IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-731

No. COA20-683

Filed 21 December 2021

Durham County, Nos. 18CRS55903, 19CRS1071

STATE OF NORTH CAROLINA

v.

STERLING EUGENE WHITTED, Defendant.

Appeal by defendant from judgment entered 8 October 2019 by Judge James E. Hardin Jr. in Durham County Superior Court. Heard in the Court of Appeals 7 September 2021.

Attorney General Joshua H. Stein, by Special Deputy Attorney General John F. Oates, Jr., for the State-appellee.

Kimberly P. Hoppin for defendant-appellant.

GORE, Judge.

¶ 1 Defendant Sterling Eugene Whitted appeals from judgment entered on his conviction for first-degree murder. Defendant argues the trial court erred when it (1) admitted lay opinion testimony identifying him in a surveillance video; (2) failed to intervene *ex mero motu* to strike improper portions of the State's closing arguments; and (3) denied his motion for mistrial. Upon review, we find no prejudicial error.

I. Background

¶ 2 On 14 August 2018, defendant was arrested and charged with the first-degree murder of Reginald Johnson. A Durham County grand jury returned a true bill of indictment on 20 August 2018 for the charge of first-degree murder, and on 16 May 2019, returned another indictment charging defendant with conspiracy to commit first-degree murder.

¶ 3 The State elected to try this matter non-capital by jury, and the trial court ordered defendant's cases to be tried separately from those of his co-defendant, Derrick Motley. The jury returned a verdict of guilty on the charge of first-degree murder and not guilty on the charge of conspiracy to commit first-degree murder.

¶ 4 On 8 October 2019, the trial court entered judgment reflecting the jury's verdict, sentencing defendant to a mandatory term of life imprisonment without possibility of parole. Defendant gave oral notice of appeal in open court.

¶ 5 The evidence presented at trial tended to show the following facts and circumstances. On the night of the murder, Andrea Arnold drove her green 1993 Mazda Protégé to pick up Johnson at his grandmother's apartment at 105 West Channing Avenue in Durham. Arnold and Johnson were longtime friends and spent the evening watching television together. In the early morning hours of 31 July 2018, Arnold drove Johson back home, pulled up along Farthing Street, and waited until Johnson got up the brick sidewalk before driving away.

¶ 6 In the meantime, Johnson's grandmother, Esther Holeman, was asleep on the living room couch and awoke to the sound of a gunshot. She heard Johnson scream "Grandma." She crawled to the kitchen to call her son, Mack Holeman, who lived nearby. After unsuccessful attempts to reach him by telephone, she went out the back door of her apartment and brought Mack and his wife back to her apartment.

¶ 7 Mack Holeman found his nephew, Johnson, lying dead at the front door. He could not remember the exact time his mother knocked on his door and asked for help but estimated he got to his mother's apartment sometime between 1 a.m. and 3 a.m. Soon after, several people gathered outside the apartment prior to the police arriving.

¶ 8 Demondray Stewart was Johnson's best friend. After receiving a phone call informing him that Johnson had been shot, he rushed to the Channing apartment complex, arriving at approximately 3:00 a.m. When Stewart learned that Johnson was dead, he "flipped out" and started calling people to let them know what happened. Stewart called Arnold, and she returned to the scene.

¶ 9 Officer Logan Williams of the Durham Police Department ("DPD") received a call at 3:48 a.m. about a reported shooting at the 105 Channing Avenue apartment. He arrived at approximately 3:55 a.m. and was the first officer on scene. Officer Williams observed Johnson was dead, lying face-up in front of his grandmother's apartment, with a visible gunshot wound and pool of blood around Johnson's upper body. He briefly inspected Arnold's car for evidence linking it to the murder, but he

found none.

¶ 10 Sarah Voeller, a crime scene investigator with the DPD, also arrived on scene at about 6 a.m. on 31 July 2018. She examined the area around Johnson's body and saw a Waffle House bag, ABC tote bag, and hat on the ground. She examined the condition of Johnson's body, noting a stiffness to the extremities and several injuries on the right side of the corpse. It appeared that the front pockets of Johnson's pants had been turned out.

¶ 11 When Johnson's body was moved, Voeller observed "three disk-like projectiles" on the ground, another "disk-like" projectile stuck to his back, two pieces of wadding, and a projectile fragment that fell out of his right pant leg. Voeller testified that the "wadding" is a material found in shotgun cartridges used to separate the gunpowder from loosely packed pellets. She saw "two crescent-shaped injuries" on the left side of Johnson's abdomen, one circular injury on the right side of his abdomen just under his arm, and injuries on the right side of his back, hip, and thigh.

¶ 12 Detective David Cramer ("Det. Cramer") is a homicide detective with the DPD and was the lead investigator on this case. He arrived on scene shortly after 5:00 a.m. While walking around the parking lot canvassing for surveillance cameras, he observed four exterior cameras on the southeast side of the building facing the driveway. Det. Cramer obtained video from those surveillance cameras belonging to neighbors in the same building.

¶ 13 On the video, Det. Cramer observed a dark-colored Audi A4 sedan approach at 12:45 a.m. and park next to the 105 building. At 12:47 a.m., he saw the front passenger door open, and "a heavyset black male wearing a light-colored tank top, baggy dark-colored jean shorts, [and] black shoes with white soles step[ ] out of the vehicle." During that time, he observed that something, possibly a lighter, being lit inside of the vehicle on both the passenger and driver side.

¶ 14 After the individual steps out of the vehicle, he appears "to adjust something in his waistband area," before walking around the corner beyond the coverage of the surveillance cameras. At 12:58 p.m., Arnold's Mazda Protégé is seen traveling past the Audi A4 away from the Channing apartment complex.

¶ 15 At about 1:00 a.m., a group of cats near a dumpster appear to be disturbed and scatter. At the same time, the brake lights on the Audi A4 engage, and the heavyset black male is seen running back to the Audi A4 with a distinct limp. The man gets in the passenger side of the vehicle, and it travels away from the apartment complex with lights off.

¶ 16 Arnold gave a statement to officers at the scene of the shooting, and left at around 6:00 a.m. She and others, including Stewart, went to a gathering at a home on Gurley Street to socialize and mourn Johnson's death. Later in the evening, defendant, along with Derek Motley showed up at Arnold's house. Arnold was not expecting them to visit and did not know why they were there. Arnold testified

defendant had a gun on his hip when he arrived. She also stated defendant and Motley were good friends with Johnson's brother, and Motley drove an Audi and a Lexus.

¶ 17 Det. Cramer ran the license plate attached to the Audi A4, and it came back as registered to a Eugenia Motley of 2009 Taylor Street, Derek Motley's mother. Det. Cramer obtained a search warrant for the vehicle, but the search did not reveal any evidence.

¶ 18 Det. Cramer also gathered surveillance video from an EconoLodge, based on information obtained during his investigation. The EconoLodge footage covered a period between 2:45 a.m. and 3:13 a.m. on 31 July 2018. The video showed three individuals, two men and one woman, walking through the hallway of the hotel at 3:12 a.m.

¶ 19 Det. Cramer testified, over objection, the men in the video were defendant and Motley. Det. Cramer stated he was familiar with defendant's appearance after viewing pictures of him during the investigation, and from a 10-minute face-to-face interview after defendant was arrested and transported to police headquarters on 14 August 2018. Det. Cramer had never interacted with either of the men before the investigation.

¶ 20 Det. Cramer's description of the man he identified as defendant in the EconoLodge video was almost identical to the description of the individual seen in the

Channing apartment complex surveillance video. He described a heavier-set black male walking with a distinct limp, wearing a light-colored tank top, baggy jean shorts, and black tennis shoes with white soles. Later in the trial, Det. Cramer was recalled to the stand, and he offered additional testimony without objection. He identified defendant as one of the individuals seen in the EconoLodge surveillance video and compared items seen worn by defendant to those in evidence.

¶ 21 Anil Patel, the manager at the EconoLodge, testified a person providing the name Sterling Whitted checked in at 3:30 a.m. on 31 July 2018, and checked out at 6:47 a.m. the same day.

¶ 22 Scott Newton, the Federal Bureau of Investigation task force officer for DPD, arrested defendant at 1212 North Mangum Street in Durham, on 14 August 2018. Newton discovered two handguns, various types of ammunition including .40, .45, and .410 caliber, a broken flip-phone, and a pair of black size 12 men's tennis shoes with white soles. Through further investigation, the number of the flip-phone was found to be the same number provided by the person seen on video checking in at the EconoLodge on 31 July 2018. Other content on the phone was associated with defendant.

¶ 23 Stewart testified he knew defendant, but he refused to answer the prosecutor's questions about what type of gun defendant was known to carry. The trial court declared Stewart a hostile witness and allowed the State to cross-examine him.

Stewart recalled seeing defendant at daybreak at the Channing apartment as people gathered after the shooting. Stewart also saw defendant at the Gurley Street gathering afterwards and saw defendant dancing and wearing a white tank top. However, Stewart grew increasingly contentious and refused to answer the prosecutor's additional questions. The trial court held Stewart in contempt of court and ordered him to spend 10 days in jail.

¶ 24 Outside the presence of the jury, the trial court conducted a hearing regarding prior statements by Stewart, and whether evidence supported a finding that he had personal knowledge of defendant carrying a specific type of gun. Det. Cramer testified Stewart told him during a recorded interview that defendant "was always strapped, that if you came at him wrong, [he would] smoke your ass." The term "strapped" specifically refers to carrying a firearm.

¶ 25 Det. Cramer also stated on *voir dire* he had an unrecorded conversation with Stewart as they walked to the front lobby after the interview. Det. Cramer testified he asked, "if [Stewart] knew what type of gun [defendant] usually carried, and [Stewart] stated a [Taurus] Judge. [Stewart] stated he believed [defendant] had carried that gun for around a year or two." Det. Cramer documented Stewart's additional statements in his supplemental notes.

¶ 26 At the same *voir dire* hearing, the prosecutor in this case, Alyson Grine, testified under oath that Stewart told her personally during an interview in her office

that he knew defendant to carry a Judge.

¶ 27 Stewart returned to the witness stand the next day after being held in contempt and spending a night in jail. He testified he personally saw defendant carry a Judge gun in the two or three months before Johnson was shot. In the presence of the jury, and without objection, Stewart identified defendant as the man getting out of the dark car in the Channing Apartment complex surveillance video.

¶ 28 Dr. Kimberly Janssen, a forensic pathologist with the North Carolina Office of the Chief Medical Examiner, performed the autopsy on Johnson on 3 August 2018. Dr. Janssen testified Johnson suffered at least four firearm injuries, and there was stripling on Johnson's arm, indicating a close range of fire. She noted the gunshot wounds were inflicted by two different types of projectiles, shotgun ammunition and handgun ammunition.

¶ 29 Allison Anderson, the firearms technical lead for the DPD, testified as an expert witness and examined the forensic firearms evidence in this case. Anderson testified there are handguns that can fire a .410 caliber shotgun shell, one such handgun being the Taurus Judge. The Taurus Judge is also capable of firing .45 or .44 caliber ammunition. She noted the ammunition collected at the 1212 North Mangum Street address was consistent with ballistics evidence collected at the scene of the shooting.

II. Lay Witness Testimony

¶ 30 Defendant argues the trial court erred by allowing Det. Cramer to identify the men seen in the EconoLodge surveillance video as defendant and Motley. We disagree.

A. Standard of Review

¶ 31 Ordinarily, "[w]e review a trial court's ruling on the admissibility of lay opinion testimony for abuse of discretion." *State v. Belk*, 201 N.C. App. 412, 417, 689 S.E.2d 439, 442 (2009) (citation omitted). However, our Courts have held that "when . . . evidence is admitted over objection, and the same evidence has been previously admitted or is later admitted without objection, the benefit of the objection is lost." *State v. Maccia*, 311 N.C. 222, 229, 316 S.E.2d 241, 245 (1984) (citations omitted). Here, defendant objected when the trial court allowed Det. Cramer to identify him as one of the men in the EconoLodge surveillance video, but he failed to object later when Det. Cramer again identified him as one of the men in still images taken from that video and made comparisons to items in evidence.

¶ 32 Defendant acknowledges this issue may not be preserved for appellate review, and in the alternative, contends the admission of Det. Cramer's identification testimony amounts to plain error. In criminal cases, this Court applies a plain error standard of review to unpreserved instructional or evidentiary errors "when the judicial action questioned is specifically and distinctly contended to amount to plain error." N.C.R. App. P. 10(a)(4). Under the plain error standard of review, "a

defendant must demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury's finding that the defendant was guilty." *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012) (quotation marks and citations omitted). We review this issue for plain error.

B. Discussion

¶ 33 Lay witness testimony is generally inadmissible "because it tends to invade the province of the jury." *State v. Fulton*, 299 N.C. 491, 494, 263 S.E.2d 608, 610 (1980). However, the trial court may, in its discretion, allow opinion evidence by a non-expert witness if it determines that "the witness, through study and experience, has acquired such skill that he is better qualified than the jury to form an opinion as to the subject matter to which his testimony applies." *Id.* (quotation marks and citations omitted). Under our Rules of Evidence, admissible lay witness testimony is limited to "opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue." N.C. Gen. Stat. § 8C-1, Rule 701 (2020).

¶ 34 Our Courts view the following factors as relevant in determining the admissibility of lay opinion testimony:

> (1) the witness's general level of familiarity with the

> defendant's appearance; (2) the witness's familiarity with the defendant's appearance at the time the surveillance photograph was taken or when the defendant was dressed in a manner similar to the individual depicted in the photograph; (3) whether the defendant had disguised his appearance at the time of the offense; and (4) whether the defendant had altered his appearance prior to trial.

Belk, 201 N.C. App. at 415, 689 S.E.2d at 441.

¶ 35 Defendant argues the facts in this case are comparable to *State v. Belk*, where this Court applied the relevant factors and held it was error to allow a testifying officer to identify the defendant in a surveillance video. *Id.* at 413, 689 S.E.2d at 440. This Court reasoned that although the testifying officer may have been familiar with the defendant's "'distinctive' profile," there was no testimony indicating that the defendant "altered his appearance between the time of the incident and the trial, that the individual depicted in the footage was wearing a disguise, or that there were any issues regarding the clarity of the surveillance footage . . . ." *Id.* at 418, 689 S.E.2d at 443. "The only factor supporting the trial court's conclusion . . . [was the testifying officer's] familiarity with [the] [d]efendant's appearance, based on three brief encounters . . . ." *Id.*

¶ 36 The State contends this case is distinguishable from *Belk*, and is analogous to *State v. Collins*, 216 N.C. App. 249, 257, 716 S.E.2d 255, 683 (2011) (holding no prejudicial error where the testifying officer "had 'dealings' with [the] defendant . . . mean[ing] more than minimal contacts, as were present in *Belk*") and *State v. Weldon*,

258 N.C. App. 150, 156, 811 S.E.2d 683, 689 (2018) (concluding the trial court did not abuse its discretion where the testifying officer "observed [the] defendant 'very frequently' in the area . . . [and the] defendant had altered his appearance significantly . . . [before] the date of trial.").

¶ 37 We conclude the facts before us are analogous to *Belk*, and Det. Cramer was in no better position than the jury to identify the individual in the surveillance video or draw comparisons between items admitted into evidence. Det. Cramer had one interaction with defendant prior to trial; a face-to-face interview on the day defendant was arrested that lasted approximately ten minutes. Det. Cramer had no prior dealings with defendant or Motley before the investigation. Nothing on the record indicates defendant significantly altered his appearance before trial, or the individual in the surveillance footage disguised his appearance at the time of the offense.

¶ 38 While it was error to allow Det. Cramer's identification testimony, "[u]nder the plain error rule, defendant must convince this Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993) (citation omitted). We conclude defendant has not met his burden in this case. There is no indication that the jury gave significant weight to Det. Cramer's testimony such that it had a probable impact on the outcome at trial. Witnesses described defendant's appearance at the Gurley Street party, and without objection, Stewart identified defendant in the

Channing Street surveillance video. An in-house guest list and receipt from the EconoLodge reveals that defendant checked into the hotel at approximately the same time the EconoLodge surveillance video showed an individual matching defendant's description walking down the hallway. The EconoLodge surveillance video was just one piece of evidence presented from which the jury could reasonably and independently conclude defendant was the individual depicted in the footage. Thus, the admission of Det. Cramer's testimony does not amount to plain error.

III. Improper Closing Arguments

¶ 39 In his second issue on appeal, defendant argues the trial court reversibly erred when it failed to strike improper portions of the State's closing arguments. We disagree.

A. Standard of Review

¶ 40 "The standard of review for assessing alleged improper closing arguments that fail to provoke timely objection from opposing counsel is whether the remarks were so grossly improper that the trial court committed reversible error by failing to intervene *ex mero motu*." *State v. Jones*, 355 N.C. 117, 133, 558 S.E.2d 97, 107 (2002) (citation omitted). This "standard of review requires a two-step analytical inquiry: (1) whether the argument was improper; and, if so, (2) whether the argument was so grossly improper as to impede the defendant's right to a fair trial." *State v. Huey*, 370 N.C. 174, 179, 804 S.E.2d 464, 468 (2017) (citations omitted).

B. Discussion

¶ 41 Pursuant to § 15A-1230(a), "an attorney may not become abusive, inject his personal experiences, express his personal belief as to the truth or falsity of the evidence or as to the guilt or innocence of the defendant, or make arguments on the basis of matters outside the record . . . ." § 15A-1230(a) (2020). "Trial counsel is allowed wide latitude in argument to the jury and may argue all of the evidence which has been presented as well as reasonable inferences which arise therefrom." *State v. Hyde*, 352 N.C. 37, 56, 530 S.E.2d 281, 294 (2000) (quotation marks and citation omitted).

¶ 42 At trial, footage from the Channing Street surveillance video showed two individuals sitting in an Audi, and several flicks of light before one of the occupants got out of the vehicle. In closing, the State argued to the jury, "You saw the flicking of that lighter, flicking again and again. It's not the way it flicks when you're smoking cigarettes. They're smoking, they were getting amped up." Defendant argues that the State presented an improper inference, unfairly drawn from the evidence presented, that the occupants of the Audi were smoking an unidentified illegal substance and getting "amped up" before the murder.

¶ 43 Here, there was no specific evidence presented as to what the occupants of the vehicle were doing. There was no additional evidence presented relating to drug use, and drugs were not at issue in this case. Assuming *arguendo*, the prosecutor's

insinuation that defendant was smoking illegal substances before the murder was an improper and unreasonable inference to be drawn from the evidence presented, "the trial court is not required to intervene *ex mero motu* unless the argument strays so far from the bounds of propriety as to impede defendant's right to a fair trial." *State v. Smith*, 351 N.C. 251, 269, 524 S.E.2d 28, 41 (2000) (quotation marks and citation omitted).

¶ 44 The prosecutor's one comment about "getting amped up" did not recur, and the trial court later instructed the jury that its "instruction contains no references to the law of impairment, voluntary intoxication, or diminished capacity." Even if the prosecutor's remark was improper, defendant fails to demonstrate prejudice. We conclude the trial court did not err by failing to intervene *ex mero motu* in this case.

IV. Motion for a Mistrial

¶ 45 Defendant argues the trial court erred by denying his motion for mistrial. We disagree.

A. Standard of Review

¶ 46 Whether a motion for mistrial should be granted or denied rests within the sound discretion of the trial court. *State v. Calloway*, 305 N.C. 747, 754, 291 S.E.2d 622, 627 (1982). "A mistrial should be granted only when there are improprieties in the trial so serious that they substantially and irreparably prejudice the defendant's case and make it impossible for the defendant to receive a fair and impartial verdict."

State v. Bonney, 329 N.C. 61, 73, 405 S.E.2d 145, 152 (1991) (quotation marks and citations omitted); *see* § 15A-1061 (2020). "Consequently, a trial court's decision concerning a motion for mistrial will not be disturbed on appeal unless there is a clear showing that the trial court abused its discretion." *Id.* at 73, 405 S.E.2d at 152 (citation omitted). "A ruling committed to a trial court's discretion is to be accorded great deference and will be upset only upon a showing that it was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

B. Discussion

¶ 47 At trial, defense counsel moved for a mistrial pursuant to § 15A-1061 and raised three grounds: (1) violation of a sequestration order by one of the State's witnesses; (2) repeat violations of discovery deadlines; and (3) the prosecutor acting as a witness in the case. He further argued the cumulative effect of these errors made it fundamentally impossible for defendant to receive a fair trial in keeping the requirements of due process. In its discretion, the trial court denied defendant's motion for a mistrial based on each of the individual issues raised and upon the cumulative effect.

¶ 48 On appeal, defendant makes no argument regarding the sequestration issue or discovery violations. Defendant only challenges the denial of his motion for mistrial based on the prosecutor acting as a witness in this case, *i.e.*, by providing sworn

testimony outside the presence of the jury during *voir dire* and in front of the jury by "cross-examining" Mr. Stewart about statements he made to her personally concerning a contested matter.

¶ 49 As a preliminary matter, the State argues that "defendant, other than citing general aphorisms regarding due process and justice, has not provided any authority in support of the specific grounds for his argument" that the prosecutor's conduct in this case created a defect in the proceedings resulting in substantial and irreparable prejudice. Accordingly, this issue on appeal should be deemed abandoned. *See* N.C.R. App. P. 28(b)(6).

¶ 50 We note that defendant does cite to § 15A-1061 (statute on mistrial for prejudice to defendant) and four cases from the North Carolina Supreme Court for the general premise that a prosecutor is obligated to ensure a defendant's right to a fair trial in keeping with the requirements of due process. The only authority defendant cites to substantiate his specific argument is *State v. Smith*, 279 N.C. 163, 167, 181 S.E.2d 458, 460 (1971) (quoting *Berger v. United States*, 295 U.S. 78, 88, 79 L. Ed. 1314, 1321 (1935)) (observing that "improper suggestions, insinuations and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none."). Whether defendant adequately supports his argument with citation to authority is questionable, but we conclude it is sufficient to facilitate review on the merits. *See Dogwood Dev. & Mgmt. Co., LLC*

v. White Oak Transp. Co., 362 N.C. 191, 199, 657 S.E.2d 361, 366 (2008) (*purgandum)* (noting that "an appellate court has a strong preference for deciding cases on their merits if at all possible.").

¶ 51 Defendant insists the prosecutor asked Stewart questions on the stand in front of the jury that began with, "You told me X, right", which made the prosecutor an impeaching witness in front of the jury. However, defendant does not identify anywhere in the record where the prosecutor explicitly phrased questions in that manner. At trial, the prosecutor asked Stewart about the brand of gun defendant carried:

> [THE STATE]: Did detective – [Det.] Cramer ask you – you told [Det.] Cramer what kind of gun the defendant carried; is that correct?
>
> [STEWART]: Yeah, I said that shit because I was pissed off and then, what the fuck, he already knew himself.
>
> [THE STATE]: And you told him what brand of gun that was, correct?
>
> [STEWART]: No. You brought it up to me what kind of gun it was.
>
> [THE STATE]: You told [Det.] Cramer what kind of gun it was that [defendant] carried, did you not?
>
> . . .
>
> [STEWART]: That's what the streets says, so I'm just going on what the fuck is going on in the street.
>
> . . .

> [THE STATE]: You told [Det.] Cramer what kind of gun the defendant . . . carried; is that correct, sir?

¶ 52 Here, the prosecutor did not ask about statements made to her personally, she asked about statements Stewart made to Det. Cramer. When Stewart returned to the stand the next day, he directly testified he knew based on personal knowledge defendant carried a Judge gun. While the prosecutor offered sworn testimony during *voir dire*, that hearing was conducted outside the presence of the jury, and there is no indication elsewhere on the record the trial court made determinations and rulings based on incompetent testimony. Defendant fails to demonstrate substantial and irreparable prejudice in this case, and we necessarily conclude the trial court did not abuse its discretion by denying defendant's motion for a mistrial.

V. Conclusion

¶ 53 For the foregoing reasons, we conclude defendant was afforded a fair trial free from prejudicial error.

¶ 54 Defendant failed to present arguments with respect to issues raised numbers 1, 2, 3, 4, 5, 8, 9, 11, 12, 13, and 14. Consequently, these issues on appeal are deemed abandoned pursuant to N.C.R. App. P. 28(b)(6).

NO ERROR.

Judges HAMPSON and WOOD concur.

Report per Rule 30(e).