion for mistrial, it is incumbent upon an appellant not only to show error but also to show that the error was prejudicial to him.").

III. CONCLUSION

¶ 33 For the reasons set forth above, we hold Defendant's trial was free from prejudicial error.

NO PREJUDICIAL ERROR.

Judges DIETZ and JACKSON concur.

Report per Rule 30(e).