NO. COA09-1397

NORTH CAROLINA COURT OF APPEALS

Filed: 19 October 2010

STATE OF NORTH CAROLINA

v. Sampson County
No. 06 CRS 53148, 53284

LAMAR DEMOND SMITH

Appeal by Defendant from judgments entered 29 January 2009 by Judge W. Allen Cobb, Jr. in Superior Court, Sampson County. Heard in the Court of Appeals 28 April 2010.

Attorney General Roy Cooper, by Assistant Attorney General Amy Kunstling Irene, for the State.

Geoffrey W. Hosford for Defendant.

McGEE, Judge.

Mercedes Lou Wilson was shot and killed in the parking lot of a convenience store in Clinton on 2 September 2006. Daniel Cordell (Cordell) and Leonard Granberry were also injured by the gunfire. Multiple witnesses identified the shooter as an African-American male with long dreadlocks and wearing a white shirt. There were several men at the scene of the shooting who matched that description, including Lamar Demond Smith (Defendant). Cordell was the only witness who specifically identified Defendant as the shooter. Defendant was arrested and indicted on 3 December 2007 for murder, attempted first-degree murder, assault with a deadly

weapon with intent to kill inflicting serious injury, assault with a deadly weapon inflicting serious injury, discharge of a firearm into occupied property, and possession of a firearm by a convicted felon. Defendant was also alleged to have attained habitual felon status.

Defendant filed a motion for a change of venue on 28 March 2008. Defendant argued that "[t]he totality of the information provided in news media articles, along with other attending publicity, renders Sampson County an improper forum for the trial of this case." A hearing on Defendant's motion was held 20 May 2008. The trial court denied the motion by order filed 18 July 2008. Defendant made several subsequent oral motions to change venue, all of which were denied.

Jury selection began on 12 January 2009 and continued through 15 January 2009. Opening arguments were heard on 16 January 2009. Defendant was convicted on 29 January 2009 of first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, attempted first-degree murder, discharge of a firearm into occupied property, and possession of a firearm by a convicted felon. Defendant was sentenced to life imprisonment without the possibility of parole due to his conviction for first-degree murder. Defendant appeals. Additional relevant facts will be discussed in the body of the opinion.

I. Motion for Change of Venue

In Defendant's first argument, he contends the trial court erred by denying his motion for a change of venue. We disagree.

> Whether to grant a motion for a change of venue is in the trial court's discretion, and the "decision will not be disturbed on appeal unless the defendant can show an abuse of discretion." "The test . . . is whether, due to pretrial publicity, there is a reasonable likelihood that the defendant will not receive a fair trial."
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> The burden of proving that pretrial publicity precludes a fair and impartial trial rests with defendant.

State v. Small, 328 N.C. 175, 188, 400 S.E.2d 413, 420 (1991) (internal citations omitted). Normally, in order for a defendant to succeed on a motion for a change of venue, he must show specific and identifiable prejudice. In certain circumstances, however, the community in which a defendant is to be tried may be so infected with bias against the defendant that it may obviate the requirement that a defendant prove specific prejudice. Our Supreme Court has discussed these issues in the following manner:

> A defendant seeking a new trial on the basis of a trial court's denial of a motion for change of venue or special venire must ordinarily establish specific and identifiable prejudice against him as a result of pretrial publicity. As we have stated in numerous cases, for a defendant to meet his burden of showing that pretrial publicity prevented him from receiving a fair trial, he ordinarily must show *inter alia* that jurors with prior knowledge decided the case, that he *exhausted his peremptory challenges*, and that a juror objectionable to him sat on the jury.
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> In this case, defendant did not exhaust his peremptory challenges before the twelve jurors who decided his case were seated[.] As the jurors at issue in this case each stated unequivocally that they would be able to reach a verdict based solely upon the evidence presented at trial, defendant did not exhaust his peremptory challenges, and defendant has not offered particular objections to any

> individual juror, defendant has not shown any specific identifiable prejudice that necessitated a change of venue or special venire.
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> Our examination of this issue in the present case, however, must go further. We indicated in *State v. Jerrett* [, 309 N.C. 239, 255, 307 S.E.2d 339, 347-48 (1983),] that where the totality of the circumstances reveals that an entire county's population is "infected" with prejudice against a defendant, the defendant has fulfilled his burden of showing that he could not receive a fair trial in that county even though he has not shown specific identifiable prejudice. We based this conclusion on the United States Supreme Court's decision in *Sheppard v. Maxwell*, 384 U.S. 333, 16 L. Ed. 2d 600 (1966). *Sheppard* involved "a trial infected not only by a background of extremely inflammatory publicity but also by a courthouse given over to accommodate the public appetite for carnival." The Supreme Court stated in *Sheppard* that, while a defendant must ordinarily show specific prejudice, "'at times a procedure employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process.'"

State v. Billings, 348 N.C. 169, 177-78, 500 S.E.2d 423, 428 (1998) (internal citations omitted).

Defendant argues that his case is similar to *State v. Jerrett*, 309 N.C. 239, 307 S.E.2d 339 (1983) and *State v. Moore*, 319 N.C. 645, 356 S.E.2d 336 (1987)[1], and that we should find that the "entire county's population [was] 'infected' with prejudice against [Defendant]," and Defendant therefore "fulfilled his burden of

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[1] We note that in *Moore*, our Supreme Court granted a new trial because the trial court had considered the defendant's motion for a change of venue pursuant to an erroneous standard placing too great a burden upon the defendant. Our Supreme Court did not reach a holding concerning whether Defendant's motion for a change of venue should have been granted.

showing that he could not receive a fair trial in that county even though he [had] not shown specific identifiable prejudice." *Billings*, 348 N.C. at 177-78, 500 S.E.2d at 428. We are not persuaded.

> In *Jerrett*, this Court noted that "the crime occurred in a small, rural and closely-knit county where the entire county was, in effect, a neighborhood." Alleghany County, where Jerrett was tried, had a population at that time of 9,587 people. The *voir dire* in *Jerrett* revealed that one-third of the prospective jurors knew the victim or some member of the victim's family, many jurors knew potential State's witnesses, four jurors who decided the case knew the victim's immediate family or other relatives, six jurors who decided the case knew State's witnesses, and the foreman stated that he had heard a victim's relative discussing the case in an emotional manner. The jury in *Jerrett* was examined collectively on *voir dire* rather than individually, thereby allowing prospective jurors to hear that other prospective jurors knew the victim and the victim's family, that some had already formed opinions in the case, and that some would be unable to give the defendant a fair trial. Additionally, in *Jerrett*, a deputy sheriff of the county, a magistrate of the county, and a private prosecutor retained by the victim's family and appearing as counsel for the State with the district attorney all expressed the opinion that it would be difficult if not impossible to select a jury in Alleghany County comprised of jurors who had not heard about, discussed, and formed opinions about the case. A majority of this Court concluded that based on the totality of the circumstances, there was a reasonable likelihood that Jerrett would not be able to receive a fair trial before a local jury.

Id. at 178, 500 S.E.2d at 428-29. In *Billings*, our Supreme Court held that defendant failed to prove there was a reasonable likelihood he could not receive a fair trial before a local jury.

The *Billings* Court held that because the population of Caswell County, where defendant was tried, exceeded 20,0000 people, the community did not "constitute a single small 'neighborhood' like that at issue in *Jerrett*." *Id.* at 178, 500 S.E.2d at 429. A "number of prospective jurors had heard about the crimes" involved in *Billings*, and one juror stated that she had already formed some belief concerning the defendant's guilt or innocence. *Id.* at 179, 500 S.E.2d at 429. This juror, however, stated that she could put her preconceived notions aside and make her determination based upon the evidence presented at trial. *Id.* The *Billings* Court next examined the level of familiarity that any of the jurors had with the victim, the victim's family, or the State's witnesses, finding that the problems identified in *Jerrett* in this respect were not present, and that media coverage related to the crimes was "routine" and "factual." *Id.*

> The United States Supreme Court warned in *Murphy* that its prior decisions "cannot be made to stand for the proposition that juror exposure to information about a state defendant's prior convictions or to news accounts of the crime with which he is charged alone presumptively deprives the defendant of due process." We have consistently held that factual news accounts with respect to the commission of a crime and the pretrial proceedings relating to that crime do not of themselves warrant a change of venue. Before a change of venue or special venire will be required, pretrial publicity must create "in the county in which the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial."

Id. (internal citations omitted). The Court held in *Billings* that:

> While at least ten of the seated jurors in

> this case had been exposed to some information about the crimes before trial, there is no indication that these factual accounts were prejudicial to defendant. Certainly, nothing in the record in the present case would permit this Court to conclude that either the community from which the jury was drawn or the trial proceedings were so infected by prejudice that they must be deemed to have deprived defendant of the opportunity to receive a fair trial and, thereby, to have denied him due process. We therefore conclude that, viewing the totality of the circumstances in this case, there is not a reasonable likelihood that pretrial publicity prevented defendant from receiving a fair trial in Caswell County, and the trial court did not err in refusing to grant defendant's motions for change of venue or a special venire.

Id. at 180, 500 S.E.2d at 430.

In the case before us, Defendant argues he suffered identifiable prejudice because one of the prospective jurors "advised the court and parties that [Defendant] could not receive a fair trial in Sampson County." Another prospective juror purportedly said to some other prospective jurors: "If that was my daughter, I would be getting on a rooftop." However, in *Billings*,

> defendant did not exhaust his peremptory challenges before the twelve jurors who decided his case were seated[.] As the jurors at issue in this case each stated unequivocally that they would be able to reach a verdict based solely upon the evidence presented at trial, defendant did not exhaust his peremptory challenges, and defendant has not offered particular objections to any individual juror, defendant has not shown any specific identifiable prejudice that necessitated a change of venue or special venire.

Billings at 177, 500 S.E.2d at 428. In the present case Defendant did not exhaust his peremptory challenges, and Defendant fails to

prove any specific identifiable prejudice.

Defendant further argues that "pretrial publicity so infected the jury pool that it was reasonably unlikely that [D]efendant could receive a fair trial in Sampson County." Defendant claims that the media coverage in this case "dwarfs the media coverage in [*Jerrett* and *Moore*.]" However, Defendant provides no factual basis in his brief for this bald assertion, as Defendant makes no factual comparison between the coverage in this case and that in *Jerrett* or *Moore*. Defendant contends that a survey of 240 people conducted prior to the first hearing on Defendant's motion for a change of venue indicated that approximately sixty-three percent of the people surveyed had some familiarity with Defendant's case through media coverage. However, as our Supreme Court stated in *Billings*,

> factual news accounts with respect to the commission of a crime and the pretrial proceedings relating to that crime do not of themselves warrant a change of venue. Before a change of venue or special venire will be required, pretrial publicity must create "in the county in which the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial."

Id. at 179, 500 S.E.2d at 429. Defendant makes no argument that the news accounts related to his case were not factual. The trial court allowed individual *voir dire* of each prospective juror "to determine whether the pretrial publicity in the case which has occurred . . . has contaminated any of the individual jurors." Defendant did not use all of his peremptory challenges, and no juror was seated who indicated an inability to decide the case on the facts presented at trial. Defendant's evidence falls short of

evidence presented in other cases that was deemed insufficient to compel a change of venue. *See, e.g., State v. Moore*, 335 N.C. 567, 585-87, 440 S.E.2d 797, 807-08 (1994).

Sampson County had, according to Defendant, approximately 60,000 residents at the time of the trial. This is three times as many residents as were present in Caswell County at the time of the *Billings* trial, *supra*, where our Supreme Court determined no error in the trial court's denial of the defendant's request for a change of venue. This is more than six times as many residents as were present in Alleghany County in *Jerrett*, where our Supreme Court found error in part because "the crime occurred in a small, rural and closely-knit county where the entire county was, in effect, a neighborhood." *Jerrett*, 309 N.C. at 256, 307 S.E.2d at 348. In *Jerrett*, multiple people testified that they had spoken with many county residents, and they did not believe the defendant could receive a fair trial in Alleghany County. Those testifying included a local radio station representative, the Sheriff of Alleghany County, a local magistrate, a local defense attorney, and a local attorney who was appearing with the State on behalf of the victim's family.

> The evidence presented by defendant prior to jury selection was clearly sufficient to show that there was considerable discussion of this case throughout Alleghany County. Every witness who testified at the hearing on defendant's motion indicated that they believed it would be extremely difficult, if not impossible, to select a jury comprised of individuals who had not heard about the case. The evidence also indicated that due to the publicity surrounding this case, potential jurors were likely to have formed preconceived

> opinions about defendant's guilt and that defendant would not receive a fair trial by an impartial jury.

Id. at 255, 307 S.E.2d at 347. Defendant's evidence in the present case falls far short of that presented in *Jerrett*. The evidence here is also less than that in *Moore*, where the defendant was an African-American man who had been dating the victim, a white woman.

> The defendant exhausted his peremptory challenges. Of the twelve jurors eventually selected, all stated their disapproval of interracial dating except one who said it was an individual question. Six jurors knew at least one of the State's witnesses, including one juror who was acquainted with the victim's sister and her secretary. Ten of the twelve jurors selected knew Sheriff Huskey. He was, for example, a good customer in one juror's store and a distant cousin of another juror's mother.[2]

Moore, 319 N.C. at 649, 356 S.E.2d at 338 (internal citation omitted). There is no evidence in the present case of racial bias on the part of any juror, nor is there evidence that any juror was tainted by any personal relationship with the victim, her family, or any of the State's witnesses. Defendant fails to meet his burden on this issue. The facts in the present case are not as compelling as the facts in other cases where our appellate courts have found no abuse of discretion in the trial court's denial of a defendant's motion for change of venue. *See*, e.g., *Billings*, 348

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[2] We again note that *Moore* sets no precedent concerning what evidence is sufficient to warrant a change of venue, as that case was decided based upon the use of an incorrect standard by the trial court. We include this analysis because Defendant cites to *Moore* in support of his argument. Even assuming *arguendo Moore* is relevant to this issue, *Moore* is easily distinguishable from the case before us.

N.C. at 176-80, 500 S.E.2d at 427-30; *State v. McDougald*, 38 N.C. App. 244, 248-52, 248 S.E.2d 72, 78-80 (1978). Defendant's argument is without merit.

II. Motion for Mistrial

Defendant contends in his second argument that the trial court erred in denying his motion for a mistrial, based upon a report that a prospective juror had stated in the presence of other prospective jurors, that: "If that was my daughter, I would be getting on a rooftop." We disagree.

N.C.G.S. § 15A-1061 provides:

> "Upon motion of a defendant or with his concurrence the judge may declare a mistrial at any time during the trial. The 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."
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> The decision whether to grant a motion for mistrial rests within the sound discretion of the trial judge and will not ordinarily be disturbed on appeal absent a showing of abuse of that discretion. The scope of appellate review, then, is limited to whether in denying the motions for a mistrial, there has been an abuse of judicial discretion.

State v. Boyd, 321 N.C. 574, 578-79, 364 S.E.2d 118, 120 (1988) (internal citations omitted).

> To establish that a trial court's exercise of discretion is reversible error, a defendant "must show harmful prejudice as well as clear abuse of discretion." A trial court's actions constitute abuse of discretion "upon a showing that [the] actions 'are manifestly unsupported by reason'" and "'so arbitrary that [they] could not have been the result of a reasoned decision.'"

State v. Williams, 361 N.C. 78, 80-81, 637 S.E.2d 523, 525 (2006) (internal citations omitted).

The first part of Defendant's argument asserts that the statement made by the prospective juror "demonstrates how widespread and pervasive public opinion was against [Defendant]. The residents of rural Sampson County were ready for retribution." This argument, though potentially relevant to Defendant's change of venue argument, is not relevant to the denial of Defendant's motion for a mistrial. Further, the purported comment of one potential juror does not support Defendant's argument that public opinion against Defendant was "widespread and pervasive," nor that "the residents of rural Sampson County were ready for retribution."

Defendant further argues that he "could not receive a fair trial in Sampson County with jurors such as this on a witch-hunt ready to burn him at the stake. Under the totality of the circumstances, this statement demonstrates how pervasive public opinion was in favor of the [victim's] family and against [Defendant]." This argument, again, is one more properly made in support of a motion for change of venue. In addition, Defendant makes no argument stating how the purported statement specifically prejudiced him. Defendant does not argue that any juror who was seated likely heard the comment, nor that any juror was tainted by the comment, thereby "resulting in substantial and irreparable prejudice." Defendant fails to carry his burden of showing that the trial court's ruling on his motion for a mistrial was "so arbitrary that [it] could not have been the result of a reasoned

decision." *Id.* at 81, 637 S.E.2d at 525.

Furthermore, Defendant cites to no authority in support of his argument that the trial court's ruling constituted an abuse of discretion. Defendant's citations in this argument are limited to setting forth the standard of review. This is a violation of Rule 28(b)(6) of the North Carolina Rules of Appellate Procedure, and constitutes an abandonment of this argument on appeal. N.C.R. App. P. 28(b)(6); *Dogwood Dev. & Mgmt. Co., LLC v. White Oak Transp. Co.*, 362 N.C. 191, 200, 657 S.E.2d 361, 367 (2008). Defendant's argument is without merit.

III. Self-Defense Instruction

In Defendant's third argument, he contends that the trial court erred by failing "to instruct the jury on the doctrine of self-defense" with regard to the charge of assault with a deadly weapon with intent to kill inflicting serious injury of Cordell because the instruction was supported by evidence admitted at trial. We disagree.

At a hearing subsequent to jury selection, the following colloquy occurred:

> [The State]: Judge, can I put one other thing on the record; a discovery issue?
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> We filed and complied with all of the statutory discovery, 15A-905(b). We have requested discovery from [Defendant] and, Judge, I'm not aware of any notices of any defenses they have filed, and I'm requesting that they comply with the statute and give me notice of any defenses that they intend to offer at this trial.
>
> The Court: What says [Defendant]?

> [Defendant's counsel]: We are not contending any defenses that we would be required to give notice of; as I recall, that would be self-defense or alibi, diminished capacity. We won't contend any of those.
>
> [The State]: The statute also includes accident and it lists it specifically, so we're asking that he comply with any of those listed in the statute.
>
> [Defendant's counsel]: We have not given notice of any of those defenses, Your Honor.
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> The Court: Anything else for the record?

Defendant added nothing else at this point.

> N.C. Gen. Stat. § 15A-905 provides that, if the State requests notice of defenses, defendant must provide notice of his or her intent to use the defenses of "alibi, duress, entrapment, insanity, mental infirmity, diminished capacity, self-defense, accident, automatism, involuntary intoxication, or voluntary intoxication." If defendant does not comply with § 15A-905, the trial court may apply various sanctions, listed in N.C. Gen. Stat. § 15A-910[.]

State v. McDonald, 191 N.C. App. 782, 785-86, 663 S.E.2d 462, 465, *review denied*, 362 N.C. 686, 671 S.E.2d 328 (2008). A trial court may, pursuant to N.C. Gen. Stat. § 15A-910, refuse to instruct on a defense where the defendant failed to give notice of that defense as required by N.C. Gen. Stat. § 15A-905. *Id.* at 786-87, 663 S.E.2d at 465.

In the present case, the trial court refused to instruct on self-defense in part due to Defendant's prior statement on the record that Defendant would not be arguing self-defense. Defendant's subsequent attempt to have the trial court instruct on

self-defense[3] constituted a violation of N.C.G.S. § 15A-905, subjecting Defendant to sanctions pursuant to N.C.G.S. § 15A-910. A trial court's determination of sanctions pursuant to N.C.G.S. § 15A-910 will only be overturned on appeal when the defendant demonstrates imposition of the sanctions constituted an abuse of discretion. *McDonald*, 191 N.C. App. at 786, 663 S.E.2d at 465. Defendant makes no argument that the trial court erred in refusing to instruct on self-defense based upon Defendant's violation of N.C.G.S. § 15A-905. Defendant has therefore abandoned this argument. N.C.R. App. P. 28(b)(6); *Dogwood*, 362 N.C. at 200, 657 S.E.2d at 367.

IV. Motion to Dismiss

In Defendant's fourth argument, he contends that the trial court erred in denying his motion to dismiss. We disagree.

> When a defendant moves for dismissal, the trial court is to determine only whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense. Whether evidence presented constitutes substantial evidence is a question of law for the court. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The term "substantial evidence" simply means "that the evidence must be existing and real, not just seeming or imaginary." The trial court's function is to determine whether the evidence will permit *a reasonable inference* that the defendant is guilty of the crimes charged. "In so doing

[3] We also note that Defendant only requested the self-defense instruction for the charge of attempted first-degree murder of Cordell. Defendant did not request any instruction on self-defense for the charge of assault with a deadly weapon with intent to kill inflicting serious injury to Cordell.

> the trial court should only be concerned that the evidence is sufficient to get the case to the jury; it should not be concerned with the weight of the evidence." It is *not* the rule in this jurisdiction that the trial court is required to determine that the evidence excludes every reasonable hypothesis of innocence before denying a defendant's motion to dismiss.
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> In ruling on a motion to dismiss:
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> "The evidence is to 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; contradictions and discrepancies are for the jury to resolve and do not warrant dismissal; and all of the evidence actually admitted, whether competent or incompetent, which is favorable to the State is to be considered by the court in ruling on the motion."
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> The test of the sufficiency of the evidence to withstand the defendant's motion to dismiss is the same whether the evidence is direct, circumstantial, or both. Therefore, if a motion to dismiss calls into question the sufficiency of circumstantial evidence, the issue for the court is whether a reasonable inference of the defendant's guilt may be drawn from the circumstances.

State v. Vause, 328 N.C. 231, 236-37, 400 S.E.2d 57, 61 (1991) (internal citations omitted).

Defendant's entire argument on this issue consists of the following:

> Multiple eyewitnesses testified for the State and were unable to identify [Defendant] as the shooter[.] Daniel Cordell was the sole witness to identify [Defendant] in this case. Mr. Cordell's credibility was itself in question, however, given his own possession of a gun that night and the fact that he suffered a gunshot wound in [his] arm. His memory was cloudy at best.

Considered in the light most favorable to the State, we hold that the evidence presented at trial, including Cordell's testimony, was sufficient to survive Defendant's motion to dismiss.

> Our Supreme Court has held that the credibility of a witness's testimony and the weight to be given that testimony is a matter for the jury, not for the court, to decide. When considering a motion to dismiss, the trial court is concerned "only with the sufficiency of the evidence to carry the case to the jury; it is not concerned with the weight of the evidence."

State v. Jackson, 161 N.C. App. 118, 122, 588 S.E.2d 11, 14-15 (2003) (internal citations omitted). Defendant's argument is without merit.

V. Closing Argument

In Defendant's fifth argument, he contends that the trial court committed reversible error by denying Defendant's objection to a portion of the State's closing argument. We disagree.

"Arguments of counsel are largely in the control and discretion of the trial court. The appellate courts ordinarily will not review the exercise of that discretion unless the impropriety of counsel's remarks is extreme and is clearly calculated to prejudice the jury." *State v. Huffstetler*, 312 N.C. 92, 111, 322 S.E.2d 110, 122 (1984) (citation omitted).

> When counsel makes a timely objection at trial, the standard of review for improper closing arguments is whether the trial court abused its discretion by failing to sustain the objection. We should reverse a trial court and find an abuse of discretion, however, "only upon a showing that its ruling could not have been the result of a reasoned decision." When applying the abuse of discretion standard to closing arguments, we

> first determine whether the "remarks were improper," and if so, whether the "remarks were of such a magnitude that their inclusion prejudiced defendant."

State v. Campbell, 177 N.C. App. 520, 530, 629 S.E.2d 345, 351 (2006) (internal citations omitted).

Defendant contends that the State made two improper arguments in its closing remarks. Defendant states in his brief: "Both arguments were improper, and as such, the trial court abused its discretion when it overruled the objection. [Defendant] deserves a new trial." However, as the law cited above makes clear, even assuming *arguendo* that the State made improper arguments, those improper arguments alone would not entitle Defendant to a new trial. Defendant has the burden of proving that the contested arguments were "clearly calculated to prejudice the jury," and that the "remarks were of such a magnitude that their inclusion prejudiced Defendant." Though Defendant argues the State made improper remarks during its closing argument, Defendant makes no argument demonstrating how the contested statements specifically prejudiced him. Defendant has failed to carry his burden of proving an abuse of discretion on this issue. *Id.* Defendant's argument is without merit.

VI. Short Form Indictment

In Defendant's sixth argument, labeled a "Preservation Issue," he contends "the short form indictment charging [Defendant] with first-degree murder was fatally defective[.]" We disagree.

Our Supreme Court has consistently upheld the use of short form indictments in cases like Defendant's. *See*, e.g., *State v.*

Wilkerson, 363 N.C. 382, 435, 683 S.E.2d 174, 206 (2009), *State v. Hunt*, 357 N.C. 257, 582 S.E.2d 593 (2003). Defendant's argument is without merit.

No error.

Judges STROUD and HUNTER, JR. concur.

Report per Rule 30(e).