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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-583

Filed: 1 December 2015

New Hanover County, No. 11 CRS 050804

STATE OF NORTH CAROLINA

v.

RONALD FARROW

Appeal by defendant from judgment entered 12 December 2014 by Judge Ebern T. Watson, III in New Hanover County Superior Court. Heard in the Court of Appeals 5 November 2015.

Attorney General Roy Cooper, by Special Deputy Attorney General Richard L. Harrison, for the State.

The Law Office of Bruce T. Cunningham, Jr., by Bruce T. Cunningham, Jr. and Amanda S. Zimmer, for defendant-appellant.

TYSON, Judge.

Ronald Farrow (“Defendant”) appeals from judgment entered after a jury convicted him of second-degree murder. We find no error in Defendant’s conviction or the judgment entered thereon.

I. Factual Background

The Rhino Club is located in downtown Wilmington, North Carolina. At approximately 2:00 a.m. on 24 January 2011, a large fight broke out outside the

building. Taaron Jones (“Mr. Jones”) was stabbed during the fight. He was transported to New Hanover Hospital, but later died as a result of the stab wound. Blood evidence showed the altercation likely occurred on the southern side of the 100 block of Market Street.

Wilmington Police Department Corporal John Kunak, Jr. (“Corporal Kunak”) was patrolling the downtown district on the night of 24 January 2011. He observed a large crowd exit the Rhino Club when he saw “a mob of people [who] appeared to be fighting.” He testified the “mob of people moved across the median into the eastbound lanes [of Market Street], pretty much directly in front of my car[.]” As a result, additional units were called to respond to the area.

Corporal Kunak witnessed a group of individuals carrying a black male, who was bleeding and appeared to be unconscious. The group placed him inside a vehicle and drove off before Corporal Kunak could reach them. Corporal Kunak observed a large pool of blood where the victim lay, prior to being placed in the vehicle and driven away.

Officer Jason Worrell (“Officer Worrell”) and Detective Robert Simpson (“Detective Simpson”) arrived on the crime scene after receiving the call for assistance. Officer Worrell testified he saw pools of blood in different areas and began roping off the crime scene with police tape. None of the officers who responded to the crime scene were able to see the faces of individuals involved in the altercation.

Wilmington Police Department Detective Matt Fox (“Detective Fox”) went to the emergency department at the hospital to view the victim and speak to others about the altercation outside the Rhino Club. Detective Fox testified he was familiar with Mr. Jones prior to seeing his body at the hospital. Detective Fox also testified he saw the numbers “1090” tattooed on Mr. Jones’ right hand and “Boyz” tattooed on his left hand. Detective Fox explained he recognized these tattoos as an association with the Bloods street gang. He also observed a “penetrating stab wound which was just under the left nipple.”

Michael McGill (“McGill”) rode inside Defendant’s vehicle to the Rhino Club on 24 January 2011. McGill witnessed the fight, but did not participate. Law enforcement officers instructed everyone to leave the area, McGill walked up the street and got into Defendant’s vehicle. McGill testified he was sitting in the back seat, Angelous Williams, known as “Roo,” was in the passenger seat, and Defendant was driving when the vehicle hit a fire hydrant. McGill exited the Defendant’s vehicle after the collision with the fire hydrant and walked home.

At approximately 2:30 a.m. on 24 January 2011, Officer Angela Blanton (“Officer Blanton”) responded to an accident reported in the 200 block of Clay Street, located off of Market Street. Officer Blanton testified she observed a red Mustang, which had struck a fire hydrant. She did not encounter anyone at the scene of the

accident. Officer Blanton determined the vehicle was registered to Defendant. She also observed blood present on the steering wheel and driver's side door.

Detective Lee Odham ("Detective Odham") also examined the vehicle after it was towed to the Wilmington Police Department's lot. He testified he observed blood present in the vehicle, "[m]ainly around the driver's area, on the driver's door, on the steering wheel, on the ignition, on the gear shifter, and on the console where the gear shifter is." Detective Odham did not recall seeing any blood on the passenger side of the vehicle. He also testified he saw blood present on a black leather jacket in the back seat of the vehicle.

Several blood samples were taken from Defendant's vehicle, including: (1) the leather jacket; (2) the right outside door handle; (3) the right front seat; (4) the center console; and (5) the gear shift knob. DNA analysis was performed on the samples. The DNA analysis showed all of the samples matched the victim's DNA, except for the blood sample obtained from the gear shift knob. This sample was consistent with the DNA of at least three people, and neither Defendant nor Mr. Jones could be excluded from this mixture.

Defendant voluntarily submitted to an interview with law enforcement several days after Mr. Jones' death. This interview was recorded, and the audio recording was played for the jury at trial. Defendant was not placed under arrest or in custody at this time. During his interview, Defendant stated the altercation on the night of

Mr. Jones' death was a result of ongoing animosity between his "group" and the "West Side" Bloods/1090 Boyz, with which Mr. Jones was affiliated. Defendant also contended the blood in his vehicle was his blood. Defendant explained he noticed he was bleeding as he was shifting gears.

The officers asked Defendant to provide all the clothing he wore the night Mr. Jones died. Defendant stated the shoes he was presently wearing were the shoes he wore to the Rhino Club on the night in question. Defendant told the officers he would go home to change his shoes, and return to the police department with the shoes he had worn the night Mr. Jones died. Detective Kevin Tully, one of the officers interviewing Defendant, testified the shoes Defendant ultimately brought to the police department were not the same shoes he was wearing during his interview. Defendant also informed the officers he had lost the jacket he was wearing that night. Defendant turned over a gray sweatshirt and blue shoes, which did not show any traces of blood.

On 12 September 2011, a grand jury indicted Defendant for first-degree murder. Defendant was tried before a jury on 1 December 2014.

James Moore ("Moore"), a friend of Mr. Jones, testified he was present at the Rhino Club on 24 January 2011. According to Moore, the fight broke out after Mr. Jones, the victim, walked out of the Rhino Club proclaiming, "West Side is the best side." Roo replied, "You got to go back to Cali with that shit." Mr. Jones and Roo

continued to exchange words outside the Rhino Club, and eventually a large altercation broke out and spilled into the street.

Moore stated he got involved in a fist fight with Demetri Murray, known as “Diesel Bomb,” during this time. According to Moore, he was fighting with eight to ten people until Corey Wrisborne (“Wrisborne”) and Deandre Harper (“Harper”) helped Moore free himself from the fight. Moore, Wrisborne, and Harper walked across the street and found Mr. Jones lying on the ground and bleeding from a stab wound.

Moore testified he observed two people walking away from the area while he and others were placing Mr. Jones into the vehicle to transport him to the hospital. Moore stated he recognized the two individuals walking away as Roo and “B.J.” Moore stated he did not know “B.J.’s” real name, but identified him as Defendant at trial. Moore was familiar with Roo because they had “exchanged words before” the night of Mr. Jones’ death. Moore also testified it appeared Roo was holding something in his hand, which Moore believed to be either a knife or a gun, as he walked away from the area.

The State showed Moore a still photograph taken from the Slice of Life restaurant’s video surveillance footage that night, marked as State’s Exhibit 23 and admitted into evidence. Moore testified the two individuals depicted in the photograph “look like Roo . . . and B.J.”

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Detective Odham testified he interviewed Roo on 25 January 2011. Detective Odham stated he collected the shirt Roo was wearing the night of the fight, and did not see any blood present on it. Detective Odham testified, over objection, he had charged Roo with first-degree murder in the death of Mr. Jones, but he subsequently “went to the district attorney’s office and had those charges dismissed.”

Wrisborne was called to testify as a witness for the State. In open court while the jury was present, Wrisborne stated “I ain’t testifying” several times. The trial judge removed the jury from the courtroom. Wrisborne continued to refuse to testify, whereupon he was taken into custody and held in contempt of court. The trial court eventually deemed Wrisborne an unavailable witness.

Defendant exercised his right not to testify at trial, nor did he offer any additional evidence. At the close of all the evidence, Defendant moved to dismiss the charge against him and asserted the State had failed to prove he was the perpetrator of the killing of Jones. The trial court denied Defendant’s motion and instructed the jury on first-degree murder, second-degree murder, voluntary manslaughter, and involuntary manslaughter.

During the charge conference, the trial judge informed the parties he intended to instruct the jury in accordance with the pattern jury instruction for False, Contradictory, or Conflicting Statements of Defendant. *See* N.C.P.I—Crim. 105.21.

Defense counsel objected, and the trial judge overruled his objection. The trial judge instructed the jury, in part, as follows:

The State contends and the defendant denies that the defendant made false, contradictory, or conflicting statements. 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 conscious, 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.

The jury returned a verdict finding Defendant guilty of second-degree murder. The trial court sentenced Defendant to 273-337 months imprisonment. Defendant gave notice of appeal in open court.

II. Issues

Defendant argues the trial court erred by: (1) denying his motion to dismiss due to insufficient evidence; (2) allowing Detective Odham to testify Roo had been charged with first-degree murder, but the charge was subsequently dismissed; (3) allowing Moore to testify one of the individuals in the photograph marked State's Exhibit 23 looked like Defendant; and, (4) instructing the jury on false, contradictory, or conflicting statements.

Defendant also argues he received ineffective assistance of counsel because: (1) defense counsel failed to move for a mistrial after the jury heard Wrisborne would not testify; and (2) defense counsel failed to object on due process grounds or move for a mistrial after Detective Odham testified Roo was charged with first-degree murder, but the charge was subsequently dismissed.

III. Analysis

A. Defendant's Motion to Dismiss

Defendant argues the trial court erred by denying his motion to dismiss because the State's evidence was insufficient to submit the charge of murder to the jury.

1. Motion to Dismiss

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted). "When reviewing a defendant's motion to dismiss, this Court determines only whether there is substantial evidence of (1) each essential element of the offense charged and of (2) the defendant's identity as the perpetrator of the offense." *State v. Fisher*, __ N.C. App. __, __, 745 S.E.2d 894, 900 (citations and internal quotation marks omitted), *disc. review denied*, 367 N.C. 274, 752 S.E.2d 470 (2013).

In reviewing challenges to the sufficiency of evidence, we must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences. Contradictions and discrepancies do not

warrant dismissal of the case but are for the jury to resolve. The test for sufficiency of the evidence is the same whether the evidence is direct or circumstantial or both.

State v. Fritsch, 351 N.C. 373, 378-79, 526 S.E.2d 451, 455 (citations and internal quotation marks omitted), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000).

“If there is any evidence tending to prove guilt or which reasonably leads to this conclusion as a fairly logical and legitimate deduction, it is for the jury to say whether it is convinced beyond a reasonable doubt of defendant’s guilt.” *State v. Franklin*, 327 N.C. 162, 171-72, 393 S.E.2d 781, 787 (1990) (citation omitted).

2. Analysis

Defendant argues the State presented sole circumstantial evidence that he killed Mr. Jones. Defendant contends this evidence was insufficient to support a conviction of second-degree murder. We disagree.

The elements of second-degree murder are: “(a) an unlawful killing; (b) of a human being; (c) with malice, but without premeditation and deliberation.” *State v. McDonald*, 151 N.C. App. 236, 243, 565 S.E.2d 273, 277, *appeal dismissed and disc. review denied*, 356 N.C. 310, 570 S.E.2d 892 (2002). These elements may be presumed where the State shows a deadly weapon was used, and its use led to the proximate death of the victim. *State v. Watkins*, 45 N.C. App. 661, 665, 263 S.E.2d 846, 848, *disc. review denied*, 300 N.C. 561, 270 S.E.2d 115 (1980).

Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence

does not rule out every hypothesis of innocence. The evidence need only give rise to a reasonable inference of guilt in order for it to be properly submitted to the jury for a determination of defendant's guilt beyond a reasonable doubt.

State v. Stone, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988) (citations omitted).

“Courts may resort to circumstantial evidence of motive, opportunity, capability and identity to identify the accused as the perpetrator of the crime.” *Id.* at 452, 373 S.E.2d at 434 (citation omitted). “Once the court decides that a reasonable inference of defendant's guilt may be drawn from the circumstances, then it is for the jury to decide whether the facts, *taken singly or in combination*, satisfy it beyond a reasonable doubt that the defendant is actually guilty.” *Fritsch*, 351 N.C. at 379, 526 S.E.2d at 455 (emphasis in original) (citations and internal quotation marks omitted).

At trial, the State presented evidence, which tended to show: (1) ongoing animosity between Defendant's group of friends and Mr. Jones' group of friends; (2) Defendant was present outside the Rhino Club the night Mr. Jones was killed; (3) Mr. Jones died as a result of a stab wound in his chest; (4) witnesses observed Defendant and Roo leaving the vicinity shortly after Mr. Jones was stabbed; and (5) Mr. Jones' blood was found inside of Defendant's vehicle and on a jacket left in his vehicle.

The State offered ample, albeit circumstantial, evidence to raise a question for the jury of whether Defendant murdered Mr. Jones. Viewed in the light most favorable to the State and giving the State the benefit of every possible inference,

sufficient evidence was admitted to allow the jury to find Mr. Jones was killed with a deadly weapon, with malice, Defendant was the perpetrator, and to convict Defendant of second-degree murder. The trial court did not err by denying Defendant's motion to dismiss the charges. This argument is overruled.

B. Detective Odham's Testimony Regarding the Charge Against Roo

Defendant argues the trial court erred by allowing Detective Odham to testify Roo had been charged with first-degree murder, but Detective Odham subsequently had intervened to have this charge dismissed. Defendant contends this testimony was irrelevant, unduly prejudicial, and an improper opinion on Defendant's guilt.

1. Standard of Review

"Whether evidence is relevant is a question of law, thus we review the trial court's admission of the evidence *de novo*." *State v. Kirby*, 206 N.C. App. 446, 456, 697 S.E.2d 496, 503 (2010) (citation omitted). The decision to exclude otherwise relevant evidence under Rule 403 rests within the trial court's discretion. This Court reviews the trial court's decision for abuse of that discretion. *State v. Sims*, 161 N.C. App. 183, 190, 588 S.E.2d 55, 60 (2003). "A trial court may be reversed for an abuse of discretion only upon a showing that its ruling was so arbitrary that it could not have been the result of a reasoned decision." *State v. Hayes*, 314 N.C. 460, 471, 334 S.E.2d 741, 747 (1985) (citation omitted).

2. Analysis

(a) Preservation of Issue for Appellate Review

“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, *stating the specific grounds for the ruling the party desired the court to make* if the specific grounds were not apparent from the context.” N.C.R. App. P. 10(a)(1) (emphasis supplied); *see also State v. Jamison*, __ N.C. App. __, __, 758 S.E.2d 666, 671 (2014).

Detective Odham testified he had charged Roo with first-degree murder for the death of Mr. Jones. The State asked Detective Odham whether this charge was still pending at the time of trial. He replied it was not. The State inquired about the resolution of this charge, and counsel for Defendant objected.

The trial court overruled Defendant’s objection, and instructed Detective Odham to respond if he knew the answer. Detective Odham stated: “I went to the district attorney’s office and had those charges dismissed.” When the State asked on what basis the charge was dismissed, counsel for Defendant objected again. The trial court sustained this objection, and the State’s line of questions shifted to another topic. Counsel for Defendant failed to state “the specific grounds for the ruling [he] desired” when he objected to Detective Odham’s testimony about the dismissal of Roo’s first-degree murder charge. N.C.R. App. P. 10(a)(1).

A party need not state the specific grounds for the ruling desired where the specific grounds are “apparent from the context.” N.C.R. App. P. 10(a)(1). The facts

at bar do not suggest defense counsel's basis for objecting was "apparent from the context." This is evidenced by the fact that, on appeal, Defendant argues the trial court erroneously allowed Detective Odham's testimony on the grounds that it was irrelevant and unduly prejudicial *and* because it was improper lay opinion testimony.

Defendant failed to raise objections to Detective Odham's testimony on the grounds of relevancy, prejudice, or improper lay opinion testimony at trial. Defendant has failed to properly preserve this issue for appellate review. This argument is dismissed.

C. Moore's Lay Opinion Testimony

Defendant argues the trial court erroneously allowed Moore to testify one of the individuals depicted in the photograph marked State's Exhibit 23 "look [sic] like" Defendant. Defendant contends this testimony amounted to improper lay opinion testimony.

1. Standard of Review

We review the admissibility of lay opinion testimony for abuse of discretion. *State v. Buie*, 194 N.C. App. 725, 730, 671 S.E.2d 351, 354 (2009). An abuse of discretion occurs when the trial judge's decision "lacked any basis in reason or was so arbitrary that it could not have been the result of a reasoned decision." *Williams v. Bell*, 167 N.C. App. 674, 678, 606 S.E.2d 436, 439 (citation and quotation marks omitted), *disc. review denied*, 359 N.C. 414, 613 S.E.2d 26 (2005).

This Court may uphold the admission of lay opinion testimony identifying a defendant in a surveillance video or photograph “if there was a rational basis for concluding that [the witness] was more likely than the jury correctly to [sic] identify Defendant as the individual in the surveillance footage.” *State v. Belk*, 201 N.C. App. 412, 417, 689 S.E.2d 439, 442 (2009) (citation omitted), *disc. review denied*, 364 N.C. 129, 695 S.E.2d 761 (2010).

2. Analysis

Witness lay opinion testimony “is limited to those 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 (2013). Lay witnesses may testify as to “instantaneous conclusions of the mind as to the appearance, condition, or mental or physical state of persons, animals, and things, derived from observation of a variety of facts presented to the senses at one and the same time. Such statements are usually referred to as shorthand statements of fact.” *State v. Alexander*, 337 N.C. 182, 191, 446 S.E.2d 83, 88 (1994) (citation and internal quotation marks omitted) (holding officer’s testimony that a photograph shown to him at trial showed “small openings that appeared to be buckshot” was a shorthand statement of fact).

Lay opinion testimony identifying an individual in a photograph or videotape is admissible “where such testimony is based on the perceptions and knowledge of the

witness, the testimony would be helpful to the jury in the jury's fact-finding function rather than invasive of that function, and the helpfulness outweighs the possible prejudice to the defendant from admission of the testimony." *Buie*, 194 N.C. App. at 730, 671 S.E.2d at 354 (citations and quotation marks omitted).

This Court held the following factors are relevant to the determination of 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.

Defendant argues Moore's testimony identifying Defendant as one of the individuals depicted in State's Exhibit 23, a still photograph taken from Slice of Life's surveillance video camera, "was not helpful to the jury in determining if [Defendant] was in the photograph or video and should not have been admitted" because "the jury was just as likely as Moore to correctly identify the person as [Defendant]." We disagree.

Defendant equates this case with *State v. Belk*, in which this Court held the trial court erred in allowing a police officer to testify the defendant was the individual depicted in a surveillance tape because the officer was "in no better position than the

jury to identify [the d]efendant as the person in the surveillance video[.]” *Belk*, 201 N.C. App. at 414, 689 S.E.2d at 441. The facts at bar are distinguishable from those in *Belk*.

In *Belk*, this Court’s grant of a new trial to the defendant was based upon the reasoning that “the State’s case rested exclusively on the surveillance video and [the officer’s] identification testimony.” *Id.* at 418, 689 S.E.2d at 443. We also noted, “because the witness was a police officer with eighteen years of experience, the jury likely gave significant weight to [his] testimony.” *Id.*

Here, Moore was a civilian, who testified he had seen Defendant on several occasions prior to the night in question, and was familiar with Defendant’s appearance. Moore stated he recognized Defendant as the individual in the photograph marked State’s Exhibit 23 because of “his face and the dreads.” Moore also recalled seeing Defendant on the night of Mr. Jones’ death inside the Rhino Club and walking through the parking lot after Mr. Jones was stabbed.

Moore’s testimony was not the sole evidence placing Defendant at the scene of the crime. McGill testified he and Roo rode away from the scene in Defendant’s vehicle, which was driven by Defendant. Defendant himself stated he was present at the scene of Mr. Jones’ murder during a noncustodial interview with law enforcement a few days after the murder.

Defendant has failed to carry his burden to show the trial court abused its discretion in allowing Moore's testimony identifying Defendant as the individual depicted in the photograph. Moore's testimony was relevant to and probative of essential issues the jury had to address. The trial judge also gave a specific limiting instruction during his jury charge and instructed them to only consider testimony of a lay witness if it was rational and helpful. This argument is overruled.

D. Jury Instructions on False, Contradictory, or Conflicting Statements

Defendant argues the trial court erred by instructing the jury on false, contradicting, or conflicting statements. Defendant argues the statements at issue were not relevant to facts in dispute at trial.

1. Standard of Review

"[Arguments] challenging the trial court's decisions regarding jury instructions are reviewed *de novo*, by this Court." *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009) (citations omitted). The trial court's choice of jury instructions generally rests within its discretion, and will not be overturned absent a showing of abuse of discretion. *State v. Nicholson*, 355 N.C. 1, 66, 558 S.E.2d 109, 152, *cert. denied*, 537 U.S. 845, 154 L. Ed. 2d 71 (2002).

"However, an error in jury instructions is prejudicial and requires a new trial only if there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the

appeal arises.” *State v. Castaneda*, 196 N.C. App. 109, 116, 674 S.E.2d 707, 712 (2009) (citations and internal quotation marks omitted).

2. Analysis

During the charge conference, the trial judge informed the State and counsel for Defendant he intended to instruct the jury on false, contradictory, or conflicting statements after the State contended: (1) Defendant did not turn over the clothes he was wearing the night of Mr. Jones’ murder; and (2) Defendant’s statement that it was his blood, which was found in his vehicle contradicted the results of the blood sample analyses.

In support of his argument that the trial court erroneously instructed the jury, Defendant relies on the note at the beginning of N.C.P.I.—Crim. 105.21, which states: “This instruction is ONLY proper where the defendant’s statements and/or trial testimony is contradictory to highly relevant facts proven at trial. HOWEVER, this instruction should NOT be used if the statements are completely irrelevant and without substantial probative force in tending to show a consciousness of guilt.” N.C.P.I.—Crim. 105.21 (alterations in original). Defendant argues the clothes he was wearing that night and his understanding of whose blood was present inside his vehicle were not highly relevant facts under dispute at trial. We disagree.

During his interview with police officers, Defendant stated the blood inside of his vehicle was his. After blood samples were collected and submitted for DNA

analysis, the results showed Mr. Jones' blood was recovered from the center console. Neither Mr. Jones' nor Defendant's blood could be ruled out as the blood found on the gear shift. The fact that the evidence showed Mr. Jones' blood was found in Defendant's vehicle not only contradicted Defendant's statement, but it was *highly* relevant to establish Defendant as the perpetrator of Mr. Jones' murder.

Whether the clothes Defendant turned over to the police officers were actually the same clothes Defendant wore the night of Mr. Jones' murder is also relevant. Despite Defendant's argument to the contrary, this issue was in dispute. During his interview, Defendant told police officers he was wearing the same shoes that day as he was wearing on the night of Mr. Jones' murder. Detective Tully testified those shoes worn during the interview were not the same shoes Defendant ultimately turned over to the officers. Defendant also alleged he had lost the jacket he was wearing that night, even though a jacket with blood was recovered from Defendant's vehicle. The jury could have reasonably believed the clothes Defendant submitted to the police officers, which did not contain any blood, were not the clothes he had worn that night of the murder, given the amount of blood that was found in Defendant's vehicle.

The jury could reasonably construe the statements Defendant made in his interview, and the clothing he provided to the officers, as conflicting with the evidence presented at trial. *See State v. Walker*, 332 N.C. 520, 538, 422 S.E.2d 716, 726 (1992)

(holding “inconsistencies brought to light by this comparison between certain statements of defendant and the evidence at trial . . . had substantial probative force, tending to show consciousness of guilt[]”), *cert. denied*, 508 U.S. 919, 124 L. Ed. 2d 271 (1993). Defendant has failed to carry his burden to show the trial court abused its discretion by instructing the jury on false, contradictory or conflicting statements. This argument is overruled.

E. Ineffective Assistance of Counsel

Defendant argues he received ineffective assistance of counsel because (1) trial counsel failed to move for a mistrial after the jury heard Wrisborne state he would not testify; and (2) trial counsel failed to move for a mistrial after the trial court allowed Detective Odham to testify about dismissal of Roo’s first-degree murder charge.

1. Standard of Review

It is well established that ineffective assistance of counsel claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as the appointment of investigators or an evidentiary hearing. Thus, when this Court reviews ineffective assistance of counsel claims on direct appeal and determines that they have been brought prematurely, we dismiss those claims without prejudice, allowing defendant to bring them pursuant to a subsequent motion for appropriate relief in the trial court.

State v. Thompson, 359 N.C. 77, 122-23, 604 S.E.2d 850, 881 (2004) (citations and internal quotation marks omitted), *cert. denied*, 546 U.S. 830, 163 L. Ed. 2d 80 (2005).

2. Analysis

Our appellate courts have established a two-prong test to determine whether a party received ineffective assistance of counsel.

[A] defendant must first show that his counsel's performance was deficient and then that counsel's deficient performance prejudiced his defense. Deficient performance may be established by showing that counsel's representation fell below an objective standard of reasonableness. Generally, to establish prejudice, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

State v. Allen, 360 N.C. 297, 316, 626 S.E.2d 271, 286 (citations and internal quotation marks omitted), *cert. denied*, 549 U.S. 867, 166 L. Ed. 2d 116 (2006).

Trial counsel is accorded wide latitude in deciding discretionary matters of trial strategy. *State v. Milano*, 297 N.C. 485, 465-96, 256 S.E.2d 154, 160 (1979) (citation and quotation marks omitted), *overruled on other grounds by State v. Grier*, 307 N.C. 628, 300 S.E.2d 351 (1983). This Court "indulge[s] a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *State v. Mason*, 337 N.C. 165, 178, 446 S.E.2d 58, 65 (1994) (citation and internal quotation marks omitted).

This Court has held:

The preference for the assertion of ineffective assistance of counsel claims in postconviction proceedings rather than on direct appeal inherent in numerous decisions by this Court and the Supreme Court stems from the fact that evidence concerning the nature and extent of the information available to the defendant's trial counsel at the time that certain decisions were made and the fact that information concerning any discussions that took place between the defendant and his or her trial counsel, while needed in evaluating the validity of the ineffective assistance of counsel claim under consideration, are generally not contained in the record presented to a reviewing court on direct appeal.

State v. Pemberton, __ N.C. App. __, __, 743 S.E.2d 719, 725 (2013).

On the record before us, this Court can only speculate of whether defense counsel's failure to move for a mistrial or other actions after Wrisborne refused to testify and after Detective Odham testified about the dismissal of Roo's first-degree murder charge "fell below an objective standard of reasonableness." *State v. Braswell*, 312 N.C. 553, 561-62, 324 S.E.2d 241, 248 (1985) (citation omitted). We dismiss Defendant's ineffective assistance of counsel claims, without prejudice to Defendant's right to move for appropriate relief in superior court.

IV. Conclusion

The State presented sufficient evidence tending to show Defendant was the perpetrator of the murder of Mr. Jones. The trial court did not err by denying Defendant's motion to dismiss for insufficient evidence.

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Defendant failed to state the specific grounds for objecting to Detective Odham's testimony about Roo's first-degree murder charge, and subsequent dismissal of this charge. Defendant failed to preserve this argument for appellate review.

Defendant failed to carry his burden to show the trial court abused its discretion by allowing Moore's lay opinion testimony that one of the individuals depicted in the photograph marked State's Exhibit 23 looked like Defendant.

Defendant's statements about the blood recovered from his vehicle, and the clothes he turned into law enforcement contradicted evidence presented by the State. The trial court properly instructed the jury on false, contradictory, or misleading statements by Defendant.

Defendant's ineffective assistance of counsel claim is dismissed, without prejudice to Defendant's right to move for appropriate relief in the superior court.

Defendant received a fair trial free from prejudicial errors he preserved and argued. We find no error in Defendant's conviction or the judgment entered thereon.

NO ERROR.

Judges McCULLOUGH and DIETZ concur.

Report per Rule 30(e).