NO. COA10-755

NORTH CAROLINA COURT OF APPEALS

Filed: 15 March 2011

STATE OF NORTH CAROLINA

v. Mecklenburg County
Nos. 08 CRS 258520
08 CRS 258521
08 CRS 258522

RICHARD C. LACY

Appeal by Defendant from judgments entered 26 January 2010 by Judge Forrest D. Bridges in Mecklenburg County Superior Court. Heard in the Court of Appeals 10 January 2011.

Roy Cooper, Attorney General, by L. Michael Dodd, Special Deputy Attorney General, for the State.

Janet Moore, Attorney at Law, LLC, by Janet Moore, for Defendant.

THIGPEN, Judge.

Richard C. Lacy ("Defendant") stabbed Janine Renee McCorey ("Decedent") twenty-three times after an argument and also stabbed a second person seven times. Defendant was convicted of first degree deliberate and premeditated murder, felony murder[1] and

[1]Because Defendant's appeal necessitates that we examine whether certain pieces of evidence prejudiced Defendant's trial, we must first determine whether the trial court elected to enter judgment against Defendant on a basis of deliberate and premeditated murder or felony murder. "Premeditation and deliberation is a theory by which one may be convicted of first degree murder; felony murder is another such theory[.]" *State v. Alford*, 339 N.C. 562, 576, 453 S.E.2d 512, 519-20 (1995) (quotation omitted). When the defendant is convicted of felony murder, the

attempted first degree murder.[2] This case requires us to decide whether Defendant's trial was prejudiced by the admission of evidence of a prior juvenile sex offense, the admission of evidence that Defendant may have engaged in plea negotiations prior to trial, and the exclusion of Decedent's mental health records. After careful review of the record, we find no reversible error.

The evidence of record tends to show that on 13 December 2007 in Charlotte, North Carolina, Defendant, driving a silver Malibu,

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underlying felony merges with the murder, and the defendant cannot receive a separate sentence for the underlying felony nor can it be used as an aggravating circumstance. *State v. Hurst*, 360 N.C. 181, 203, 624 S.E.2d 309, 326, *cert. denied*, 549 U.S. 875, 127 S. Ct. 186, 166 L. Ed. 2d 131 (2006) (citation omitted). However, "if a defendant is convicted of first-degree murder on the basis of both premeditation and deliberation and felony murder, then premeditated and deliberate murder alone supports the conviction; the underlying felony for felony murder can be used as an aggravating circumstance at sentencing, and the defendant can receive separate sentences for both the first-degree murder conviction and the conviction, if any, for the underlying felony supporting felony murder." *State v. Millsaps*, 356 N.C. 556, 560, 572 S.E.2d 767, 770-71 (2002). "[W]hen the jury's verdict *specifies both* theories in its verdict of murder in the first degree, it is the court's decision, not that of the jury, to select the theory on which the sentence for the homicide is to be based[,] [a]nd where the sentence for homicide rests upon the premeditated and deliberate murder conviction, the merger rule does not apply." *State v. Fields*, 315 N.C. 191, 206-07, 337 S.E.2d 518, 527-28 (1985). In this case, the trial court sentenced Defendant on both deliberate and premeditated murder and the underlying felony supporting felony murder – the attempted first degree murder offense. Because the trial court sentenced Defendant for both the first-degree murder conviction and the conviction for the underlying felony supporting felony murder, we must conclude that the trial court decided to select the theory of premeditation and deliberation upon which to base Defendant's sentence.

[2]The jury also found Defendant guilty of assault with a deadly weapon with intent to kill inflicting serious injury. However, the trial court entered an order arresting judgment on this offense. The record shows that the trial court arrested judgment for reasons other than the felony murder merger rule.

picked up Decedent and asked Decedent, who was a prostitute and drug user, if "she was working." Decedent agreed to have sex with Defendant for twenty dollars and suggested that she and Defendant go to a nearby house where her friend Robert Mitchell Howard ("Howard") lived. When Defendant and Decedent arrived at Howard's home, Howard and Darlene Brooks ("Brooks") were present. At Decedent's suggestion, Defendant purchased one gram of crack cocaine for $40.00 for Defendant and Decedent's consumption, and Defendant gave half of the crack cocaine to Howard for use of a room. Defendant and Decedent then went into a bedroom to have sex.

Afterwards, Decedent asked to use Defendant's phone, and Decedent took the phone outside of the bedroom. After Decedent left the room, Defendant believed that Decedent had taken his money. Defendant confronted Decedent about his missing money, and the two argued violently. Defendant pulled out a knife and attacked Decedent, stabbing her twenty-three times. Decedent escaped Defendant's attack and ran out of the house. Defendant followed, but Howard stopped Defendant, asking him, "[W]hat's going on?" Defendant stabbed Howard seven times, after which Defendant ran out of the house. Defendant got into the silver Malibu and sped away.

Decedent was found at the steps of a house down the street in the same neighborhood, bleeding from a wound to her heart and multiple other lacerations. Police and medics were called. After being taken to Carolinas Medical Center, Decedent died as a result of the wound to her heart.

Howard was found at his house, also bleeding from wounds to his abdomen and groin. Howard received medical treatment and survived.

Almost one year later, on 11 December 2008, Defendant consented to be interviewed by police, and during the interview, he admitted to his presence at Howard's home on 13 December 2007. Defendant also admitted to stabbing both Decedent and Howard multiple times, and to fleeing the home afterwards.

On 5 January 2009, Defendant was indicted on counts of first degree murder, attempted first degree murder, and assault with a deadly weapon with intent to kill inflicting serious injury. The case was tried on 11 January 2010, and a jury found Defendant guilty of all charges. On 26 January 2010 the trial court entered judgments consistent with the jury's verdicts but arresting judgment on the assault with a deadly weapon with intent to kill inflicting serious injury offense.

I: Evidence of Prior Bad Acts & Prior Conviction

In Defendant's first argument on appeal, he contends the trial court erred by allowing evidence of Defendant's juvenile sex offense, which was fourteen years old. Although it was error to admit this evidence, we hold it was not prejudicial to Defendant's trial.

"We review a trial court's determination to admit evidence under N.C. R. Evid. 404(b) and 403, for an abuse of discretion." *State v. Summers*, 177 N.C. App. 691, 697, 629 S.E.2d 902, 907, *app'l dismissed, disc. review denied,* 360 N.C. 653, 637 S.E.2d 192

(2006) (citations omitted). "To receive a new trial based upon a violation of the Rules of Evidence, a defendant must show that the trial court erred and that there is a 'reasonable possibility' that without the error 'a different result would have been reached at the trial.'" *State v. Ray*, 364 N.C. 272, 278, 697 S.E.2d 319, 322 (2010) (citing N.C. Gen. Stat. § 15A-1443(a) (2009)).

N.C. Gen. Stat. § 8C-1, Rule 404(b) (2009), states that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident."

"[I]n order for evidence relating to the prior crime to be admissible under N.C. Gen. Stat. § 8C-1, Rule 404(b), it must have some relevance to the issue of the defendant's guilt of the crime for which he or she is on trial." *State v. Ward*, __ N.C. App. __, __, 681 S.E.2d 354, 361, *aff'd*, 364 N.C. 133, 694 S.E.2d 738 (2010) (citing N.C. Gen. Stat. § 8C-1, Rule 401 (2009)). The evidence in question must be relevant to some issue other than the defendant's "propensity or disposition to commit an offense of the nature of the crime charged." *State v. Coffey*, 326 N.C. 268, 279, 389 S.E.2d 48, 54 (1990).

"[P]rior offenses are not admissible to prove that a person acted in conformity therewith." *State v. Emery*, 91 N.C. App. 24, 33, 370 S.E.2d 456, 461, *disc. review denied*, 323 N.C. 627, 374

S.E.2d 594 (1988); *see also State v. Smith*, 152 N.C. App. 514, 521, 568 S.E.2d 289, 294, *app'l dismissed, disc. review denied,* 356 N.C. 623, 575 S.E.2d 757 (2002) ("As a general rule, evidence of a defendant's prior conduct . . . is not admissible to prove the character of the defendant in order to show that the defendant acted in conformity therewith on a particular occasion"). "[S]ubstantive evidence of a defendant's past, and distinctly separate, criminal activities or misconduct is generally excluded when its only logical relevancy is to suggest defendant's propensity or predisposition to commit the type of offense with which he is presently charged." *State v. Maxwell*, 96 N.C. App. 19, 25, 384 S.E.2d 553, 557 (1989), *disc. review denied*, 326 N.C. 53, 389 S.E.2d 83 (1990) (quotation omitted).

In this case, Defendant's prior juvenile sex offense ultimately came into evidence through the cross-examination of Defendant's expert witness. The evidence in question was included in Defendant's 2006 mental health records, which stated "that [Defendant] had sex offender treatment at Port Smith, Virginia, as a juvenile." These records were provided to the State in discovery, and Defendant filed a pretrial motion stating that Defendant "voluntarily turn[ed] over certain records of the Defendant to the State that refer to this conviction" and seeking to prevent any reference during trial to the sex offense. Defendant argued in his pretrial motion that any reference to the juvenile sex offense would be irrelevant and unfairly prejudicial. The court provisionally granted Defendant's pretrial motion:

> [Defense Counsel]: . . .[M]y client has a juvenile conviction for a rape sex offense and statutory sex offense which we contend wouldn't come in as 404(b) and is too old even if he would testify in this case,[3] but we had filed that as a motion. . . .
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> [Counsel for State]: [Defense Counsel] and I had some discussions about that and when he sent the report from the psychologist that he contends may testify during the Defendant's case in chief, it seems to read that - or I interpret it to read that the psychologist reviewed or based his opinion in part on that juvenile conviction. . . .

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[3]Defendant did, in fact, testify at trial, which arguably implicated Rule 609, which in some circumstances allows evidence of prior convictions to impeach a testifying defendant who takes the stand and thereby places his credibility at issue. *See State v. Wilkerson* 356 N.C. 418, 571 S.E.2d 583 (2002); *State v. Blankenship*, 89 N.C. App. 465, 467, 366 S.E.2d 509, 510-11 (1988). Assuming *arguendo* that Rule 609 was implicated in this case, we agree with Defendant that the court erred by allowing the evidence of the prior juvenile sex offense under Rule 609, given that the conviction was more than ten years old and the court did not determine that the probative value of the conviction substantially outweighed its prejudicial effect, and given that "[e]vidence of juvenile adjudications is generally not admissible[.]" N.C. Gen. Stat. § 8C-1, Rule 609(d); *see also State v. Muhammad*, 186 N.C. App. 355, 362-63, 651 S.E.2d 569, 575 (2007), *app'l dismissed*, 362 N.C. 242, 660 S.E.2d 537 (2008) (stating that "[w]hen more than ten years have passed after a conviction, evidence of the conviction is inadmissible 'unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect'"(quoting N.C. Gen. Stat. § 8C-1, Rule 609(b)); *State v. Lynch*, 337 N.C. 415, 420, 445 S.E.2d 581, 583 (1994). However, for the same reasons the admission of the evidence under Rule 404(b) did not prejudice the trial, the admission of the evidence pursuant to Rule 609 was not prejudicial to the outcome of the trial. *See State v. Badgett*, 361 N.C. 234, 247-48, 644 S.E.2d 206, 214, *cert. denied*, 552 U.S. 997, 128 S. Ct. 502, 169 L. Ed. 2d 351 (2007) (stating that "[t]he improper admission of a defendant's prior conviction is not reversible *per se*[,]" and the "[d]efendant has the burden under N.C.G.S. § 15A-1443[a] of demonstrating that but for the erroneous admission of this evidence . . . there is a reasonable possibility that the jury would have reached a verdict of not guilty").

> The Court: All right. Well, at this point I'm going to assume that the matter will not come into evidence, so the Motion in Limine is provisionally granted at this point, unless you all can convince me otherwise at some point in time.

Defendant called the expert witness who had reviewed Defendant's 2006 mental health records. During the *voir dire* examination of the expert witness by the State, the Court made the following determination:

> The Court: What do you want to ask in front of the jury?
>
> [Counsel for State]: That same line of questions, your Honor, that Dr. Hilkey was provided numerous reports, some of those reports were from the Behavioral Health Center, that the Defendant was seen on September 30th of 2006, and at that time the Defendant reported violence, or I can refrain from saying violence towards children or I can be as specific as indicated in the report.
>
> The Court: I will let you pursue that line of questioning . . . without saying violence toward women or violence toward children or inappropriate touching of female children[.]

The State, upon cross-examination, asked the following questions in front of the jury:

> Q: And the Defendant has never been to a mental hospital, has he?
>
> A: He has been . . . treated in an inpatient hospital.
>
> Q: And what hospital was that?
>
> A: It was a hospital in Port Smith, Virginia.
>
> Q: For an incident that –

> [Defense Counsel]: Your Honor, I think I have an objection. I think we're getting far afield from what our agreement was.
>
> The Court: Overruled.
>
> Q: And in Port Smith, Virginia, what was he treated for?
>
> [Defense Counsel]: Objection.
>
> The Court: Overruled.
>
> [Defense Counsel]: Your Honor, could we approach?
>
> The Court: Yes.
>
> (A bench discussion was held)
>
> Q: Dr. Hilkey, what was the Defendant being treated for?
>
> A: Do I need to answer that? He had been involved with inappropriate touching of a child and he was referred for treatment for that.

Afterwards, the court instructed the jury to disregard and not consider in its deliberations any evidence of Defendant's prior juvenile conviction.

We agree that the questioned testimony was not admitted for one of the proper purposes specified by Rule 404(b). The testimony that fourteen years ago Defendant was "involved with inappropriate touching of a child" and "was referred [to a mental health care facility] for treatment for that" had no tendency to make any fact of consequence in his first degree murder trial more or less probable, nor was the evidence relevant to any material fact in issue. The only relevance of the evidence was to Defendant's character tending to show he had a propensity for bad acts and

acted in conformity therewith in killing Decedent. This is, necessarily, proscribed. Therefore, we conclude that the evidence that fourteen years ago Defendant was "involved with inappropriate touching of a child" and "was referred for treatment for that" was inadmissible under N.C. Gen. Stat. § 8C-1, Rule 404(b), and the trial court abused its discretion in allowing its admission.

We now must determine whether the admission of the foregoing evidence prejudiced Defendant's trial. *See Ray*, 364 N.C. at 278, 697 S.E.2d at 322 (stating that "[t]o receive a new trial based upon a violation of the Rules of Evidence, a defendant must show that the trial court erred and that there is a 'reasonable possibility' that without the error 'a different result would have been reached at the trial'") (citing N.C. Gen. Stat. § 15A-1443(a) (2009)). Here, Defendant confessed the crimes to the police, and the jury saw and heard Defendant's confession on videotape. Defendant admitted to being at Howard's home on 13 December 2007; to stabbing both Howard and Decedent; and to fleeing the home afterwards. Furthermore, the testimony of multiple witnesses at trial, fingerprint evidence found on a beer bottle at Howard's home, and DNA evidence discovered underneath Decedent's fingernails, linked Defendant to the crimes committed on 13 December 2007. We also find it telling that Decedent sustained twenty-three stab wounds, and Howard sustained seven stab wounds, one of which was "to [his] back," and another which punctured his liver. Decedent's numerous wounds were described in the following way at trial: Decedent had a cut "from one part of her scalp to

the other part"; a "gaping wound" on her "left shoulder"; wounds to her "left chest," "right thigh," "abdomen"; "part of her ear was missing"; one cut on Decedent's head went "straight down . . . and actually cut[] a groove into the underlying skull bone"; another wound on Decedent's head went "down to the bone but it d[id]n't actually make a cut in the bone"; another wound went "through the chest wall and actually cut[] a piece of cartilage off of the fifth rib," went "down through the left lung and then [went] through the left ventricle of the heart [before coming] out the back side of the heart." *See State v. Warren*, 348 N.C. 80, 111, 499 S.E.2d 431, 448, *cert. denied*, 525 U.S. 915, 142 L. Ed. 2d 216, 119 S. Ct. 263 (1998) (stating that "[t]he condition of the victim's body, the nature of the wounds, and evidence that the murder was done in a brutal fashion are circumstances from which premeditation and deliberation can be inferred").

In light of this ample evidence incriminating Defendant, and considering the trial court's instruction to the jury to disregard evidence of Defendant's juvenile sex offense, *see State v. Jennings*, 333 N.C. 579, 618, 430 S.E.2d 188, 208, *cert. denied*, 510 U.S. 1028, 114 S. Ct. 644, 126 L. Ed. 2d 602 (1993) (stating that "[w]e presume that jurors . . . attend closely the particular language of the trial court's instructions in a criminal case and strive to understand, make sense of, and follow the instructions given them") (quotation omitted); *State v. Boston*, 165 N.C. App. 214, 221, 598 S.E.2d 163, 167 (2004) (holding that "[t]o the extent that the evidence tended to show that defendant committed

inadmissible prior bad acts, . . . we hold that the trial court's limiting instructions to the jury were sufficient to cure any prejudice against defendant"), we conclude that Defendant's argument that evidence of his juvenile sex offense materially impacted the jury's decision at trial must necessarily fail. Defendant has failed to demonstrate any reasonable possibility that the jury would have reached a different result had the evidence not reached the jury. *See* N.C. Gen. Stat. § 15A-1443(a). Therefore, we conclude the admission of Defendant's juvenile sex offense conviction was error, but the error did not prejudice Defendant's trial.

II: Inadmissibility of Plea Discussions

In Defendant's second argument on appeal, he contends he must receive a new trial because defense counsel unintentionally elicited testimony from a defense expert that could arguably have been construed to show that Defendant engaged in a pretrial plea negotiation. Evidence of "plea discussions" is generally inadmissible pursuant to N.C. Gen. Stat. § 8C-1, Rule 410, and § 15A-1025.

Rule 410 states in pertinent part the following:

> Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible for or against the defendant who made the plea or was a participant in the plea discussions: . . .
>
> (4) Any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

> However, such a statement is admissible in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it.

Furthermore, N.C. Gen. Stat. § 15A-1025, provides the following with regard to the inadmissibility of plea negotiations:

> The fact that the defendant or his counsel and the prosecutor engaged in plea discussions or made a plea arrangement may not be received in evidence against or in favor of the defendant in any criminal or civil action or administrative proceedings.

In the case *sub judice*, Defendant failed to object to the introduction of the statement by the defense expert that he prepared documents for Defendant's plea negotiation. In fact, defense counsel elicited the evidence, and the State, not Defendant, objected to the evidence. Counsel for Defendant asked a defense expert the following questions, which revealed to the jury that Defendant may have engaged in some sort of plea negotiation prior to the trial:

> Q: . . . [P]rior to preparing your final report you prepared a more informal report, is that right?
>
> A: I did. . . . It was my understanding I was asked to summarize my findings because there was a meeting with . . . the district attorney[.] . . .
>
> [Counsel for State]: Objection
>
> The Court: Overruled.
>
> Q: And it was your understanding that that letter, as well as the records would be provided to the State?

> A: The letter - yes, the letter was a summary of my findings that was going to be presented in terms of a negotiation for plea bargain.

We conclude that because Defendant did not object and, in fact, elicited the evidence during direct examination, Defendant has waived his right to appellate review. *See State v. Thompson*, 141 N.C. App. 698, 704, 543 S.E.2d 160, 164, *disc. review denied*, 353 N.C. 396, 548 S.E.2d 157 (2001) (concluding the defendant "waived his right to appellate review by introducing evidence during his own direct examination of plea discussions and subsequently failing to object to the State's eliciting of further evidence during cross-examination"); *see also* N.C. Gen. Stat. § 15A-1443(c) (2009) ("A defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct"); *State v. Wooten*, 86 N.C. App. 481, 482, 358 S.E.2d 78, 79 (1987) (stating that the admission of inadmissible plea negotiation testimony alone does not automatically require a new trial). Furthermore, Defendant did not argue in his brief on appeal that the admission of the evidence in question was plain error, and accordantly, Defendant has abandoned this argument. *See Thompson,* 141 N.C. App. at 705, 543 S.E.2d at 165 (stating that the defendant "[did] not raise or argue the errors as plain error in his brief[;]" therefore, the Court concluded, "[w]e . . . deem defendant to have waived any assignment of plain error"); N.C.R. App. P., Rule 28(a) ("Issues not presented and discussed in a party's brief are deemed abandoned").

However, assuming *arguendo* the issue were properly preserved for appeal, any error in this case was not plain error. We reiterate that there was copious other uncontested evidence incriminating Defendant, including Defendant's own confession of the crimes to the police, which was videotaped. Defendant also admitted to being at Howard's home on 13 December 2007; to stabbing both Howard and Decedent; and to fleeing the home afterwards. The testimony of multiple witnesses at trial, fingerprint evidence found on a beer bottle at Howard's home, and DNA evidence discovered underneath Decedent's fingernails, linked Defendant to the crimes committed on 13 December 2007. The nature of Decedent's wounds and evidence that the murder was done in a brutal fashion are "circumstances from which premeditation and deliberation can be inferred[.]" *Warren*, 348 N.C. at 111, 499 S.E.2d at 448.

The trial court also specifically gave a limiting instruction to the jury that evidence of a plea bargain was not to be used as evidence of defendant's guilt.[4] *See State v. Riley*, __ N.C. App. __, __, 688 S.E.2d 477, 480-81 (2010) ("Any error in the prosecutor's cross-examination of defendant concerning a prior

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[4]The trial court instructed the jury: "Now, another area, during the . . . testimony of Dr. Hilkey[,] there was some reference by him in his testimony to something that he characterized as a plea bargain. Now, again, I am striking that portion of Dr. Hilkey's testimony. Do not consider that term, do not make any inferences, assumptions, conclusions, or speculations as to whether or not there has been any offer extended by the State or by the Defendant toward a potential compromise of any position in this case. At this point certainly first of all there has been no evidence whatsoever of any such actions having taken place, even if there were any such evidence, that is not a matter that would be properly for your consideration."

criminal charge [and the defendant's associated plea] was cured by the trial court's limiting instruction to the jury").

For the foregoing reasons, assuming *arguendo* Defendant properly preserved this issue for appellate review, we conclude that any potential error was not plain error.[5]

III: Motion for Mistrial

In Defendant's third argument on appeal, Defendant contends that the trial court abused its discretion in denying Defendant's motion for mistrial based on the erroneous admission of evidence of Defendant's juvenile sex offense and on the erroneous admission of statements regarding Defendant's plea negotiations. We disagree.

"A trial judge may declare a mistrial at any time during the trial upon defendant's motion or with defendant's concurrence." *State v. Maness*, 363 N.C. 261, 288, 677 S.E.2d 796, 813 (2009), *cert. denied*, __ U.S. __, 130 S. Ct. 2349, 176 L. Ed. 2d 568 (2010). "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,

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[5]Although Defendant generally claims in his brief that he "was severely prejudiced by his trial lawyer's . . . deficient performance," and broadly states, with regard to a claim of ineffective assistance of counsel, that our standard of review is *de novo*, Defendant makes no legitimate showing "that the deficient performance [of counsel] prejudiced the defense[,]" or that "counsel's errors were so serious as to deprive the defendant of a fair trial, *a trial whose result is reliable*." *State v. Braswell*, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985). We have concluded that the evidence did not prejudice Defendant's trial, and we further conclude that the elicitation of the evidence by the counsel for Defendant was not so serious an error as to deprive Defendant of a fair trial.

resulting in substantial and irreparable prejudice to the defendant's case." N.C. Gen. Stat. § 15A-1061 (2009).

"The decision to grant or deny a mistrial lies within the sound discretion of the trial court and is 'entitled to great deference since [the trial court] is in a far better position than an appellate court to determine the effect of any [misconduct] on the jury.'" *State v. Taylor*, 362 N.C. 514, 538, 669 S.E.2d 239, 260 (2008), *cert. denied*, __ U.S. __, 175 L. Ed. 2d 84, 130 S. Ct. 129 (2009) (quoting *State v. Thomas*, 350 N.C. 315, 341, 514 S.E.2d 486, 502, *cert. denied*, 528 U.S. 1006, 145 L. Ed. 2d 388, 120 S. Ct. 503 (1999)). "The standard of review for denial of a mistrial is whether the trial court abused its discretion." *State v. Hagans*, 177 N.C. App. 17, 25, 628 S.E.2d 776, 782 (2006) (citation omitted). "An abuse of discretion occurs when a ruling is 'manifestly unsupported by reason, which is to say it is so arbitrary that it could not have been the result of a reasoned decision.'" *Taylor*, 362 N.C. at 538, 669 S.E.2d at 260 (quoting *State v. T.D.R.*, 347 N.C. 489, 503, 495 S.E.2d 700, 708 (1998)).

We have already concluded in the foregoing sections for the reasons discussed therein that the admission of Defendant's prior juvenile sex offense was error; however, we have also concluded, because the uncontroverted evidence incriminating Defendant was plenteous, the admission of evidence of the juvenile sex offense and the alleged plea negotiation was not prejudicial to Defendant's trial. The trial court properly determined that the foregoing evidence did not result in substantial and irreparable prejudice to

the defendant's case, and the trial court gave instructions to the jury to disregard the evidence in question. We conclude that the trial court did not abuse its discretion in denying Defendant's motion for mistrial.

IV: Evidence of Mental Illness

In Defendant's final argument on appeal, he contends the trial court erred in sustaining the State's objection to the introduction of Decedent's mental health records into evidence. We disagree.

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. Gen. Stat. § 8C-1, Rule 401 (2009). "Evidence which is not relevant is not admissible." N.C. Gen. Stat. § 8C-1, Rule 402 (2009). "If the proffered evidence has no tendency to prove a fact in issue in the case, the evidence is irrelevant and must be excluded." *State v. Coen*, 78 N.C. App. 778, 780-81, 338 S.E.2d 784, 786, *disc. rev. denied, dismissal allowed*, 317 N.C. 709, 347 S.E.2d 444 (1986) (citing *State v. Perry*, 298 N.C. 502, 259 S.E.2d 496 (1979)); *see also State v. Adams*, 103 N.C. App. 158, 404 S.E.2d 708 (1991) (concluding that a trial court did not err by excluding medical records and preventing cross-examination of the State's witness regarding her mental and emotional condition and treatment).

At trial, the court concluded that the evidence of Decedent's mental health records was irrelevant. Defendant, in his argument on appeal, attempts to bolster his argument for relevancy through

a theory of self-defense. Defendant states, because of Decedent's mental illnesses, she may have "contribut[ed]" to the "violent struggle[.]" However, there was no theory of self-defense at trial and no evidence that Defendant was aware of Decedent's alleged mental illnesses before picking her up as a prostitute on 13 December 2007.[6] In fact, when asked, "You just met [Decedent] that day (13 December 2007), right?" Defendant replied, "I did." Defendant also acknowledged that he did not know Decedent from "previous encounter[s]." Defendant does not argue that Decedent's mental illnesses affected Defendant's state of mind during the confrontation. Furthermore, the trial court did not instruct the jury on self-defense, and Defendant does not argue on appeal that the trial court erred by failing to instruct on self-defense. Even assuming that evidence of Decedent's mental health were relevant to a theory of self-defense, because there is no evidence that Defendant knew of Decedent's alleged violent propensities, such evidence "has no tendency . . . to make the existence of [defendant's] belief as to the apparent necessity to defend himself from an attack more or less probable than it would be without the evidence[.]" *Smith*, 337 N.C. at 666, 447 S.E.2d at 380. Defendant makes no other argument for the relevancy of the evidence of

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[6] *See State v. Smith*, 337 N.C. 658, 666, 447 S.E.2d 376, 380 (1994) (reasoning that "no showing was made that defendant was aware of [the victim's] criminal past; hence, the fact that [the victim] had assaulted a man nine years earlier or had committed burglary four years earlier has no tendency . . . to make the existence of [defendant's] belief as to the apparent necessity to defend himself from an attack more or less probable than it would be without the evidence") (quotation omitted).

Decedent's mental health and fails to explain how the evidence of Decedent's mental health has any tendency to prove a fact in issue in the case.

Defendant has also failed to demonstrate that he was prejudiced by the exclusion of the evidence of Decedent's mental health. Pursuant to N.C. Gen. Stat. § 15A-1443(a), Defendant must show that "there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial[.]"[7]

For the foregoing reasons, we conclude that the trial court did not err by sustaining the State's motion to exclude evidence of Decedent's alleged mental illnesses, because the evidence was not relevant, and we further conclude that assuming *arguendo* the trial court erred, such error did not prejudice Defendant's trial.

We conclude that Defendant had a fair trial, free from prejudicial error.

NO ERROR.

Chief Judge MARTIN and Judge ROBERT C. HUNTER concur.

Report per Rule 30(e).

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[7]Although Defendant makes a general constitutional argument in his brief on appeal, this issue was not raised at the trial, and therefore, we will not review it. *See State v. Elam*, 302 N.C. 157, 160-61, 273 S.E.2d 661, 664 (1981) (stating that the Court will not review constitutional questions "not raised or passed upon in the trial court").