IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-546

Filed: 15 September 2020

Onslow County, Nos. 15CRS054715, 18CRS001315

STATE OF NORTH CAROLINA

v.

CARLETON EDWIN DAVIS, JR., Defendant.

Appeal by Defendant from judgments entered 16 August 2018 by Judge Imelda J. Pate in Superior Court, Onslow County. Heard in the Court of Appeals 31 March 2020.

Attorney General Joshua H. Stein, by General Counsel W. Swain Wood, for the State.

Glover & Petersen, P.A., by Ann B. Petersen, for Defendant.

McGEE, Chief Judge.

Carleton Edwin Davis, Jr. ("Defendant"), appeals the trial court's judgments entering a jury verdict convicting him of second-degree murder and concealment of death. Defendant argues that the trial court erred by not instructing the jury on the lesser-included offense of voluntary manslaughter and that the State failed to submit sufficient evidence showing Defendant's out-of-state prior convictions were

substantially similar to North Carolina felonies. For the reasons discussed below, we find no prejudicial error.

I. Factual and Procedural Background

The evidence at trial tended to show that on or about 31 October 2013, Defendant learned that his sister, Cheri Davis ("Cheri"), had a physically violent domestic dispute with her boyfriend, Sheldon Prawl ("Prawl"). Celsie Davis, Defendant's girlfriend ("Celsie"), testified that Defendant traveled from Detroit, Michigan, where she and Defendant lived, to visit Cheri in Jacksonville, North Carolina, sometime in October 2013. Defendant called Celsie while he was in Jacksonville on the morning of October 31. Celsie "heard some commotion in the background" of the phone call. Defendant told Celsie that "[Cheri] and [Prawl] had got into an argument[,]" that there was a "physical altercation" between Cheri and Prawl, and "that [Cheri] was going to take care of it[.]" After the call, Cheri left her home to go to work. Prawl texted Cheri sometime in the early afternoon that "he was going to go out of town for a little while."

Prawl's mother testified that she and Prawl texted each other "[e]very morning or every other day[,]" but she was unable to get in touch with him on 31 October 2013. Prawl's mother explained that, on 31 October, she "called and [] did not get a respon[se] from [Prawl]. And around 2:00[p.m.], a text came in telling me he's traveling and he'll talk to me later." Prawl's mother attempted to call Prawl multiple

times over the next four days, but was unable to reach him each time. Prawl's mother then called Cheri on 3 November and "asked if [her] son was there." Cheri responded that Prawl had "packed his stuff" and "went up north." Prawl's mother told Cheri that Prawl had not traveled north to New York, where she lived, and insisted that Cheri "go report this right now[,] [s]omething is wrong."

Cheri reported Prawl missing to the Jacksonville Police Department on 4 November 2013. Cheri informed police that she and Prawl had a domestic argument on the morning of 31 October 2013; that Prawl "indicated to her he was going to go out of town for a little while" that afternoon; and that she had not heard from him since. The officer who took Cheri's statement testified that she was calm and had no notable physical injuries at the time.

On 30 May 2014, police in Detroit, Michigan responded to a report that severed body parts were discovered in a garage approximately seven miles away from Celsie's residence in Detroit. Police searched the garage and found "two plastic tub-like storage tubs" containing plastic garbage bags filled with severed human body parts encased in cement. The county medical examiner removed the tubs from the premises and later identified the body parts as the remains of Prawl.

In September 2016, an Onslow County grand jury indicted Defendant for the murder of Prawl. In July 2018, Defendant was also indicted on charges of concealing

the death of Prawl and conspiracy to conceal Prawl's death. The charges in the two indictments were joined for trial.

Defendant was tried for all three charges on 6 August 2018 in Superior Court, Onslow County. At trial, Prawl's best friend, Chris Frazier ("Frazier"), testified for the State that he last spoke with Prawl around 11:00 a.m. on the morning of 31 October 2013. Frazier explained that he arrived at Defendant's sister Cheri's residence around 9:00 a.m. because Prawl had agreed to give Frazier a ride to the Onslow County courthouse. Cheri had left the residence to go to work before Frazier arrived, and Prawl was "banging on the door yelling" because he "wanted his blunt wraps" from inside. Defendant eventually let Prawl inside. When Prawl came back outside, Frazier asked if Defendant was back. Prawl responded, "[y]eah, he's back with his people." Frazier explained that he and Prawl had seen Defendant "a week prior" at Cheri's residence, believed Defendant had returned to Detroit, and that Defendant had come back to Jacksonville with some of his friends.

Frazier further testified that Prawl then drove Frazier to the courthouse, dropped him off, and told him, "[c]all me when you get out. I'm going back to the house to wake and bake" before returning to Cheri's residence. Frazier texted Prawl around 11:00 a.m. to ask that Prawl "come get [him] later" than they had planned because he still had not seen the judge and court was going to recess. Frazier testified that "a text came back from [Prawl's] phone saying that something came up, he had

to go out of town, and watch out for [Cheri] for me." Frazier called Prawl several times after he left court on 31 October, but was unable to reach Prawl and was never able to speak to him.

Terrell Debose ("Debose") testified that he sold drugs for Defendant in North Carolina in 2014. He also said Defendant told him "about four or five" times in or around June 2014 that he "[had] a body chopped up in Detroit." Debose testified that he and Defendant became close friends and business partners, that he "gave [Defendant] a key to [his] house[,]" and that they would frequently go out to clubs together. Debose explained that Defendant repeatedly mentioned that he "[had] a body" that "[he] took to Detroit" and that the body "was starting to smell[.]" Debose testified that "[Cheri] and the guy kept – they got in a fight, and [Defendant] went in there and intervened, they fought," and "[Defendant] said he choked him, and I guess his neck broke." Debose further recounted Defendant's statements that he killed Cheri's boyfriend, "then took [the body] to a river, some river down here, threw the body in a river." Defendant told Debose "[a] couple times" that the body "kept coming up" and "floating up[,]" so Defendant "chopped the body up and put it in cement[.]"

Jerry Dorris ("Dorris"), an acquaintance of Defendant, also testified that he once overheard Defendant state that he "choked [Prawl] out." At the time, Dorris lived in Detroit, two houses down from where police discovered the totes containing Prawl's body. Dorris explained that he first met Defendant in September 2013 when

Dorris walked by his neighbor's home on the way to get something from a nearby convenience store. Richard Jackson ("Jackson"), a neighbor of Dorris, was talking to Defendant outside of his home; Dorris stopped and spoke to Jackson and Defendant. Dorris next saw Defendant in February or March of 2014 when he was once again walking to the store one evening. Dorris testified that Jackson and Defendant were talking outside Jackson's home, "I was on my way, walking to the store, and I -- as I was about to pass him and [Jackson], I heard [Defendant] say, 'I had to choke him out.'" Dorris continued walking to the store and did not hear the remainder of the conversation between Jackson and Defendant.

Later that evening, Dorris testified, Jackson came over to speak with Dorris and pointed out two blue totes outside of Jackson's garage. A few days later, Jackson asked Dorris to help him move the two totes to a new location. Dorris testified that he and Jackson moved the two totes into the garage of Jackson's neighbor, a man they called "Red," who was incarcerated at the time. Dorris testified that he next saw Defendant in May, when Defendant and Cheri picked up Jackson after police had arrived at Red's garage and taped off the area.

Dr. Jeffrey Hudson ("Dr. Hudson"), assistant medical examiner in Detroit, Michigan, testified that he performed an autopsy on the severed body parts found in the tubs to determine the cause of Prawl's death. Dr. Hudson testified to his expert opinion that the manner of Prawl's death was homicide, but he was unable to

determine the exact cause of death due to a lack of wounds or broken bones and due to the severed, decomposed, and chemically burned state of the body.

Defendant presented no evidence at trial. The trial court dismissed the charge of conspiracy to conceal death at the close of all the evidence. During the jury instruction conference, Defendant requested a jury instruction on the lesser-included offense of voluntary manslaughter, in addition to the instructions on first-degree murder and second-degree murder. The State objected to the voluntary manslaughter instruction on the basis that there was no evidence to support the instruction. The trial court denied Defendant's request.

The jury found Defendant guilty of second-degree murder and concealing death. The parties stipulated at sentencing that Defendant had three prior felony convictions for armed robbery in Michigan, carjacking in Michigan, and federal possession of a firearm by a felon. The State presented the corresponding Michigan criminal statutes to the trial court and argued that the statutes were substantially similar to Class D and G North Carolina felonies. Defendant did not object and the trial court agreed with the State. The trial court entered judgment on the jury's verdicts, determined Defendant to be a Prior Record Level ("PRL") IV based on his Michigan and federal convictions, and sentenced Defendant to a term of 365 to 450 months imprisonment for the Class B1 felony second-degree murder conviction and a

consecutive term of 97 to 129 months imprisonment for the Class D felony concealing death conviction.[1] Defendant appeals.

II. Analysis

Defendant argues on appeal that: (1) the trial court erred by denying his request to instruct the jury on the lesser-included offense of voluntary manslaughter; and (2) the State failed to present sufficient evidence showing that his out-of-state felony convictions were substantially similar to North Carolina felony offenses for calculation of his PRL.

A. *Jury Instruction on Lesser-Included Offense*

Defendant first contends the trial court erred by denying his request to instruct the jury on the lesser-included offense of voluntary manslaughter. We review a trial court's denial of a defendant's request for a jury instruction on a lesser-included offense *de novo*, *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E. 2d 144, 149 (2009), considering all evidence presented in the light most favorable to the defendant, *State v. Barlowe*, 337 N.C. 371, 378, 446 S.E.2d 352, 357 (1994).

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[1] We note that both Defendant and the State present their arguments to this Court based on their mutual belief that Defendant was sentenced at PRL IV. At sentencing, the trial court repeatedly announced orally: "The court having determined the [PRL] points of the defendant to be 14, he is a [PRL] 4 for sentencing purposes." The trial court then orally sentenced Defendant at the upper end of the presumptive ranges for the commission of Class B1 and Class D felony offenses by a defendant at PRL IV.

This Court recognizes that 14 prior record points means that Defendant is properly a PRL V. N.C. Gen. Stat. § 15A-1340.14(c) (2017). The trial court noted that 14 points gave Defendant a PRL V when it entered the written Judgments in the case on 23 August 2018.

"A trial court must give instructions on all lesser-included offenses that are supported by the evidence[.]" *State v. Lawrence*, 352 N.C. 1, 19, 530 S.E.2d 807, 819 (2000). "Failure to so instruct the jury constitutes reversible error not cured by a verdict of guilty of the offense charged." *State v. Whitaker*, 316 N.C. 515, 520, 342 S.E.2d 514, 518 (1986) (citation omitted). Nonetheless, "[i]t is well settled that the trial court is not required to charge the jury upon the question of a defendant's guilt of lesser degrees of the crime charged in the indictment when there is no evidence to sustain a verdict of defendant's guilt of such lesser degrees." *State v. Gadsden*, 300 N.C. 345, 350, 266 S.E.2d 665, 669 (1980) (citations omitted).

Voluntary manslaughter is a lesser-included offense of first-degree murder and second-degree murder. *See State v. Wrenn*, 279 N.C. 676, 681–82, 185 S.E.2d 129, 132 (1971). The applicable offense turns on evidence of the perpetrator's mental state leading up to and during the killing:

> Murder in the first degree is the unlawful killing of a human being with malice and with premeditation and deliberation. Murder in the second degree is the unlawful killing of a human being with malice but without premeditation and deliberation. Voluntary manslaughter is the unlawful killing of a human being without malice and without premeditation and deliberation.

Id. (citations omitted). The malice element of first-degree murder and second-degree murder can be shown by at least three kinds of evidence: (1) actual or "express hatred, ill-will or spite[;]" (2) commission of an "act [so] inherently dangerous to human life

[and] done so recklessly and wantonly as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief[;]" or simply (3) a killing committed "'intentionally without just cause, excuse, or justification.'" *State v. Reynolds*, 307 N.C. 184, 191, 297 S.E.2d 532, 536 (1982) (citations omitted).

North Carolina courts typically allow instruction on voluntary manslaughter where the evidence shows the killing was "both unlawful and intentional," but was committed under circumstances which "are said to displace malice and to reduce the offense from murder to manslaughter." *State v. Wilkerson*, 295 N.C. 559, 579, 247 S.E.2d 905, 916 (1978). Such circumstances have been held to include a killing committed either "in the heat of passion suddenly aroused by adequate provocation[,]" where excessive force renders "the exercise of self-defense" imperfect, or where the defendant is "the aggressor bringing on the affray." *Id.* Thus, the question in this case is whether there was evidence, in the light most favorable to Defendant, which showed that Defendant killed Prawl for a purpose which would displace malice and excuse him of the offense.

Defendant contends that because there was no evidence that a deadly weapon was used, and because the State presented no "real evidence of actual malice," the State's proof of malice was "equivocal at best" and Defendant was "was not legally obligated to present evidence of heat of passion or imperfect self-defense in order to

seek an instruction on voluntary manslaughter." Defendant's arguments are misplaced.

The need for evidence of heat of passion or imperfect self-defense is not predicated on the State's proof of malice by evidence of the defendant's use of a deadly weapon. First, the State is not required to show the use of a deadly weapon to prove the defendant committed a killing with malice. Defendant rightfully asserts that the Supreme Court of North Carolina has stated malice "is proved as a matter of law when the state proves the intentional infliction of a wound with a deadly weapon which results in death and there is no evidence of mitigation, justification or excuse." *Reynolds*, 307 N.C. at 191, 297 S.E.2d at 536. The Supreme Court has also generally stated that "[m]alice is said to exist as a matter of law 'whenever there has been an unlawful and intentional homicide without excuse or mitigating circumstance.'" *State v. Fleming*, 296 N.C. 559, 563, 251 S.E.2d 430, 432 (1979) (citation omitted). Likewise, the Supreme Court has held "[a]n act that indicates a total disregard for human life is sufficient to supply the malice necessary to support the crime of second degree murder" without any mention of the use of a deadly weapon. *See Wilkerson*, 295 N.C. at 581, 247 S.E.2d at 918 (citation omitted). And "[a] malicious killing cannot be voluntary manslaughter." *Fleming*, 296 N.C. at 563, 251 S.E.2d at 432.

Second, while voluntary manslaughter is a lesser-included offense of first-degree murder and second-degree murder, voluntary manslaughter does not simply

arise where the State shows the defendant intentionally committed a killing but somehow fails to show malice. Again, malice presumedly exists as a matter of law whenever the State shows a killing was intentionally committed in the absence of evidence of "excuse or mitigating circumstance." *Id.* Voluntary manslaughter may only arise when a killing is committed "without premeditation and without malice," and in the midst of a circumstance which "renders the [defendant's] mind temporarily incapable of cool reflection." *State v. Camacho*, 337 N.C. 224, 233, 446 S.E.2d 8, 13 (1994) (citation omitted). "Therefore, to support an instruction on . . . voluntary manslaughter, a defendant must produce '[]heat of passion' or 'provocation' evidence negating the elements of malice, premeditation, or deliberation." *State v. Rainey*, 154 N.C. App. 282, 290, 574 S.E.2d 25, 30 (2002).

In the present case, the State presented unequivocal "real evidence of actual malice" and, absent this evidence, neither party presented evidence which would support an instruction on voluntary manslaughter. The State's evidence showed Defendant was aware of domestic arguments between Cheri and Prawl and that one such argument occurred in Defendant's presence the morning of 31 October before Prawl went missing. The evidence showed that Prawl and Cheri each left Cheri's residence that morning after the argument. Prawl then came back to get his blunt wraps, but banged on the door for several minutes because Defendant would not let him inside. After dropping Frazier off at the courthouse, Prawl expressed his intent

to return to Cheri's residence to "wake and bake." Cheri, Frazier, and Prawl's mother each received a text message from Prawl that afternoon stating that he was "going out of town," and then never heard from him again. Prawl's body was later found severed in totes in a garage next-door to the home of Jackson, a friend of Defendant, and seven blocks away from Celsie's residence. Dorris testified that he helped move the totes into the garage where police ultimately found them. Debose and Dorris each testified that Defendant stated he "had to choke him out." Debose further explained that Defendant told him on multiple occasions that he intervened in Cheri and Prawl's domestic dispute, choked Prawl out, brought Prawl's body back with him to Detroit, and ultimately disposed of Prawl's body by storing it, severed, in plastic totes.

The evidence presented at trial, even when taken in the light most favorable to Defendant, showed only that Defendant harbored ill-will towards Prawl because of the domestic altercation between Prawl and Cheri and that he "choked [Prawl] out." There was no evidence that Defendant killed Prawl for "just cause, excuse, or justification." *Reynolds*, 307 N.C. at 191, 297 S.E.2d at 536. Without such evidence, an instruction on voluntary manslaughter would rest solely on the possibility that the jury disbelieved the State's evidence on malice. *State v. Annadale*, 329 N.C. 557, 568, 406 S.E.2d 837, 844 (1991) ("A defendant is not entitled to an instruction on a lesser included offense merely because the jury could possibly believe some of the State's evidence but not all of it."). We hold that the trial court did not err by denying

Defendant's request for a jury instruction on the lesser-included offense of voluntary manslaughter.

B. *Out-of-State Offenses in Prior Record Level Calculation*

Defendant next argues that the State failed to submit sufficient evidence showing a substantial similarity between his prior out-of-state felony convictions and North Carolina Class D and G felonies.[2] He contends, therefore, the trial court erred in calculating his PRL and improperly sentenced him as a PRL IV. We disagree.

"The trial court's determination of a defendant's [PRL] is a conclusion of law, which this Court reviews *de novo* on appeal." *State v. Threadgill*, 227 N.C. App. 175, 178, 741 S.E.2d 677, 679–80 (2013) (citations omitted). Even so, "[t]his Court applies a harmless error analysis to improper calculations of [PRL] points." *State v. Lindsay*, 185 N.C. App. 314, 315–16, 647 S.E.2d 473, 474 (2007) (citations omitted). A miscalculation of a defendant's total PRL points is harmless where "deducting the improperly assessed points would not affect the defendant['s] [PRL]." *Id.* at 316, 647 S.E.2d at 474 (citing *State v. Bethea*, 173 N.C. App. 43, 61, 617 S.E.2d 687, 698 (2005); *State v. Smith*, 139 N.C. App. 209, 219–20, 533 S.E.2d 518, 524 (2000)).

A defendant's PRL "is determined by calculating the sum of the points assigned to each of the offender's prior convictions[.]" *State v. Arrington*, 371 N.C. 518, 522,

[2] Defendant did not object to his PRL calculation during sentencing, but "[a] defendant need not object to the calculation of his [PRL] at sentencing in order to preserve the issue for appellate review." *State v. Bryant*, 255 N.C. App. 93, 95, 804 S.E.2d 563, 565 (2017).

819 S.E.2d 329, 332 (2018); N.C. Gen. Stat. § 15A-1340.14(a) (2017). "After the trial court determines the total number of prior record points a defendant has accumulated, the court utilizes N.C.G.S. § 15A-1340.14(c) to establish the [PRL] based on the total record points the defendant has accrued." *Arrington*, 371 N.C. at 522, 819 S.E.2d at 332; N.C. Gen. Stat. § 15A-1340.14(c). The State has the burden to prove that a prior conviction exists and may ordinarily satisfy this burden by a stipulation of the parties. *Arrington*, 371 N.C. at 522, 819 S.E.2d at 332; N.C. Gen. Stat. § 15A-1340.14(f).

A prior felony conviction from a jurisdiction outside of North Carolina is considered a Class I felony for purposes of PRL calculation, unless the State proves by a preponderance of the evidence that the offense is "substantially similar" to a comparable, more severe North Carolina offense. *State v. Bryant*, 255 N.C. App. 93, 96, 804 S.E.2d 563, 566 (2017); N.C. Gen. Stat. § 15A-1340.14(e). The trial court "may accept a stipulation that the defendant in question has been convicted of a particular out-of-state offense and that this offense is either a felony or a misdemeanor under the law of that jurisdiction[,]" but it "may not accept a stipulation to the effect that a particular out-of-state conviction is 'substantially similar' to a particular North Carolina felony or misdemeanor." *State v. Bohler*, 198 N.C. App. 631, 637–38, 681 S.E.2d 801, 806 (2009). "'[D]etermination of whether the out-of-state conviction is substantially similar to a North Carolina offense is a question of law involving

comparison of the elements of the out-of-state offense to those of the North Carolina offense.'" *State v. Sanders*, 367 N.C. 716, 720, 766 S.E.2d 331, 334 (2014) (citation omitted). "[T]he party seeking the determination of substantial similarity must provide evidence of the applicable law[,]" *id.* at 719, 766 S.E.2d at 333, and fails to meet its burden "when evidence of the applicable law is not presented to the trial court," *id.* at 718, 766 S.E.2d at 332.

In the present case, Defendant and the State stipulated at sentencing that Defendant had three prior out-of-state felony convictions: (1) armed robbery in Michigan, under Mich. Comp. Laws §§ 750.529, 750.530 (2001); (2) carjacking in Michigan, under Mich. Comp. Laws § 750.529(a) (1997); and (3) a federal violation for possession of a firearm by a felon, under 18 U.S.C. § 922 (2013). The State argued to the trial court that Defendant's Michigan carjacking conviction and federal conviction were each substantially similar to Class G felonies in North Carolina, and assigned four points each; and that Defendant's Michigan armed robbery conviction was substantially similar to a Class D North Carolina felony, and assigned six points. *See* N.C. Gen. Stat. § 15A-1340.14(b). The trial court agreed, determined Defendant had a sum of 14 points, and sentenced Defendant to terms of imprisonment at the top of the presumptive ranges for PRL IV—even though 14 points corresponds to PRL V. *See* N.C. Gen. Stat. § 15A-1340.14(c)(5) ("The [PRLs] for felony sentencing are: . . . (4)

Level IV -- At least 10, but not more than 13 points. (5) Level V – At least 14, but not more than 17 points."); N.C. Gen. Stat. §§ 15A-1340.17(c), (e1)).

We find the State presented evidence sufficient to show that Defendant's convictions for armed robbery in Michigan and federal felony possession of a firearm were substantially similar to North Carolina offenses. "[A] printed copy of a statute of another state is admissible as evidence of the statute law of such state[,]" and we have held that "copies of [out-of-state] statutes, and comparison of their provisions to the criminal laws of North Carolina, were sufficient to prove by a preponderance of the evidence that the crimes of which defendant was convicted in those states were substantially similar to classified crimes in North Carolina for purposes of G.S. § 15A–1340.14(e)." *State v. Rich*, 130 N.C. App. 113, 117, 502 S.E.2d 49, 52 (1998). In this case, the State handed to the trial court copies of Mich. Comp. Laws §§ 750.529, 750.530, and 18 U.S.C. § 922 that matched the crimes for which Defendant was convicted. The State then explained to the trial court that the Michigan armed robbery offense was "much like our statute" for armed robbery in North Carolina, a Class B felony, and that the federal felon in possession of a firearm statute was "essentially the same" as North Carolina's possession of a firearm statute, a Class D felony. The State presented sufficient evidence of substantial similarity for the Michigan armed robbery and federal possession of a firearm by a felon, and the trial

court did not err by assigning Defendant a total of 10 prior record points for these offenses. *See* N.C. Gen. Stat. § 15A-1340.14(b).

The State, however, failed to sufficiently show that Defendant's conviction for Michigan carjacking was substantially similar to a North Carolina offense. The State presented the trial court with the most current text of Mich. Comp. Laws § 750.529(a) (2017), which was amended in 2004 to include an additional element regarding the perpetrator's intent. Defendant was convicted in 1997 under the earlier version of the statute, Mich. Comp. Laws § 750.529(a) (1997). The State concedes that it did not present the correct Michigan statute for which Defendant was convicted, and it therefore stands that the State did not present sufficient evidence to show substantial similarity for this offense. *Sanders*, 367 N.C. at 720, 766 S.E.2d at 334. The trial court erred by accepting the State's proposed classification of the carjacking offense as a Class G felony and assigning it four points, because the offense should have been assigned two points as a Class I felony. N.C. Gen. Stat. §§ 15A-1340.14(b)(3), (4).

Nonetheless, this miscalculation was harmless error. Though a total of 14 points corresponds to a PRL V, the trial court determined that Defendant was a PRL IV and sentenced Defendant at the upper end of the presumptive ranges of punishment for felonies committed by a defendant at PRL IV—365 to 450 months for second-degree murder, a Class B1 felony, and 97 to 129 months for concealment of death, a Class D felony. *See* N.C. Gen. Stat. § 15A-1340.14(c)(4); N.C. Gen. Stat. §

15A-1340.17. If we deduct the improperly assigned four points and instead calculate Defendant's PRL properly by assigning the carjacking offense two points, Defendant has a total of 12 points and is still correctly sentenced at PRL IV. N.C. Gen. Stat. § 15A-1340.14(c)(4). The trial court's miscalculation of Defendant's PRL was harmless error because "deducting the improperly assessed points [does] not affect [D]efendant['s] [PRL]" that the trial court used in sentencing or the appropriate range of punishment for the sentences he received. *See Lindsay*, 185 N.C. at 316, 647 S.E.2d at 474.

III. Conclusion

We hold that the trial court did not err by denying Defendant's request to instruct the jury on the lesser-included offense of involuntary manslaughter because the evidence at trial did not support the requested instruction. Further, though the trial court erred in its calculation of Defendant's total prior record points, we hold that the error was harmless because the trial court imposed a sentence within the presumptive range for Defendant's correct PRL.

NO PREJUDICIAL ERROR.

Judges INMAN and BERGER concur.

Report per Rule 30(e).