

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA13-558
NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2013

STATE OF NORTH CAROLINA

v.

Mecklenburg County
No. 09 CRS 250733

KAVRON ROBERT HART

Appeal by defendant from judgment entered 9 November 2012 by Judge Mark E. Klass in Mecklenburg County Superior Court. Heard in the Court of Appeals 9 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General David L. Elliott, for the State.

Russell J. Hollers, III, for defendant-appellant.

STEELMAN, Judge.

The trial court's instructions to the jury on defendant's contradictory statements did not constitute plain error.

I. Factual and Procedural Background

On 17 October 2009, Kavron Hart (defendant) was working as a dishwasher at a restaurant inside the Embassy Suites in Charlotte, North Carolina. Cody Jeffries (Jeffries) and his girlfriend, Tandralla Hood (Hood), attended a birthday party that

same afternoon at the motel pool and stayed afterwards for the happy hour at the motel. Later that evening, Jeffries pulled the motel's fire alarm, causing the evacuation of the hotel, including defendant. Outside in the parking lot, Jeffries and Hood argued. Defendant saw the couple arguing and Hood trying to escape Jeffries' embrace. He went to his car and retrieved a pistol. As people re-entered the motel, defendant walked from the motel's parking lot to the motel. He approached the couple and told them not to argue at his work site. Jeffries walked towards defendant and told him to "mind your own business." Defendant raised his gun and shot Jeffries once. Jeffries died as a result of the gunshot wound.

On 2 November 2009, defendant was indicted for murder. The State presented the testimony of eyewitnesses and a video recording from the motel security cameras. Defendant testified. On cross-examination, the State questioned defendant about the differences between a phone conversation that he had with his grandmother on the day of his arrest and his trial testimony. On 9 November 2012, the jury found defendant guilty of voluntary manslaughter. The trial court sentenced defendant as a Level I offender to an active term of imprisonment of 55 to 75 months.

Defendant appeals.

II. Jury Instructions

In his only argument on appeal, defendant contends that the trial court erred by instructing the jury on false or contradictory statements made by defendant. We disagree.

A. Standard of Review

Defendant did not object during the jury charge conference, nor following the jury charge, to the trial court's instructions on false and contradictory statements. We therefore only review for plain error:

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.

State v. Lawrence, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012)
(citation omitted).

B. Analysis

[F]alse, 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. Myers, 309 N.C. 78, 86, 305 S.E.2d 506, 511 (1983) (citation omitted). "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." *State v. Scercy*, 159 N.C. App. 344, 353, 583 S.E.2d 339, 344 (2003).

In the instant case, the evidence supported an instruction on false, contradictory, or conflicting statements. Defendant testified at trial that he saw Hood trying to escape from Jeffries' "bear hug," however, he admitted that he used the word choke when he spoke to his grandmother on the day of his arrest. Another employee of the motel restaurant testified that he witnessed the argument, but that it was not violent or physical. Additionally, defendant testified at trial that Jeffries did not try to hit him, but admitted that during his conversation with his grandmother, he told her that Jeffries tried to swing at him.

Even assuming *arguendo* that it was error to charge the jury on defendant's contradictory statements, defendant cannot show that it had a probable impact on the jury's verdict of guilty. The trial court gave the following instruction in accordance with *Myers*:

The State contends, and the defendant denies, that the defendant made false and contradictory or conflicting statements. If you find the defendant made such statements, they may be considered by you as circumstances tending to reflect the mental process of a person possessed of a guilty conscience seeking to divert suspicion or to

aggravate the person. You should consider that evidence, along with all other believable evidence in this 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 or deliberation.

See *Myers*, 309 N.C. at 87-88, 583 S.E.2d at 512. The jury was thus instructed that conflicting statements may be considered, but that it is never alone, enough to establish guilt; that it did not create a presumption of guilt; and that it may not be considered as tending to show premeditation or deliberation. Defendant cannot show that these instructions had a probable impact on the jury finding him guilty.

This argument is without merit.

NO ERROR.

Judges HUNTER, ROBERT C., and BYRANT concur.

Report per Rule 30(e).