

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-132

Filed: 5 November 2019

Guilford County, Nos. 16 CRS 79989-90, 81751-52

STATE OF NORTH CAROLINA

v.

JAMES DAVID FOOTMAN

Appeal by defendant from judgments entered 28 March 2018 by Judge Susan E. Bray in Guilford County Superior Court. Heard in the Court of Appeals 17 October 2019.

Attorney General Joshua H. Stein, by Senior Deputy Attorney General Amar Majmundar, for the State.

Glover & Petersen, P.A., by James R. Glover, for defendant.

ARROWOOD, Judge.

James David Footman (“defendant”) appeals from judgments entered on his convictions for first-degree murder, attempted first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, and robbery with a dangerous weapon. Defendant contends the trial court erred by instructing the jury on the issue of flight. Because defendant fled the crime scene, failed to seek medical

assistance for his victims, and attempted to mislead police officers by creating a false alibi, we find no error.

I. Background

On 26 September 2016, defendant was indicted on charges of first-degree murder, attempted first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, and robbery with a dangerous weapon for offenses committed on 4 July 2016.

Defendant was tried by a jury on 13 March 2018. The State's evidence tended to show the following. On 4 July 2016, Cathy Littles ("Littles") and Vickie Poole ("Poole") were smoking crack cocaine in the bedroom of Littles' apartment. Littles sold crack from her apartment and sometimes allowed customers to smoke her product there as well. Defendant was the only other person present in the apartment just before Poole and Littles were attacked. At some point while she was smoking in Littles' bedroom, Poole was stabbed in and across the mouth from behind. Littles was then stabbed by the assailant twice in the neck. The assailant grabbed a pile of crack on Littles' bed and ran out of the room. Littles and Poole escaped the apartment and a neighbor, Marsha McCain ("McCain"), called 911. Littles later died from her injuries.

McCain testified she witnessed defendant flee the apartment and drive away in a blue car. Other witnesses reported defendant as being present in Littles'

STATE V. FOOTMAN

Opinion of the Court

apartment shortly before the attack, and identified him as being the driver of a blue Nissan Versa with a cracked windshield, which they had seen parked in front of Littles' apartment. One of defendant's friends, Terrance Gault ("Gault"), testified defendant carried a knife around with him in the car. Defendant's then-girlfriend, Evonnie Blue ("Blue"), owned the blue Nissan but often allowed defendant to use it. Blue testified she and defendant were supposed to spend 4 July 2016 with her parents. However, that morning, defendant told her he needed to help Gault with a broken down vehicle. Defendant did not return to the home he shared with Blue until 10:00 p.m. that night.

Unbeknownst to Blue, defendant had been smoking crack cocaine whenever he was away from their home, and often bought product from Littles. On 6 July 2016, defendant told Blue that if anyone asked about his whereabouts on 4 July, Blue was to tell them she and defendant went to Winston-Salem to celebrate Independence Day with defendant's sister. That evening, defendant was arrested for the robbery and murder of Littles and the attempted murder and assault of Poole. During an interview with law enforcement, Blue initially followed defendant's instructions and told police they spent 4 July with defendant's sister. However, upon learning defendant was observed fleeing the scene of the crime in her vehicle, Blue recanted her statement and admitted defendant had instructed her to lie about where he was that day.

Over defendant's objection, the trial court instructed the jury that it could consider defendant's flight from the crime scene as evidence of his guilt. Defendant was found guilty of all charges. The trial court arrested judgment on the charge of robbery with a dangerous weapon, and sentenced defendant to consecutive terms of life imprisonment without the possibility of parole and 207 months to 261 months for the remaining convictions. Defendant gave oral notice of appeal in open court.

II. Discussion

In his sole argument on appeal, defendant argues the trial court erroneously instructed the jury that it could consider evidence of flight in determining his guilt, because there was no evidence he took steps to avoid apprehension. We disagree.

During the charge conference, the State requested the jury be given an instruction on evidence of flight by defendant. Over defendant's objection, the trial court gave the following instruction:

The State contends that [] defendant fled. Evidence of flight may be considered by you, together with all other facts and circumstances in this case, in determining whether the combined circumstances amount to an admission or show a consciousness of guilt; however, proof of this circumstance is not sufficient, in itself, to establish [] defendant's guilt.

Further, this circumstance has no bearing on the question of whether [] defendant acted with premeditation and deliberation; therefore, it must not be considered by you as evidence of premeditation or deliberation.

STATE V. FOOTMAN

Opinion of the Court

“We review a challenge to the trial court’s decision regarding jury instructions de novo.” *State v. Parks*, __ N.C. App. __, __, 824 S.E.2d 881, 884 (2019) (citing *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009)). To prevail on a jury instruction challenge, a defendant must show error and “demonstrate that ‘there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.’” *Id.* at __, 824 S.E.2d at 884 (quoting N.C. [Gen. Stat.] § 15A-1443(a) (2017)).

“It is well established that ‘[e]vidence of a defendant’s flight following the commission of a crime may properly be considered by a jury as evidence of guilt or consciousness of guilt.’” *State v. Royster*, 237 N.C. App. 64, 74, 763 S.E.2d 577, 584 (2014) (alteration in original) (quoting *State v. King*, 343 N.C. 29, 38, 468 S.E.2d 232, 238 (1996)). “[J]ury instructions relating to the issue of flight are proper as long as there is ‘some evidence in the record reasonably supporting the theory that the defendant fled after the commission of the crime charged.’” *State v. Allen*, 346 N.C. 731, 741, 488 S.E.2d 188, 193 (1997) (quoting *State v. Fisher*, 336 N.C. 684, 706, 445 S.E.2d 866, 878 (1994)). “Mere evidence that defendant left the scene of the crime is not enough to support an instruction on flight. There must also be some evidence that defendant took steps to avoid apprehension.” *State v. Thompson*, 328 N.C. 477, 490, 402 S.E.2d 386, 392 (1991).

STATE V. FOOTMAN

Opinion of the Court

Although something more than fleeing the crime scene is required to support a jury instruction on flight, North Carolina courts have found numerous factors sufficient to meet that threshold. In *State v. Taylor*, the defendant and his accomplice committed armed robbery of a grocery store in the course of which they shot and fatally wounded one of their victims. 362 N.C. 514, 521-22, 669 S.E.2d 239, 250-51 (2008). The defendant immediately left the crime scene and drove his accomplice to a hospital, where he lied to hospital staff about how his accomplice was shot and later gave a false statement to police officers regarding his involvement in the robbery. *Id.* at 522-23, 669 S.E.2d at 251. Our Supreme Court held the defendant's flight from the crime scene, failure to provide or obtain medical assistance for his victims, and misleading investigating officers regarding his role in the incident constituted substantial evidence supporting a jury instruction on flight. *Id.* at 540, 669 S.E.2d at 262. *See also State v. Eubanks*, 151 N.C. App. 499, 503, 565 S.E.2d 738, 741 (2002) (holding an instruction on flight proper where the evidence showed defendant provided no assistance to his victim after wounding him, fled the crime scene and disposed of the weapon, and did not voluntarily contact the police or turn himself in).

Defendant argues the evidence in this case raises no more than suspicion or conjecture that he engaged in behavior constituting flight. He correctly notes that more than mere departure from a crime scene is required to support a jury instruction on flight, and that the evidence must show he made an effort to avoid apprehension.

STATE V. FOOTMAN

Opinion of the Court

In support of his argument the evidence did not show he made any effort to avoid apprehension, defendant directs our attention to two cases, *State v. Thompson*, 328 N.C. 477, 402 S.E.2d 386 (1991) and *State v. Holland*, 161 N.C. App. 326, 588 S.E.2d 32 (2003).

In *Thompson*, the defendant, a military serviceman, left the scene of a crime and returned to his military base where he then mistakenly entered an off-limits area. 328 N.C. at 490, 402 S.E.2d at 392-93. The defendant parked near a dumpster in the area but drove off when approached by a military police car. The *Thompson* court held that evidence was not enough to warrant an instruction on flight. *Id.* at 490, 402 S.E.2d at 393. In *Holland*, the defendant and his accomplices left the crime scene and defendant went to his girlfriend's home. 161 N.C. App. at 330, 588 S.E.2d at 36. This Court held it was error to instruct the jury on flight, noting that "[v]isiting a friend at their residence is not an act that, by itself, raises a reasonable inference that [the] defendant was attempting to avoid apprehension." *Id.*

Defendant's reliance on *Thompson* and *Holland* is misplaced, as they are readily distinguishable from the present case, where defendant's conduct did raise a reasonable inference defendant was attempting to avoid apprehension. Defendant asserts that he did not take steps to avoid apprehension because he engaged in business as usual, returning home to his usual abode and going to work as scheduled. However, defendant mistakenly assumes that flight from home or divergence from

STATE V. FOOTMAN

Opinion of the Court

normal routine are the only methods of avoiding apprehension. While those may be some of the most common circumstances, they are certainly not the only means a suspect may employ, as this case makes evident.

In the present case, multiple witnesses placed defendant at the crime scene and saw him leave Littles' apartment in a blue Nissan distinctive for its cracked windshield. While this Court has recognized that the act of leaving a crime scene, by itself, is not sufficient to warrant an instruction on flight, that was not the case here. Similar to *Taylor*, in addition to fleeing the crime scene, defendant made no effort to provide or obtain medical assistance for Littles or Poole after stabbing them. He also intentionally misled investigating police officers by creating a false alibi and instructing his girlfriend to lie to law enforcement on his behalf. Creating a false alibi is, in no uncertain terms, an attempt to avoid apprehension.

By lying about his whereabouts, defendant attempted to deceive law enforcement into believing he could not possibly have had anything to do with the crime. Had he succeeded in his mission, he may have walked out of that police station a free man. We are thus not persuaded by defendant's argument that "[c]reating a false alibi has nothing to do with trying to avoid apprehension." In addition, "the trial court's instruction correctly informed the jury that proof of flight was not sufficient by itself to establish guilt and would not be considered as tending to show premeditation and deliberation." *State v. Grooms*, 353 N.C. 50, 81, 540 S.E.2d 713,

STATE V. FOOTMAN

Opinion of the Court

732 (2000). Accordingly, the trial court's instruction to the jury on flight was proper, and we reject this assignment of error.

III. Conclusion

For the foregoing reasons, we hold defendant had a fair trial free from prejudicial error.

NO ERROR.

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).