NO. COA05-1249

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 02 CRS 206557

DAVID LEE RISHER

Appeal by Defendant from judgment entered 12 December 2003 by Judge Yvonne Mims Evans in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 May 2006.

Attorney General Roy Cooper, by Assistant Attorney General Kelly L. Sandling, for the State.

Tin Fulton Greene & Owen, PLLC, by Noell P. Tin and Matthew G. Pruden, for Defendant-Appellant.

STEPHENS, Judge.

Defendant appeals the trial court's judgment entered 12 December 2003 upon his conviction by a jury of indecent liberties with a child (S.C.). Defendant further appeals the court's order of 12 October 2004 denying his motion for appropriate relief. Defendant brings forward four assignments of error. For the following reasons, we hold that Defendant received a fair trial, free of error, and we affirm the denial of his motion for appropriate relief.

At trial, the State's evidence tended to show the following: In June 2000, S.C. and her family, consisting of her mother, stepfather, brother, sister, and cousin Gina, moved from Georgia to Charlotte, North Carolina, because S.C.'s stepfather wanted to be

closer to his best friend, Defendant. S.C.'s stepfather and Defendant had grown up together and lived across the street from each other for years. When S.C.'s family moved to Charlotte, they stayed at Defendant's home until they could find their own house. Defendant hired S.C.'s stepfather to work in his commercial contracting business. S.C. testified that she was a rising eighth-grader and Gina was a rising high school freshman. S.C.'s family lived with Defendant for approximately one month.

At the time S.C.'s family was living with Defendant, Defendant's wife, son and daughter also lived in the home. S.C. testified that she became especially close with Defendant's wife and daughter. Occasionally, S.C. and Gina would receive gifts or payment for helping Defendant's wife clean her home after S.C.'s family had moved into their rental home. Sometimes the girls would spend the night at Defendant's home. Gina and S.C. would also baby-sit Defendant's children for money, and S.C.'s family became friends with Defendant's brothers and their families as well. The members of the Risher households considered S.C. to be a part of their families. S.C. testified that her parents were very strict and would not allow the children to watch MTV, watch certain movies, go out with friends or talk on the phone to boys. On the contrary, at Defendant's house, they were allowed to do these things, unknown to S.C.'s parents.

During S.C.'s first year in Charlotte, Defendant had a new home built for his family, so S.C.'s family purchased and moved into Defendant's former home. This occurred in late summer 2001.

In July 2001, fourteen-year-old S.C. was at Defendant's new home helping Defendant's wife clean and put things in place. At one point during this visit, S.C. was alone with Defendant while helping him place bricks into a trailer. Defendant asked S.C. to go with him to his former home to retrieve papers and boxes, and S.C. agreed. When they arrived, S.C. had to climb through a kitchen window to let Defendant inside through the patio door. Defendant told S.C. that the boxes were upstairs in the master bedroom. Once upstairs, Defendant walked into the bedroom and closed the blinds. S.C. asked him what he was doing. Defendant then asked S.C. if he could feel her breasts. S.C. testified that she said "no" and started becoming afraid. S.C. asked if they could just leave and go home. Defendant demanded that she stay. Then Defendant came closer to S.C., pulled up her shirt and bra, and placed his mouth on her breast. S.C. pulled away and tried to leave the room, but Defendant told her that if she left, he would tell her parents "everything" and that her stepfather would lose his job. Defendant told S.C. that he had had sex with one of his nieces, A.D., and that he had paid another woman and A.D. to have a "threesome." Defendant then pulled down his pants and underwear, grabbed S.C.'s hand and forced her to touch his penis. She noticed that Defendant was not circumcised. She pulled away and began crying and again told Defendant that she wanted to leave. However, Defendant instructed S.C. to watch him masturbate. He ejaculated on the carpeted floor. They both then left the room. Once they got in the car, Defendant told S.C. that he would never do anything

to her again. They went to the bank and back to Defendant's new home, where S.C. immediately called her parents to come pick her up. She said nothing about the incident to her parents at that time.

S.C. testified that prior to the events of July 2001, Defendant had frequently attempted to touch Gina's buttocks and S.C.'s breasts. She also described an incident when Defendant was driving S.C. and Gina to rent movies and told them that he had sex with women when he went on business trips to Myrtle Beach. He asked the girls if they had ever seen someone ejaculate and offered to show them. The girls told him "no." On another occasion, S.C. was spending the night at the new house and she asked Defendant if she could sleep in his daughter's bed. Defendant replied that she could, but only if she would let him touch her breasts. She again told him "no."

By July 2001, Gina had returned to her home in Texas. Thereafter, S.C. told Gina by telephone about the incident at Defendant's old home. In December 2001, S.C. spent the night at Defendant's new home to help Defendant's wife with Christmas preparations. Everyone wanted to rent movies for the children, and Defendant announced that just S.C. and he were going to get the movies. S.C. was hesitant, but she went with Defendant. During the drive, Defendant kept trying to touch S.C.'s breasts. She moved his hand away and told him that if he did not stop, she would tell on him.

Following a misunderstanding between Defendant and S.C.'s

parents in January 2002 involving S.C.'s decision to take Defendant's daughter to S.C.'s youth group meeting at her church, S.C. finally told her mother about the sexual comments Defendant had been making to her and Gina. However, she did not tell her mother about the July 2001 incident until a few days later when her mother asked her if Defendant had done anything else to her. After consulting with their pastor, S.C.'s parents called the police and S.C. gave a five-page written statement to the authorities.

The following day, S.C. attempted to commit suicide by taking a large amount of ibuprofen. She was taken to Matthews Hospital and then admitted to Presbyterian Hospital as a patient in the psychiatric ward for about a week. While at Presbyterian Hospital, S.C. experienced many emotions including shame and fear, as well as sadness because she knew that she would never be able to have contact with Defendant's wife and children, about whom she cared. She was also worried about her stepfather getting fired by Defendant and having split loyalties "about whether to believe and support her, or to support his boss." S.C.'s stepfather testified that he was fired shortly after S.C.'s hospitalization.

S.C.'s family moved back to Georgia in May 2002. In August 2002, S.C. took a box cutter and cut her wrists, breasts and face. S.C. was admitted to a hospital in Georgia and placed on Celexa, an anti-depressant. S.C. testified that when her family moved back to Georgia, her parents allowed her to have a boyfriend. It was the first time she had begun to trust another male, but they eventually broke up. S.C. stated that when she cut herself, she was in the

bathroom and looking in the mirror. She testified that she hated her body because she believed her body had attracted Defendant to her. At that time, S.C. was having continuing flashbacks and nightmares about Defendant. She testified that she was having a flashback while she cut herself.

S.C.'s parents and her cousin, Gina, testified and substantially corroborated S.C.'s testimony. Dr. Bret Burquest, a stipulated expert in the field of psychiatry and the Director of the Adolescent Unit at Cedar Springs Hospital, testified regarding his treatment of S.C. following her first suicide attempt. He diagnosed S.C. with post-traumatic stress disorder and adjustment reaction.

Defendant testified on his own behalf and offered the testimony of several witnesses tending to show that he had never spoken about sexual matters with S.C. and had never tried to touch her inappropriately. Defendant admitted that he had offered S.C. and Gina "friendly" parental advice about abstaining from sexual activity, but insisted he only gave such advice in the company of S.C.'s parents. He also admitted to playfully "popping" Gina on her buttocks one night because he believed that she was faking sleep.

Defendant specifically denied touching or kissing S.C.'s breasts, forcing her to watch him masturbate, or touching his penis with her hand in July 2001 or at any other time. He further specifically denied each incident of inappropriate behavior alleged by S.C. He testified that, in his opinion, S.C. fabricated the

alleged abuse as a way of retaliating against him when he told her she could not come back to his home because of unkind remarks he claimed S.C. made about his son.

Defendant also offered evidence tending to establish his good character and reputation in his community. Defendant's wife, Leslie, testified that after S.C.'s family moved to Charlotte, she became close to S.C., who referred to Leslie as her aunt. She would shop with S.C., do her hair, talk with her about many kinds of issues important to teenagers, and have regular family gatherings that included S.C. and her family. Leslie observed that Defendant and S.C. had a friendly and playful relationship, like an uncle and niece. She never saw Defendant act inappropriately toward S.C. or make inappropriate comments to her, and she did not believe S.C.'s allegations.

Additionally, Defendant offered the testimony of Dr. William Michael Tyson, stipulated to be an expert in clinical forensic psychology with specific expertise in the investigation of sexual crimes against children. Dr. Tyson testified that he reviewed S.C.'s medical records and case investigative materials. Based on his review of these materials, he was of the opinion that further investigation was needed to evaluate S.C.'s allegations and to determine the correct diagnosis of her emotional disorders.

At the conclusion of the evidence, the trial court submitted three counts of indecent liberties with a minor to the jury. Following a day and a half of deliberations, the jury found Defendant guilty of one count of indecent liberties with a child by

masturbating to ejaculate in her presence. On 12 December 2003, Judge Evans imposed a suspended sentence and placed Defendant on probation for thirty-six months. Defendant gave notice of appeal that same day and filed a timely motion for appropriate relief on 22 December 2003. By order filed 12 October 2004[1], Judge Evans denied Defendant's motion for appropriate relief, from which Defendant gave notice of appeal on 26 October 2004.

We note first that this appeal is subject to dismissal for rule violations. The North Carolina Rules of Appellate Procedure provide, in pertinent part, that

> [i]mmediately following each question [in the appellant's brief] shall be a reference to the assignments of error pertinent to the question, identified by their numbers and by the pages at which they appear in the printed record on appeal. Assignments of error not set out in the appellant's brief . . . *will* be taken as abandoned.

N.C.R. App. P. 28(b)(6) (2005) (emphasis added). In the present case, Defendant failed to refer to any assignment of error after each question presented in his brief, nor did Defendant include the page numbers of the record to which each of his arguments relates. Violations of the Rules of Appellate Procedure subject an appeal to dismissal. *Viar v. N.C. Dep't of Transp.*, 359 N.C. 400, 401, 610 S.E.2d 360, 360, *reh'g denied*, 359 N.C. 643, 617 S.E.2d 662 (2005) (appeal dismissed for multiple rule violations). However, Rule 2

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[1] In the order, the trial judge notes that the trial court was not aware of the motion for appropriate relief until on or about 20 September 2004.

of the Rules of Appellate Procedure allows this Court to suspend any of the appellate rules "to prevent manifest injustice to a party, or to expedite decision in the public interest." N.C.R. App. P. 2 (2005). Although in *Viar*, our Supreme Court cautioned this Court to refrain from creating an appeal for the appellant, this Court has since reached the merits of cases despite Rule 28 violations, as long as the appellee "'had sufficient notice of the basis upon which our Court might rule.'" *Hammonds v. Lumbee River Elec. Membership Corp.*, ___ N.C. App. ___, ___, 631 S.E.2d 1, 9-10 (2006) (quoting *Davis v. Columbus County Schools*, ___ N.C. App. ___, ___, 622 S.E.2d 671, 674 (2005)). *See also Youse v. Duke Energy Corp.*, 171 N.C. App. 187, 192, 614 S.E.2d 396, 400 (2005). Here, from its thorough response to Defendant's arguments, we conclude that the State had sufficient notice of the basis upon which we might rule regarding Defendant's assignments of error. We therefore choose to invoke Rule 2 and hear this appeal on its merits despite the violation of Rule 28.

Defendant first argues that the trial court should have excluded testimony of S.C.'s stepfather concerning a conversation he had with Defendant about alleged semen stains on the floor of the room in which the July 2001 incident occurred. Specifically, Defendant argues that this evidence was not admissible because the prosecutor failed to timely disclose Defendant's alleged statements to the stepfather, in violation of N.C. Gen. Stat. § 15A-903(a)(2) (2003). We disagree.

Under the terms of this statute in effect at the time of the trial in this case[2], upon a motion by the defense, the State was required to

> divulge, in written or recorded form, the substance of any oral statement relevant to the subject matter of the case made by the defendant, regardless of to whom the statement was made, within the possession, custody or control of the State, the existence of which is known to the prosecutor or becomes known to him prior to or during the course of trial . . . . If the statement was made to a person other than a law-enforcement officer and if the statement is then known to the State, the State must divulge the substance of the statement no later than 12 o'clock noon, on Wednesday prior to the beginning of the week during which the case is calendared for trial.

N.C. Gen. Stat. § 15A-903(a)(2) (2003).

The statement at issue was S.C.'s stepfather's testimony that one day, when he was walking out of the office of Defendant's business, Defendant stopped him. Defendant asked about S.C., who was in the hospital after her first suicide attempt. In response, S.C.'s stepfather asked Defendant "about the ejaculation there in the house" and told Defendant that S.C. had actually pointed out the place where the semen landed on the floor. Defendant denied the allegations and explained that there could be semen all over "that room" (by which Defendant meant the master bedroom) from his prior private activities there with his wife. The stepfather responded that he had not even mentioned in which room S.C. said the incident happened. Subsequently, the stepfather admitted that

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[2] Section 15A-903 was subsequently amended by 2004 N.C. Sess. Laws 2004-154, s.4, which became effective on 1 October 2004.

S.C. had never pointed out any place where semen had landed. He testified that he made the comments to Defendant to see how Defendant would react.

The State concedes that it did not provide the statement to defense counsel until the morning of the trial. The prosecutor explained that he did not provide the statement on the Wednesday prior to trial, as mandated by N.C. Gen. Stat. § 15A-903(a)(2), because Defendant served the State with three motions on the Tuesday before trial, one of which requested the very information contained in the statement in question. The prosecutor argued at the hearing on Defendant's motion *in limine* to exclude the statement that since Defendant had requested the identical information in his supplemental discovery motion, the State chose to supply the statement in response to that motion by delivering the stepfather's statement within five days of receiving the motion, rather than by providing the statement pursuant to the statutory mandate.

Defendant argued that he was severely prejudiced by receiving the statement on the first day of trial because he thus had no opportunity to examine the carpet. We are not persuaded by this argument. The testimony of S.C.'s stepfather establishes that his statement to Defendant was false and made solely to see how Defendant would react. The State offered no evidence to prove that Defendant's semen could be found in any place on the floor of the bedroom in question. Thus, Defendant had no need to examine the carpet.

Moreover, "[a] district attorney's refusal to comply with a discovery order under G.S. 15A-903 does not automatically require the exclusion of the undisclosed evidence." *State v. Stevens*, 295 N.C. 21, 37, 243 S.E.2d 771, 781 (1978). It is within the trial court's discretion whether to allow such statements after considering the circumstances surrounding the discovery issue. *State v. East*, 345 N.C. 535, 481 S.E.2d 652, *cert. denied*, 522 U.S. 918, 139 L. Ed. 2d 236 (1997). This Court will not reverse the trial court absent a showing of abuse of discretion. *State v. Weeks*, 322 N.C. 152, 367 S.E.2d 895 (1988). An abuse of discretion results from a ruling so arbitrary that it could not have been the result of a reasoned decision or from a showing of bad faith by the State in its noncompliance. *State v. Nolen*, 144 N.C. App. 172, 550 S.E.2d 783, *appeal dismissed and cert. denied*, 354 N.C. 368, 557 S.E.2d 531 (2001).

The purpose of N.C. Gen. Stat. § 15A-903 is to protect the defendant from unfair surprise by the introduction of evidence he cannot anticipate. *State v. Payne*, 327 N.C. 194, 202, 394 S.E.2d 158, 162 (1990), *cert. denied*, 498 U.S. 1092, 112 L. Ed. 2d 1062 (1991). Here, Defendant has not shown that the trial judge's decision to allow the statement was so arbitrary that it could not have been the result of a reasoned decision. Defendant has likewise failed to offer any proof that the prosecutor's decision to supply the statement in response to Defendant's motion, rather than pursuant to the statute, was made in bad faith. Therefore, we

hold that the trial judge did not err by allowing the evidence. This assignment of error is overruled.

Defendant next argues that the trial court erred by allowing counsel for the State to insert his interpretation of S.C.'s potential testimony in his opening statement. Again, we disagree.

This Court has held that "[t]he purpose of an opening statement 'is to allow the party to inform the court and jury of the nature of his case and the evidence he plans to offer in support of it.'" *State v. Elliott*, 69 N.C. App. 89, 93, 316 S.E.2d 632, 636, *disc. review denied*, 311 N.C. 765, 321 S.E.2d 148 (1984). In general, counsel should not (1) refer to inadmissible evidence, (2) exaggerate or overstate the evidence, or (3) discuss evidence he expects the other party to introduce. *State v. Freeman*, 93 N.C. App. 380, 389, 378 S.E.2d 545, 551, *disc. review denied*, 325 N.C. 229, 381 S.E.2d 787 (1989). Nonetheless, counsel is given wide latitude in the scope of his or her opening statement. *State v. Gladden*, 315 N.C. 398, 417, 340 S.E.2d 673, 685, *cert. denied*, 479 U.S. 871, 93 L. Ed. 2d 166 (1986). The trial court has the discretion to determine the scope of an opening statement. *Elliott*, 69 N.C. App. at 93, 316 S.E.2d at 636.

In this case, in discussing his forecast of anticipated testimony that Defendant told S.C. her father would lose his job if S.C. left the room during the incident in July 2001, the prosecutor characterized that testimony as a "threat" against S.C. Specifically, he said, "[y]ou'll also hear some conversation

between the two of them there about – I'm going to interpret it as a threat, you know, don't tell anybody about this or your dad will [lose] his job." The trial judge overruled Defendant's objection to this statement.

During direct examination of S.C., she testified that "I tried to leave the room and [Defendant] said no, don't you leave; I'll tell your parents everything and your dad will lose his job and lose everything." Based on this testimony, we hold that the prosecutor's characterization was an accurate forecast of the evidence. The prosecutor did not refer to inadmissible evidence, exaggerate or overstate the evidence, or discuss evidence he expected Defendant to introduce. Moreover, Defendant has not shown any abuse of discretion on the part of the trial judge in allowing the prosecutor's statement. Accordingly, this assignment of error is without merit and is also overruled.

By his next argument, Defendant contends the trial court erred in refusing to allow testimony regarding alleged false allegations of abuse made by S.C. against her stepfather. Defendant argues such testimony was relevant to impeach S.C.'s credibility. This argument has no merit.

Upon the State's objection to the evidence in question, the trial court conducted *voir dire* hearings to determine whether the testimony would be admissible. During the *voir dire* of S.C., she testified that she had never made allegations against her stepfather that he inappropriately touched her in any way at any

time. On cross-examination at trial, she again denied having ever made any allegations against her stepfather. Nevertheless, defense counsel attempted to question S.C. about a conversation she allegedly had with another witness regarding these allegations. The State objected to the questioning based on relevance, and the trial court sustained the objection. During the *voir dire* of S.C.'s former boyfriend and his mother, the defense elicited testimony that S.C. had complained to them that her stepfather had inappropriately touched her. Likewise, at trial, the judge sustained the State's objection to questioning of these witnesses on grounds of relevancy. Defendant contends that his proposed questioning of all three witnesses was relevant and the court's refusal to allow the questioning deprived him of his right to effective cross-examination to attack S.C.'s credibility.

Rule 607 of the North Carolina Rules of Evidence provides that "[t]he credibility of a witness may be attacked by any party, including the party calling him." N.C. Gen. Stat. § 8C-1, Rule 607 (2005). Cross-examination of an adverse witness is a matter of right, but the scope of cross-examination is subject to appropriate control by the court. *State v. Hosey*, 318 N.C. 330, 348 S.E.2d 805 (1986). The issue here is whether the evidence was admissible after S.C. denied making the prior alleged accusations.

It is well settled that "[w]hen a cross-examiner seeks to discredit a witness by showing prior inconsistent statements . . . the answers of the witness to questions concerning collateral matters are generally conclusive and may not be contradicted by

extrinsic testimony." *State v. Cutshall*, 278 N.C. 334, 349, 180 S.E.2d 745, 754 (1971). This is because "once a witness denies having made a prior inconsistent statement, the [cross-examiner] may not introduce a prior statement in an attempt to discredit the witness; the prior statement concerns only a collateral matter, i.e., whether the statement was ever made." *State v. Najewicz*, 112 N.C. App. 280, 289, 436 S.E.2d 132, 138 (1993), *disc. review denied*, 335 N.C. 563, 441 S.E.2d 130 (1994). A collateral matter is irrelevant to the issues in the case, and therefore, inadmissible. *Id.* In *State v. Williams*, 322 N.C. 452, 455, 368 S.E.2d 624, 626 (1988) (citation omitted), our Supreme Court held that

> [a] witness may be cross-examined by confronting him with prior statements inconsistent with any part of his testimony, but where such questions concern matters collateral to the issues, the witness's answers on cross-examination are conclusive, and the party who draws out such answers will not be permitted to contradict them by other testimony.

In the case *sub judice*, S.C.'s testimony on cross-examination that her stepfather had not inappropriately touched her could not be contradicted by alleged inconsistent statements she made to the defense's other witnesses. This is because the testimony is irrelevant as to whether Defendant masturbated in S.C.'s presence in July 2001 and lacks any probative value toward establishing a material fact on that issue. Defendant sought to introduce the alleged prior inconsistent statements only to contradict S.C.'s statement that her stepfather had not inappropriately touched her.

Such evidence is plainly collateral, and consequently, inadmissible. *See also State v. Shane,* 304 N.C. 643, 285 S.E.2d 813 (1981), *cert. denied*, 465 U.S. 1104, 80 L. Ed. 2d 134 (1984); *State v. Mack*, 282 N.C. 334, 193 S.E.2d 71 (1972); *State v. Long*, 280 N.C. 633, 187 S.E.2d 47 (1972); *State v. Crockett*, 138 N.C. App. 109, 530 S.E.2d 359 (2000).

Accordingly, we hold that the trial court properly refused to allow the defense attorney to question S.C. and other witnesses as to whether she told someone else that her stepfather had touched her inappropriately.

By his final argument, Defendant contends that the trial court abused its discretion by denying his motion for appropriate relief. For the reasons which follow, we disagree.

Defendant's motion for appropriate relief, filed on 22 December 2003, alleged that (1) the trial court erred by failing to exclude the stepfather's statement because it was not provided to the defense by noon on the Wednesday before trial, (2) the trial court erred in not allowing evidence of S.C.'s third hospitalization, (3) the trial court erred in excluding evidence that S.C. gave a prior inconsistent statement regarding alleged inappropriate touching by her stepfather, (4) the verdict was contrary to the weight of the evidence at trial, and (5) the verdict was not fair and impartial.

We review the trial court's order denying a motion for appropriate relief under an abuse of discretion standard. *State v.*

Haywood, 144 N.C. App. 223, 236, 550 S.E.2d 38, 46, *disc. review denied*, 354 N.C. 72, 553 S.E.2d 206 (2001). An abuse of discretion results where the trial court's ruling is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision. *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988).

We have already addressed Defendant's arguments regarding the admission of the stepfather's statement and testimony relating to S.C.'s alleged prior inconsistent statements. Defendant offers no additional reasons to support his motion for appropriate relief on these grounds, and consequently, we need not discuss them further. As for the remaining bases alleged as support for this motion, Defendant argues only that "the trial court . . . erred by denying said Motion." He offers no explanation or even contention to prove that the trial judge abused her discretion, and from our thorough review of the evidence in this case, we perceive none.

Defendant further contends, however, that his motion for appropriate relief should have been allowed because the jury verdict was "coerced." After a day and a half of deliberations, the jury informed the judge that it was deadlocked. The trial judge then read the pattern instructions regarding failure to reach a verdict to the jury. Specifically, the judge further charged the jury in accordance with North Carolina Criminal Pattern Jury Instruction 101.40:

> Members of the jury, you have indicated by a note that you have not been able to agree upon a verdict.

> I want to emphasize to you that it is your responsibility to do whatever you can to reach a verdict.
>
> You should reason together as reasonable men and women and try to reconcile your differences if you can.
>
> However, you should not surrender your conscientious conviction.
>
> No juror should surrender his conscientious conviction or honest conviction as to the weight or the effect of the evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.
>
> Now I will let you go back and try to reason together for a period of time and we will wait to hear from you again.

The jurors then deliberated for an additional forty-five minutes until they reached a verdict finding Defendant guilty on one count of the three submitted. Defendant contends that during the additional forty-five minutes, several jurors could be heard yelling at the one juror responsible for the deadlock. Neither in his motion to the trial court nor on this appeal, however, did Defendant support this contention with any evidence from any source, such as an affidavit from a member of the jury or a court official. While we recognize that a defendant is entitled to a new trial where coercion occurred within the jury, *State v. Dexter*, 151 N.C. App. 430, 566 S.E.2d 493 (2002), in this case there is no evidence on which the trial court or this Court can determine that the jury's verdict was "coerced." Defendant's unsupported and bare allegation is not only insufficient to establish coercion of a juror, it is also improper. The trial court correctly denied his motion for appropriate relief, and we thus affirm Judge Evans's 12 October 2004 order.

For the foregoing reasons, we hold that Defendant received a fair trial, free of error.

No error.

Judges WYNN and GEER concur.

Report per Rule 30(e).