NO. COA 13-193
NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2013

STATE OF NORTH CAROLINA

v. Cumberland County
No. 09 CRS 064038

TREMONA DREMELL WILLIAMS

Appeal by defendant from judgment entered 21 May 2012 by Judge Lucy N. Inman in Cumberland County Superior Court. Heard in the Court of Appeals 4 June 2013.

*Attorney General Roy Cooper, by Special Deputy Attorney General Alexander McC. Peters, for the State.*

*M. Alexander Charns for defendant-appellant.*

HUNTER, JR., Robert N., Judge.

Tremona Dremell Williams[1] ("Defendant") appeals from judgment entered after a jury convicted him of: (i) first-degree murder; and (ii) felonious breaking or entering. On appeal, Defendant argues: (i) the trial court erred by instructing the

[1] The appellate briefs and court documents alternate between spelling Defendant's name "T-E-R-M-O-N-A" and "T-R-E-M-O-N-A." In this opinion, we adopt the spelling used in the trial court's judgments: "T-R-E-M-O-N-A."

jury that it could reach a verdict by majority vote; (ii) he received ineffective assistance of counsel; (iii) the trial court erred by instructing the jury that it could use armed robbery as a predicate felony for felony murder; and (iv) the trial court erred by instructing the jury on (a) false, contradictory, or conflicting statements; and (b) flight. Upon review, we determine Defendant received a fair trial, free from error.

## I. Facts & Procedural History

On 11 October 2010, Defendant was indicted for: (i) first-degree murder; (ii) felonious breaking or entering; and (iii) felonious conspiracy to commit assault with a deadly weapon with intent to kill inflicting serious injury. The State's evidence at trial tended to show the following facts.

Defendant and Sean Foster ("Sean")[2] worked in the drug trade together. Sean supplied crack cocaine to Defendant, and Defendant sold the crack cocaine. In 2009, Sean loaned Defendant a sum of money. Defendant agreed to repay Sean by 25 September 2009.

On the afternoon of 25 September 2009, Sean's girlfriend, Desiree Santiago ("Desiree"), drove Sean and Sean's uncle to

[2] The trial transcript sometimes references Sean Foster as "Terrence Foster."

Defendant's house. After Defendant came outside, either Sean or Sean's uncle held a gun to Defendant's head and took Defendant's wallet and money. After taking almost $200 from Defendant, Sean said that although the money didn't fully satisfy the debt, they were now "good." Defendant denied Sean said this. After the gun was put away, the parties got in a physical fight that carried them across the front yard and into the lot across the street. The fight ended when Sean and his uncle got back in their car and left.

About an hour later, Desiree, Sean, and Sean's uncle returned to Desiree's house. Minutes after getting home, two cars pulled up to Desiree's house and six people with guns jumped out, including Defendant. At the time, Desiree and her son were outside. When Desiree saw Defendant, she asked him not to "do this" because she had children. Defendant responded that she should tell her "punk-ass boyfriend to come outside." Defendant's friends also said they would "come in there blazing . . . if Sean didn't come outside."

Desiree and her son ran inside. Desiree's two children hid in a back room. Desiree hid in the bathroom and called 911. From the window, Desiree saw Defendant and his friends surround her house. She then heard Marcus McAllister ("Marcus"), one of

Defendant's friends, kick in the front door. Next, she heard fighting and shooting.

The trial court heard conflicting testimony as to what happened next. Marcus testified he and Defendant entered the home, and Defendant shot Sean. Defendant claimed he never entered Desiree's home or fired a gun that day. Instead, Defendant testified he simply came to Desiree's house to get his wallet back peacefully. Defendant claimed one of his friends shot Sean.

A neighbor then saw Defendant's group flee from the house and get in a pickup truck. Defendant got in the truck's cab, and Marcus got in the truck's bed. The neighbor testified Marcus fired a gun at Desiree's house from the truck's bed as the truck pulled away. However, Marcus testified he never touched a gun that day.

After Defendant and his friends left, Desiree checked on everyone. She found her children were unhurt, but Sean was lying in the carport bleeding. He was alive, but unable to communicate. Paramedics took Sean to the hospital, where he died shortly after arriving.

Desiree rode with her neighbor to the hospital. On her way, she received a call from Defendant on Sean's phone.

Desiree testified Defendant told her "this wasn't over," and she had "half-an-hour to get [him] his money." However, Defendant denied threatening Desiree or asking for his money back. Later that day, Defendant found out Sean died. Marcus testified that Defendant called him to tell him Sean had died and to burn the clothes and shoes Marcus wore that day.

Defendant was arrested on 7 October 2009. He was indicted on 11 October 2010 for: (i) first-degree murder; (ii) felonious breaking or entering; and (iii) felonious conspiracy to commit assault with a deadly weapon with intent to kill inflicting serious injury.[3]

After the close of all the evidence, the trial court issued jury instructions. The transcript reflects that the trial court made the following statement during jury instructions:

> It is your duty to find the facts and to render a verdict reflecting the truth. All 12 of you must agree to your verdict. ***You can reach a verdict by majority vote.*** When you have agreed upon a unanimous verdict as to each charge, your foreperson should so indicate on the jury form. . . . When you have unanimously agreed upon a verdict as to each charge and are ready to announce your verdicts, your foreperson should record your verdict form. . .

[3] The State later voluntarily dismissed the charge of felonious conspiracy to commit assault with a deadly weapon with intent to kill inflicting serious injury.

(Emphasis added.) Defendant did not object to this statement at trial. The trial court also instructed the jury on: (i) armed robbery; (ii) flight; and (iii) giving false, contradictory or conflicting statements. Defendant did object to these three jury instructions at trial.

Before instructing the jury, the trial court gave printed copies of the instructions to the jurors so they could read along. The trial court also allowed the jury to take a copy of the printed instructions into the deliberation room. The printed instruction about unanimous verdicts differs from the trial transcript:

> It is your duty to find the facts and to render a verdict reflecting the truth. All twelve of you must agree to your verdict. *You cannot reach a verdict by majority vote*.

(Emphasis added.)

After the jury reached a verdict, the trial court asked the foreperson if the verdict was unanimous. The foreperson replied affirmatively for both offenses. The trial court then asked the jury, "Members of the jury, if each of you agree to and assent to this verdict, please raise your hand." In response, each juror raised his or her hand.

On 21 May 2012, the jury found Defendant guilty of: (i) first-degree murder; and (ii) felonious breaking or entering.

The verdict form stated the verdict was "unanimous." The trial court: (i) sentenced Defendant to life imprisonment without parole for murder; and (ii) arrested judgment for the breaking or entering conviction. Defendant gave oral notice of appeal in open court.

**II. Jurisdiction**

This Court has jurisdiction to hear the instant case pursuant to N.C. Gen. Stat. § 7A-27(b) (2011).

"A criminal defendant has a constitutional right to the effective assistance of counsel." *State v. Redman*, __ N.C. App. __, __, 736 S.E.2d 545, 550 (2012) (citing *State v. Braswell*, 312 N.C. 553, 561, 324 S.E.2d 241, 247 (1985)). "The standard of review for alleged violations of constitutional rights is *de novo*." *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009), *appeal dismissed and disc. rev. denied*, 363 N.C. 857, 694 S.E.2d 766 (2010); *see also Piedmont Triad Reg'l Water Auth. v. Sumner Hills Inc.*, 353 N.C. 343, 348, 543 S.E.2d 844, 848 (2001) ("[D]e novo review is ordinarily appropriate in cases where constitutional rights are implicated.").

Additionally, "[a]s a question of law, this Court reviews the sufficiency of jury instructions *de novo*." *State v. Boyd*, __ N.C. App. __, __, 714 S.E.2d 466, 471 (2011). "'Under a *de*

*novo* review, the court considers the matter anew and freely substitutes its own judgment' for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen Ltd.*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

However, "[a] party may not make any portion of the jury charge or omission therefrom the basis of an issue presented on appeal unless the party objects thereto before the jury retires to consider its verdict." N.C. R. App. P. 10(a)(2). Still, "[u]npreserved error in criminal cases . . . is reviewed . . . for plain error" at the defendant's request. *State v. Lawrence*, 365 N.C. 506, 512, 723 S.E.2d 326, 330 (2012). To receive plain error review, the defendant must "specifically and distinctly" request plain error review on appeal. N.C. R. App. P. 10(a)(4).

> For error to constitute plain error, 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. Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.

*Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334 (quotation marks and internal citations omitted) (alteration in original).

## III. Analysis

On appeal, Defendant argues: (i) the trial court erred by instructing the jury that it could reach a verdict by majority vote; (ii) he received ineffective assistance of counsel when his trial attorney failed to object to the erroneous jury instruction on unanimity; (iii) the trial court erred by instructing the jury that it could use armed robbery as a predicate felony for felony murder; and (iv) the trial court erred by instructing the jury on (a) false, contradictory, or conflicting statements; and (b) flight.

### A. Jury Instructions on Unanimous Verdict

First, Defendant argues the trial court's statement that the jury "can reach a verdict by majority vote" was plain error. We disagree.

In North Carolina, trial courts must instruct the jury on the applicable law. *See* N.C. Gen. Stat. § 15A-1231(c); *Sugg v. Baker*, 258 N.C. 333, 335-36, 128 S.E.2d 595, 597 (1962). The purpose of jury instructions is to "appl[y] the law to the evidence in such manner as to assist the jury in understanding the case and in reaching a correct verdict." *State v. Williams*,

280 N.C. 132, 136, 184 S.E.2d 875, 877 (1971). Therefore, it is error for the trial court to misstate the applicable law when instructing the jury. *See id.*

To this effect, it is well-established in North Carolina that jury verdicts must be unanimous and cannot be reached by majority vote. *See* N.C. Const. art. I, § 24 ("No person shall be convicted of any crime but by the unanimous verdict of a jury in open court."); N.C. Gen. Stat. § 15A-1237(b) ("The verdict must be unanimous, and must be returned by the jury in open court."). Thus, it is error to instruct the jury that verdicts may be reached by majority vote. *See id.*

Still, North Carolina courts have "repeatedly held that a lapsus linguae not called to the attention of the trial court when made will not constitute prejudicial error when it is apparent from a contextual reading of the charge that the jury could not have been misled by the instruction." *State v. Baker*, 338 N.C. 526, 565, 451 S.E.2d 574, 597 (1994). For example, in *Baker*, the defendant argued the trial court erred by stating during jury instructions that "a reasonable doubt as that term is employed in the administration of criminal law is an honest, *substantial misgiving* generated by the insufficiency of proof." *Id.* at 562, 451 S.E.2d at 596 (emphasis added). There, the

trial court "repeatedly instructed the jury that the State had the burden of proving defendant was guilty beyond a reasonable doubt" and correctly stated the law when discussing each element of the relevant crimes. *Id.* In *Baker*, our Supreme Court held that "[r]eading the charge in its entirety," the jurors "could not have been misled." *Id.*

Similarly, in *State v. Laws*, the trial court gave the following jury instruction:

> If the State proves beyond a reasonable doubt that the defendant killed the deceased with a deadly weapon or intentionally inflicted a wound upon the deceased with a deadly weapon that proximately caused the deceased's death, the law *requires*, first, that the killing was unlawful and, second, that it was done with malice.

325 N.C. 81, 98-99, 381 S.E.2d 609, 619 (1989), *cert. granted*, *judgment vacated on other grounds*, 494 U.S. 1022 (1990). In *Laws*, the defendant argued the trial court's use of the word "requires" "created a mandatory presumption of malice." *Id.* at 99, 381 S.E.2d at 619. However, our Supreme Court held this statement "was merely a *lapsus linguae* which rendered the instruction ambiguous at worst." *Id.* Given the context of the trial court's other instructions, our Supreme Court determined there was no plain error. *Id.*

In the present case, Defendant argues the trial court committed plain error by instructing the jury that "you can reach a verdict by majority vote." Upon review, we find no plain error.

Here the transcript reflects the trial court made the following statement during jury instructions:

> It is your duty to find the facts and to render a verdict reflecting the truth. All 12 of you must agree to your verdict. ***You can reach a verdict by majority vote.*** When you have agreed upon a unanimous verdict as to each charge, your foreperson should so indicate on the jury form. . . . When you have unanimously agreed upon a verdict as to each charge and are ready to announce your verdicts, your foreperson should record your verdict form . . .

(Emphasis added.) This instruction follows the pattern jury instruction on unanimity almost word-for-word, except for one deviation: the pattern jury instruction states a jury "***cannot*** reach a verdict by majority vote." N.C.P.I.—Crim. 101.35 (2012) (emphasis added). However, the printed jury instructions given to the jury follow the pattern instruction fully and state that jurors "***cannot*** reach a verdict by majority vote." (Emphasis added.) The jurors read these printed instructions while the trial court gave oral instructions. Moreover, the jury took the printed jury instructions into the deliberation room.

In the instant case, the transcript's statement that a jury "can reach a verdict by majority vote" is incorrect. *See* N.C. Const. art. I, § 24; N.C. Gen. Stat. § 15A-1237(b). Upon reviewing the record, we believe the transcript's statement is either: (i) transcription error; or (ii) *lapsus linguae*. In either scenario, we determine no plain error occurred.

First, if the statement is transcription error, then the trial court accurately stated the law during the actual jury instructions. As such, there would be no legal error. Furthermore, after examining the record "contextually and in its entirety," we determine any *lapsus linguae* is not plain error because it did not have a "probable impact on the jury's finding that the defendant was guilty." *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334 (quotation marks and citation omitted).

Here, the overall context of the jury instructions indicates that, despite any potential *lapsus linguae*, the jury understood it could *not* reach a verdict by majority vote. *See Laws*, 325 N.C. at 99, 381 S.E.2d at 619. Specifically, like in *Baker*, the trial court here made multiple references to the unanimity requirement both before and after the statement at issue. *See Baker*, 338 N.C. at 565, 451 S.E.2d at 597. In the sentence prior to the alleged error, the trial court told the

jury, "All 12 of you must agree to your verdict." In the sentence after the alleged error, the trial court stated, "When you have agreed upon a unanimous verdict as to each charge, your foreperson should so indicate on the jury form."

Moreover, the printed jury instructions correctly state that the jury "cannot reach a verdict by majority vote." The jury read the printed jury instructions while the trial court gave oral instructions. Furthermore, the jury took the printed jury instructions into the deliberation room. The jury then reached a "unanimous verdict" as stated on the jury's verdict sheet. In light of these facts, we determine any *lapsus linguae* does not constitute plain error.

**B. Ineffective Assistance of Counsel**

Defendant next contends his trial attorney's failure to object to the statement about unanimity constitutes ineffective assistance of counsel. We disagree.

In North Carolina,

> [t]o successfully assert an ineffective assistance of counsel claim, defendant must satisfy a two-prong test. First, he must show that counsel's performance fell below an objective standard of reasonableness. Second, once defendant satisfies the first prong, he must show that the error committed was so serious that a reasonable probability exists that the trial result would have been different absent the error. However, the

> fact that counsel made an error, even an unreasonable error, does not warrant reversal of a conviction unless there is a reasonable probability that, but for counsel's errors, there would have been a different result in the proceedings. This determination must be based on the totality of the evidence before the finder of fact.

*State v. Batchelor*, 202 N.C. App. 733, 739, 690 S.E.2d 53, 57 (2010) (citations and quotation marks omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland v. Washington*, 466 U.S. 668, 694 (1984). Our appellate courts "engage[] in a presumption that trial counsel's representation is within the boundaries of acceptable professional conduct" when reviewing ineffective assistance of counsel claims. *State v. Roache*, 358 N.C. 243, 280, 595 S.E.2d 381, 406 (2004).

In the present case, Defendant argues his trial counsel's failure to object to the trial court's statement that "you can reach a verdict by majority vote" constitutes ineffective assistance of counsel. We do not agree.

As discussed previously, the statement at issue is either: (i) transcription error; or (ii) *lapsus linguae*. If the statement is transcription error, then Defendant does not satisfy the first prong of the test for ineffective assistance of counsel because there was no actual incorrect statement to

which his trial attorney could object. If the statement was *lapsus linguae*, then the circumstances do not satisfy the second prong of the test for ineffective assistance of counsel. *Batchelor*, 202 N.C. App. at 739, 690 S.E.2d at 57.

Here, the trial court correctly stated the verdict must be unanimous both immediately before and immediately after the sentence at issue. Moreover, the jury received printed copies of the jury instructions that correctly stated the law. The jury read these printed jury instructions while the trial court gave oral jury instructions. The jury also retained the printed jury instructions during deliberation. As such, we conclude that there is not "a reasonable probability that, but for counsel's errors, there would have been a different result in the proceedings." *Id.*

Consequently, Defendant did not receive ineffective assistance of counsel when his trial attorney did not object to the trial court's statement that "you can reach a verdict by majority vote."

**C. Jury Instructions on Armed Robbery, False, Contradictory or Conflicting Statements, and Flight**

Defendant next argues the trial court erred by instructing the jury on: (i) using armed robbery as a predicate felony for

first-degree murder; (ii) giving false, contradictory, or conflicting statements; and (iii) flight. We disagree.[4]

In North Carolina, "[a] trial judge is required . . . to instruct the jury on the law arising on the evidence. This includes instruction on the elements of the crime. . . [and] all substantive and material features of the crime with which a defendant is charged." *State v. Bogle*, 324 N.C. 190, 195, 376 S.E.2d 745, 748 (1989). "The purpose of a charge is to give a clear instruction which applies the law to the evidence in such a manner as to assist the jury in understanding the case and in reaching a correct verdict." *State v. Harris*, 306 N.C. 724, 727, 295 S.E.2d 391, 393 (1982). To this effect, "[a]n instruction about a material matter must be based on sufficient evidence." *State v. Osario*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009). In light of this requirement, we now address the three specific instructions Defendant challenges on appeal.

**i. Using Armed Robbery as a Predicate Felony**

Defendant argues the trial court erred by instructing the jury it could consider attempted robbery with a firearm as a predicate felony for a felony murder conviction.[5] We disagree.

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[4] Since Defendant's third and fourth arguments both deal with jury instructions, we address them together.

[5] In his appellate brief, Defendant contends the trial court

Felony murder occurs: "[1] When a killing is committed [2] in the perpetration of an enumerated felony (arson, rape, etc.) or other felony committed with the use of a deadly weapon." *State v. Jones*, 353 N.C. 159, 164, 538 S.E.2d 917, 922 (2000) (citations omitted). Thus, when instructing the jury on felony murder, trial courts should also instruct the jury on the elements of potential predicate felonies. *See id.* In light of this discussion, we now discuss the elements of potential predicate felonies.

"An attempted robbery with a [firearm] occurs when a person, with the specific intent to unlawfully deprive another of personal property by endangering or threatening his life with a [firearm], does some overt act calculated to bring about this result." *State v. Allison*, 319 N.C. 92, 96, 352 S.E.2d 420, 423 (1987). Felonious breaking or entering occurs when a person "breaks or enters any building with intent to commit any felony or larceny therein." N.C. Gen. Stat. § 14-54(a) (2011).

To use felonious breaking or entering as a predicate felony for felony murder, defendants must use a dangerous weapon such

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erred by instructing the jury on armed robbery as a predicate felony. However, since the trial court instructed the jury on using *attempted* armed robbery with a deadly weapon as a predicate felony, we interpret Defendant's argument as referencing that instruction.

as a firearm in the commission of the crime. *See State v. Fields*, 315 N.C. 191, 199, 337 S.E.2d 518, 523 (1985). However, our Supreme Court has clarified that mere possession of a firearm during a breaking or entering constitutes "use:"

> We hold that possession is enough, and the defendant is guilty of felony murder, even if the weapon is not *physically* used to actually commit the felony. If the defendant has brought the weapon along, he has at least a psychological use for it: it may bolster his confidence, steel his nerve, allay fears of his apprehension. Even under circumstances where the weapon is never used, it functions as a backup, an inanimate accomplice that can cover for the defendant if he is interrupted.

*Id.*

Furthermore, in North Carolina "'[n]ew trials are not awarded because of technical errors. The error must be prejudicial.'" *Sisk v. Sisk*, __ N.C. App. __, __, 729 S.E.2d 68, 71 (2012) (quoting *Dixon v. Weaver*, 41 N.C. App. 524, 528, 255 S.E.2d 322, 325 (1979)). "The burden of showing such prejudice . . . is upon the defendant." N.C. Gen. Stat. § 15A-1443(a) (2011). "This burden may be met by showing that there is a reasonable possibility that a different result would have been reached had the error not been committed." *State v. Jones*, 188 N.C. App. 562, 569, 655 S.E.2d 915, 920 (2008).

In the instant case, Defendant argues the trial court erred by instructing the jury on using attempted robbery with a firearm as a predicate felony for felony murder. Upon review, we conclude no prejudicial error occurred.

Here, the trial court instructed the jury on the elements of two predicate felonies for felony murder: (i) felonious breaking or entering; and (ii) attempted robbery with a firearm. The jury then found Defendant guilty of: (i) felonious breaking or entering; and (ii) felony murder. The verdict sheet does not indicate the predicate felony used for Defendant's felony murder conviction. However, evidence clearly indicates that Defendant's felonious breaking or entering can serve as a predicate felony for felony murder. Thus, any error in instructing the jury about using attempted robbery with a firearm as a predicate felony is non-prejudicial.

Here, the jury first explicitly determined Defendant was guilty of felonious breaking or entering. Next, since the jury was presented with evidence that Defendant shot Sean, it also had evidence that Defendant possessed a firearm during the events of 25 September 2009. As our Supreme Court held in *Fields*, possession of a firearm during a breaking or entering constitutes the use of the firearm for the commission of that

crime. *See Fields*, 315 N.C. at 199, 337 S.E.2d at 523. Thus, evidence indicated Defendant committed felonious breaking or entering while using a dangerous weapon. This satisfies the predicate felony requirement for a felony murder conviction. *See Jones*, 353 N.C. at 164, 538 S.E.2d at 922.

Consequently, any error in instructing the jury on using attempted robbery with a firearm is non-prejudicial. *See Sisk*, __ N.C. App. at __, 729 S.E.2d at 71; *Dixon*, 41 N.C. App. at 528, 255 S.E.2d at 325; *Jones*, 188 N.C. App. at 569, 655 S.E.2d at 920. Therefore, Defendant cannot receive a new trial based on this argument.

**ii. Giving False, Contradictory, or Conflicting Statements**

Defendant next argues the trial court erred by instructing the jury on false, contradictory, or conflicting statements. We find this argument unpersuasive.

"Our Supreme Court has held that false, contradictory, or conflicting statements made by an accused concerning the commission of a crime may be considered as a circumstance tending to reflect the mental processes of a person possessed of a guilty conscience seeking to divert suspicion and to exculpate himself." *State v. Scercy*, 159 N.C. App. 344, 353, 583 S.E.2d 339, 344 (2003); *see also State v. Myers*, 309 N.C. 78, 86, 305

S.E.2d 506, 511 (1983) ("The probative force of such evidence is that it tends to show consciousness of guilt."). "The instruction is proper not only where defendant's own statements contradict each other but also where defendant's statements flatly contradict the relevant evidence." *Scercy*, 159 N.C. App. at 353, 583 S.E.2d at 344.

Still, "a trial judge should not give instructions to the jury which are not supported by the evidence produced at the trial." *State v. Cameron*, 284 N.C. 165, 171, 200 S.E.2d 186, 191 (1973). Additionally, the trial court may only issue this jury instruction if the defendant's statement is relevant to proving he or she committed the crime at hand. *State v. Walker*, 332 N.C. 520, 537, 422 S.E.2d 716, 726 (1992).

In the instant case, Defendant argues the evidence does not support a jury instruction on false, contradictory, or conflicting statements. We disagree.

Preliminarily, we note that when the trial court instructed on false, contradictory, or conflicting statements, it appropriately gave the following warning:

> If you find that the defendant made such statements, they may be considered by you as a circumstance tending to reflect the mental process of a person possessed of a guilty conscience seeking to divert suspicion or to exculpate the person; and, you should

> consider that evidence, along with all the other believable evidence in the case. However, if you find that the defendant made such statements, they do not create a presumption of guilt; and, such evidence, standing alone, is not sufficient to establish guilt. Such evidence may not be considered as tending to show premeditation and deliberation.

Furthermore, the evidence supports a jury instruction on false, contradictory, or conflicting statements. Here, Defendant admitted to giving police a false statement about who accompanied him to Desiree's house. In fact, he specifically said he "didn't tell [the officer] the truth at that time." Furthermore, this false statement is relevant because it involves the constituency of the group that entered Desiree's home. Here, Defendant's initial refusal to name the members of his group could indicate a desire to fabricate an alternate story about the events of 25 September 2009.

Consequently, we conclude the trial court did not err by instructing on false, contradictory, or conflicting statements.

**iii. Flight**

Lastly, Defendant argues the trial court erred by instructing the jury on flight.

"A trial court may properly instruct on flight where there is some evidence in the record reasonably supporting the theory

that the defendant fled after the commission of the crime charged. . . . There must also be some evidence that defendant took steps to avoid apprehension." *State v. Lloyd*, 354 N.C. 76, 119, 552 S.E.2d 596, 625-26 (2001) (quotation marks and internal citations omitted).

Here, the evidence supports an instruction on flight. First, Defendant admitted to leaving the scene of the crime (Desiree's home). Although he disputes the State's evidence about his conduct at Desiree's home, Defendant concedes that he: (i) went to Desiree's home on 25 September 2009 to confront Sean; and (ii) left Desiree's home after Sean was shot. Furthermore, evidence indicates Defendant took steps to avoid apprehension. For instance, as Defendant left the scene of the crime, Marcus fired shots at the house to prevent anyone from following them. Additionally, Defendant instructed Marcus to burn his clothes and shoes, presumably to destroy evidence tying the group to the scene of the crime.

Consequently, the trial court did not err in instructing the jury on flight.

**IV. Conclusion**

For the foregoing reasons, we find

NO ERROR.

Chief Judge MARTIN and Judge ELMORE concur.

Report per Rule 30(e).