IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1040

Filed 05 September 2023

Cleveland County, Nos. 20CRS55158, 21CRS50126

STATE OF NORTH CAROLINA

v.

JOHN HENRY CARVER, Defendant.

Appeal by defendant from judgment entered 24 March 2022 by Judge George Cooper Bell in Cleveland County Superior Court. Heard in the Court of Appeals 9 August 2023.

Joseph P. Lattimore, for defendant-appellant.

Attorney General Joshua H. Stein, by Special Deputy Attorney General I. Faison Hicks, for the State.

FLOOD, Judge.

John Henry Carver ("Defendant") appeals from a jury verdict finding him guilty of one count of attempted first degree murder, and one count of felonious assault with a deadly weapon with intent to kill, inflicting serious injury ("AWDWIKISI"). Defendant contends: (1) the trial court reversibly erred when it refused to instruct on defense of another; (2) the trial court plainly erred by failing to

instruct the jury on the lesser-included offense of attempted voluntary manslaughter; (3) the trial court plainly erred by admitting opinions on the credibility of witnesses and Defendant's guilt; and (4) Defendant was deprived of effective assistance of counsel. We disagree and hold the trial court did not commit reversible error, and Defendant did not receive ineffective assistance of counsel.

I. Factual and Procedural Background

At some point between November and December 2020, Defendant entered an arrangement with Ralph Hudson ("Hudson"), whereby Defendant and his girlfriend, Georgia Darlene Towery ("Darlene") lived in Hudson's trailer as lessees. In early December 2020, Defendant told an acquaintance, Chris Moody ("Moody"), that he wished to "hurt" Hudson.

On 29 December 2020, Defendant invited Hudson to come to the trailer. Later that day, Moody drove to Hudson's trailer and found Defendant, Hudson, Darlene, and a female named Tina Burnett ("Burnett") inside. After Moody's arrival, Defendant brought Moody into the bathroom of the trailer, closed the door, and told Moody he "wanted to kill" Hudson. Moody observed Defendant was "calm" when he made this statement, and he was unarmed. Moody remained in the trailer for approximately ten to fifteen minutes after his exchange with Defendant, and then drove to a store to purchase beer. Moody returned to the trailer, went inside, opened a beer and started drinking it, and also gave a beer to Hudson. At this time, the only people in the trailer were Defendant, Hudson, Moody, Darlene, and Burnett.

According to Moody, he and Defendant were having "a nice conversation" when Defendant then invited Hudson to come speak with him in the bedroom at the back of the trailer. Hudson obliged. After conversing with Defendant, Hudson walked from the back bedroom and, when Hudson reached the living room, Defendant approached Hudson from behind and struck him twice in the head with a one-pound hammer. As Defendant was striking Hudson, Burnett yelled, "[g]et him, get him." At the time of this attack, nobody in the trailer was arguing, and Defendant said nothing to Hudson during the attack. After being struck by Defendant, Hudson fell down, but managed to rise and walk out of the trailer onto the front porch. Defendant followed Hudson out to the front porch and, from the living room, Moody heard two more hammer blows.

After the attack, Moody, who "froze" during the assault, left the trailer and went to his vehicle in the front yard. As Moody was entering his vehicle, Defendant approached Moody with the hammer and told Moody to get rid of it. Moody refused, and Defendant told Moody that, if he did not get rid of the hammer, Defendant "was going to hit [Moody] over the head like he did [Hudson]." Moody took the hammer, drove a distance, threw the hammer behind a bush, and drove to his mother's house.

Upon arrival at his mother's house, Moody disclosed to her that Defendant had struck Hudson with a hammer; there was blood everywhere; and Defendant made him take the hammer, which Moody threw away. Moody's mother called the police. Soon after, a police officer arrived at Moody's mother's house and spoke with Moody.

Moody gave the officer a statement of what had transpired that night, and he told the officer where to find the hammer. Sheriff's Lieutenant Brad Pearson drove to the location and found the hammer. Sheriff's Deputy Matthew Clayton ("Deputy Clayton"), based on Moody's statement, drove to Hudson's trailer.

Soon after arriving at the trailer and conducting an initial inspection inside, Deputy Clayton found Hudson standing away from the trailer, but "bleeding very profusely from the top of his head." Deputy Clayton returned to the trailer and spoke with Defendant, Darlene, and Burnett. Defendant told Deputy Clayton that, at the time of the incident, he had been asleep in the bedroom at the back of the trailer, Burnett had been sleeping on the couch in the living room, and Defendant woke up when he heard Burnett and Hudson arguing and Burnett screaming. Defendant contended to Deputy Clayton that he had then gone into the living room and found Hudson holding a blanket over Burnett's face. Darlene and Burnett each gave Deputy Clayton the same account of these events as Defendant's.

After speaking with Defendant, Darlene, and Burnett, the police obtained a search warrant on the trailer for any evidence therein related to the incident and seized two quilts and duct tape. Additionally, they found a red blanket in the trailer's living room that was "[f]olded over . . . [l]ike you would fold over a blanket and lay it over the top of a couch." On his way into the trailer, Deputy Clayton had also seen "a splatter of blood probably the size of [his] hand" by the door of the trailer, of which he took photographs that he took into evidence.

On 1 January 2021, Darlene contacted Deputy Clayton, and they spoke on a recorded call. Later, Deputy Clayton met in person with Darlene, and he recorded this interview as well. In this interview, Darlene told Deputy Clayton that her initial statement given at the trailer was false, and she "knew [she] needed to tell the truth." Darlene disclosed to Deputy Clayton that Defendant had threatened to kill her if she did not "stick with the story." Darlene gave Deputy Clayton a handwritten statement, which reads, in relevant part:

> [Defendant] and Chris Moody was [sic] in the bathroom back talking while I was in the living room
>
> . . . .
>
> [Defendant] was trying to get me to lure [Hudson] towards the back of the house. I did not. [Defendant] was telling me he was planning on hitting [Hudson] in the head, that I needed to get [Hudson] towards the back of the house. I did not. I went into the living room and sat down in the recliner by the front door. The next thing I remember was hearing a loud sound.
>
> . . . .
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> After that . . . everything was really a blur for me. [Defendant's] motive was he wanted [Hudson's] money. [Defendant] said something to the effect of, "[Hudson's] money will be my money." [Defendant] told me that if I didn't want to die too that I would do what he said. I was fearing for my life. [Defendant] said if I did not do what he said exactly . . . he would kill me.

On 11 January 2020, Deputy Clayton and Deputy Derek Shaffer ("Deputy Shaffer") conducted an additional interview of Defendant, which was recorded.

Defendant initially stated he "didn't believe" he had struck Hudson outside the trailer, but after being shown photographs of the blood spatter found by the door of the trailer, Defendant said: "I remember going outside. I don't remember chasing him, but I . . . could have hit him outside more than one time." Defendant admitted to the officers that he hit Hudson and, after first saying he could not remember the instrument he used to hit Hudson, eventually admitted that he used a hammer. Defendant also disclosed to the officers that he observed, after striking Hudson in the living room, Hudson was "not doing anything else" and was instead "trying to leave" the trailer.

These matters came on for trial on 21 March 2022 in Cleveland County Superior Court. At trial, Moody was the first witness to testify, and he fully imparted his account of the incident. Deputy Shaffer testified about the circumstances surrounding his interview with Defendant. During his testimony, the following exchange occurred between Deputy Shaffer and the prosecutor:

> Q. And did you give [Defendant] your opinion of what happened during that interview?
>
> A. I gave him several opinions of what I felt like happened.
>
> Q. And why is that?
>
> A. Again, I think the tactic for that is to build a connection with him and tell him what I feel and how I feel about the situation. In that specific incident I told him that I felt like there was some plan—there was a plan to get [Hudson] there and then for [Defendant] to attack him or assault him. And based on the information we had, there really

> was no other reason for him to attack [Hudson]. There was some disagreement in the past. We believe he was invited there, based on the other witnesses, but once he got there there's really no reason for him to attack him or to hit him. So . . . my opinion was that[,] . . . whether it was [Defendant] or not, somebody invited [Hudson] there. He gets there, they call him into the bedroom, he goes back out into the living room, and then [Defendant] hits him in the head with a hammer.

Darlene testified and stated Hudson did not assault Burnett at any time during the incident. Darlene also stated that, two days prior to the incident, Defendant told Burnett she could put Hudson's money into her bank account, and "then they could split it." Deputy Clayton testified after Darlene and, in his statement regarding the blanket found during the search of the trailer, provided:

> To me that would mean that [the blanket] was fully opened, and if in the event of a struggle, it would be thrown on the floor. This [blanket] was folded at least in half, if not more times, longways and stretched across[.] . . . It did not appear that somebody had just been using it to keep warm with.

The State also presented as physical evidence, pictures of the blood splatter found by the door of the trailer, and the hammer used to strike Hudson.

At the close of the State's case, Defendant moved to dismiss all charges against him under the "castle doctrine." The trial court denied this motion. Defendant did not testify or put on any evidence. The jury found Defendant guilty of one count of attempted first degree murder and AWDWIKISI. Defendant provided oral notice of appeal.

II. Jurisdiction

Defendant's right to appeal arises from final judgments entered. N.C. Gen. Stat. §§ 7A–26, 7A–27(b)(1), 15A–1441, and 15A–1444(a) (2021). Defendant's appeal is properly before this Court pursuant to Rule 4 of the North Carolina Rules of Appellate Procedure. *See* N.C. R. App. P. 4(a)(1).

III. Analysis

Defendant contends on appeal: (A) the trial court erred when it failed to instruct on "defense of another"; (B) the trial court plainly erred by failing to instruct on the lesser-included offense of attempted voluntary manslaughter; (C) the trial court plainly erred by admitting Deputy Shaffer's testimony regarding the credibility of witnesses and Defendant's guilt; and (D) alternatively, Defendant received ineffective assistance of counsel due to his trial counsel's failure to object to Deputy Shaffer's improper testimony. We address each argument, in turn.

A. Defense of Another Instruction

1. Standard of Review

As an initial matter, Defendant contends this Court's proper standard of review of this issue is *de novo*, where we consider the matter anew and freely substitute our own judgment for that of the trial court. *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008); *see also State v. Williams*, 283 N.C. App. 538, 542, 873 S.E.2d 433, 436 (2022) ("A trial court's decisions regarding jury instructions are reviewed de novo."). The correct review of this issue, however, is for

plain error, as Defendant did not preserve for our review his argument regarding defense of another.

At trial, Defendant's counsel made the following motion to dismiss, which the trial court denied:

> We would like to make a motion that this case be dismissed. . . . I would cite the North Carolina General Statute, and I do . . . not know the specific number, which is commonly known as the *castle doctrine*. In this particular case a man is allowed to defend the *contents of his home*. And I feel that competent evidence has been presented that [Hudson] came in and for whatever reason that he was not welcome or wanted there by [Defendant], and, therefore, he had to defend his home and did so, and as such the case should be dismissed.

(emphasis added). Additionally, the following exchange occurred between Defendant's counsel and the court:

> THE COURT: Oh, you want to be heard on self-defense.
>
> [DEFENSE COUNSEL]: Yes, sir, I do.
>
> . . . .
>
> [DEFENSE COUNSEL]: . . . I believe that some evidence was presented concerning self-defense[.] . . . And as such I believe the self-defense should be included as for the jury instructions for them to consider.
>
> . . . .
>
> [DEFENSE COUNSEL]: I was looking at the [self-defense instruction] that was associated with the first degree murder, but I wasn't completely satisfied with the wording, so I was hoping Your Honor could help me out as far as that's concerned. . . . The way this is written, that he was

> being assaulted, and that's not where we're going. It's more like it's *defense of home and others*.
>
> . . . .
>
> THE COURT: I'll look at those instructions. It's just confusing. It says "[Defendant] assaulted the victim to *prevent a forcible entry into* [Defendant's] *home* or to *terminate the intruder's unlawful entry*." That's what you're talking about?
>
> [DEFENSE COUNSEL]: *Yes sir*.
>
> . . . .
>
> THE COURT: . . . . I just think that in these circumstances there's just not enough evidence for self-defense of *home*, so I'm going to deny the request, but certainly if you want to preserve that for appeal. I just don't think that the evidence is there for self-defense of *home*.
>
> [DEFENSE COUNSEL]: Yes, your Honor.

(emphasis added).

Defendant's argument here concerns defense of another, which he did not preserve at trial for our *de novo* review. Per Defendant's motion and his counsel's colloquy with the court, Defendant preserved for our review only his request for jury instruction on the *castle doctrine*, which is a separate and distinct standard from self-defense and defense of another. *See State v. Walker*, 286 N.C. App. 438, 448, 880 S.E.2d 731, 739 (2022) ("[T]he 'castle doctrine' statute, simply provides that a lawful occupant of a home . . . is entitled to a rebuttable presumption that deadly force is reasonable when used against someone who had or was unlawfully breaking into that

location or kidnapping someone from that location.") (citation omitted); *see State v. Austin*, 279 N.C. App. 377, 380, 865 S.E.2d 350, 353 (2021) ("The castle doctrine is a form of self-defense, but it is broader than the traditional self-defense doctrine because, when the statutory criteria are satisfied, the defendant no longer has the burden to prove key elements of the traditional self-defense doctrine."); *see* N.C. Gen. Stat. § 14-51.2(b) (2021). Because Defendant's argument on appeal does not concern the castle doctrine, however, we will not assess that issue. Instead, we address Defendant's argument on defense of another.

As Defendant did not object to the trial court's failure to instruct the jury on defense of another, we review this matter for plain error. *See State v. McNeil*, 196 N.C. App. 394, 400, 674 S.E. 2d 813, 817 (2009) ("Our review of matters Defendant did not object to at trial is limited to plain error.") (citing N.C. R. App. P. 10(b)(1), (c)(4)). "Plain error is error so fundamental that it tilted the scales and caused the jury to reach its verdict convicting the defendant." *Id.* at 400, 674 S.E.2d at 817 (citation and internal quotation marks omitted). "In deciding whether a defect in the jury instruction constitutes plain error, the appellate court must examine the entire record and determine if the instructional error had a probable impact on the jury's finding of guilt." *Id.* at 400, 674 S.E.2d at 817–18 (citation and internal quotation marks omitted). Put a different way, the inquiry is whether the defendant has shown that, "absent the error, the jury probably would have returned a different verdict." *State v. Lawrence*, 365 N.C. 506, 519, 723 S.E.2d 326, 335 (2012).

2. Analysis

Defendant argues that, although there is ample testimony to establish that he acted unlawfully in this matter, because there is evidence to support the contention that Defendant struck Hudson to stop the alleged attack on Burnett, Defendant was entitled to a jury instruction on defense of another. We disagree.

Under North Carolina law,

> for a defendant to establish entitlement to an instruction on perfect or imperfect self-defense, two questions must be answered in the affirmative: (1) Is there evidence that the defendant in fact formed a belief that it was necessary to kill his adversary in order to protect himself [or another] from death or great bodily harm, and (2) if so, was that belief reasonable. If both queries are answered in the affirmative, then an instruction on self-defense must be given. If, however, the evidence requires a negative response to either question, a self-defense instruction should not be given.

State v. Harvey, 372 N.C. 304, 308, 828 S.E.2d 481, 484 (2019) (citation omitted); *see State v. Perry*, 338 N.C. 457, 466–67, 450 S.E.2d 471, 476 (1994) ("In order to establish either perfect or imperfect defense of another, the evidence must show that it appeared to the defendant and he believed it necessary to kill [his adversary] in order to save another from death or great bodily harm. It must also appear that the defendant's belief was reasonable in that the circumstances as they appeared to him at the time were sufficient to create such a belief in the mind of a person of ordinary firmness.") (citation omitted); *see* N.C. Gen. Stat. § 14-51.3(a)(1) (2021) ("A person is justified in the use of deadly force and does not have a duty to retreat in any place he

or she has the lawful right to be if . . . [h]e or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another."). In answering these two queries, the evidence must be taken in the light most favorable to the defendant. *Harvey*, 372 N.C. at 309, 828 S.E.2d at 484. Moreover, "our law does not permit a defendant to receive the benefit of self-defense if he was the aggressor or initially provokes the use of force against himself[.]" *State v. Parks*, 264 N.C. App. 112, 115, 824 S.E.2d 112, 884–85 (2019) (citation and internal quotation marks omitted) ("An individual is the aggressor if he or she aggressively and willingly enters into a fight without legal excuse or provocation.") (citation and internal quotation marks omitted).

Here, Defendant has not met his burden of establishing he was entitled to a jury instruction on defense of another. At trial, Defendant neither testified nor put on any evidence in support of a defense of another instruction. In fact, both Moody's and Darlene's testimonies indicate Defendant was the aggressor in his attack on Hudson in the living room, which would deprive him of the benefit of self-defense. *See Parks*, 264 N.C. App. at 115, 824 S.E.2d at 884–85. Additionally, given the facts, it certainly cannot be said Defendant's continued attack on Hudson on the front porch constituted lawful defense of another. Although Defendant had the lawful right to be in the trailer as a lessee, there is no evidence that, after Hudson rose and walked away from Defendant to the front porch, Defendant formed a reasonable belief that it was necessary to kill Hudson in order to protect Burnett from death or great bodily

harm. *See Harvey*, 372 N.C. at 308, 828 S.E.2d at 484; *see Perry*, 338 N.C. at 466–67, 450 S.E.2d at 476; *see* N.C. Gen. Stat. § 14-51.3(a)(1). As Defendant himself disclosed to Deputy Clayton and Deputy Shaffer, Defendant recognized at the time of the incident that, after he struck Hudson in the living room, Hudson was no longer a threat and was instead "trying to leave" the trailer. As such, given the lack of evidence presented by Defendant, the testimonies of Moody and Darlene, and the facts surrounding Defendant's continued attack of Hudson on the porch, it cannot be said the trial court's failure to instruct the jury on defense of another had a probable impact on the jury's verdict. *See McNeil*, 196 N.C. App. at 400, 674 S.E. 2d at 817. The trial court did not plainly err.

B. Attempted Voluntary Manslaughter Instruction

Defendant argues the trial court plainly erred in failing to instruct on the lesser-included offense of attempted voluntary manslaughter as, according to Defendant, "the State's evidence of premeditation and deliberation was disputed by [Defendant's] explanation of the event." Specifically, Defendant contends the trial court "failed to provide the jury with the necessary guidance to resolve the highly-disputed issue of [Defendant's] intent. We disagree.

1. Standard of Review

This Court reviews unrequested jury instructions on a lesser included offense for plain error. *State v. Lowe*, 150 N.C. App. 682, 685, 564 S.E.2d 313, 315 (2002). "In order to obtain relief under this doctrine, [a] defendant must establish that the

omission was error, and that, in the light of the record as a whole, the error had a probable impact on the verdict." *Id.* at 685, 564 S.E.2d at 315.

2. Analysis

"In general, a defendant is entitled to have the jury instructed as to a lesser included offense when there is sufficient evidence to support that lesser included offense." *State v. Smith*, 163 N.C. App. 771, 773, 594 S.E.2d 430, 432 (2004). Attempted voluntary manslaughter, a lesser-included offense of attempted first degree murder, is an unsuccessful "intentional killing without premeditation, deliberation or malice but done in the heat of passion suddenly aroused by adequate provocation or in the exercise of imperfect self-defense where excessive force under the circumstances was used or where the defendant is the aggressor." *State v. Guin*, 282 N.C. App. 160, 166–67, 870 S.E.2d 285, 290–91 (2022) (citation and internal quotation marks omitted); *see State v. Miller*, 344 N.C. 658, 667, 477 S.E.2d 915, 921 (1996) ("The elements of an attempt to commit any crime are: (1) the intent to commit the substantive offense, and (2) an overt act done for that purpose which goes beyond mere preparation, but (3) falls short of the completed offense.").

As articulated in our analysis of Defendant's argument on a defense of another instruction, given the evidence surrounding the incident, it is not probable the jury would have returned with a different verdict had the trial court instructed on attempted voluntary manslaughter. *See Lawrence*, 365 N.C. at 519, 723 S.E.2d at 335. Defendant put on no evidence, and Defendant's continued attack on Hudson

outside the trailer was done after a period of time had elapsed between the alleged provocation—Hudson's smothering of Burnett—and Hudson's exit from the trailer. In fact, Defendant himself recognized that Hudson was no longer a threat. Additionally, testimonies from Moody and Darlene—that Defendant wished to "kill" Hudson and "split" Hudson's money with Burnett after the fact—suggests premeditation on Defendant's part. Accordingly, as two requisite elements of attempted voluntary manslaughter are that it be done without premeditation and "in the heat of passion *suddenly aroused* by adequate provocation[,]" it cannot be said that the trial court's failure to instruct on attempted voluntary manslaughter had a probable impact on the jury's verdict. *See Guin*, 282 N.C. App. at 166–67, 870 S.E.2d at 290–91 (emphasis added); *see Lowe*, 150 N.C. App. at 685, 564 S.E.2d at 315. The trial court did not plainly err.

C. Deputy Shaffer's Testimony

Defendant argues the trial court plainly erred in admitting Deputy Shaffer's testimony about his post-arrest interview with Defendant, where, according to Defendant, Deputy Shaffer told the jury he did not believe Defendant struck Hudson in defense of Burnett, and he believed Defendant planned to attack Hudson. We disagree.

1. Standard of Review

At trial, Defendant did not object to Deputy Shaffer's testimony, and we therefore review this issue for plain error. *See McNeil*, 196 N.C. App. at 400, 674 S.E. 2d at 817; *see* N.C. R. App. P. 10(a)(4).

2. Analysis

It is well-established under North Carolina law that a trial court errs when it allows a witness in a criminal case to offer his opinion of whether a defendant is guilty. *See State v. Elkins*, 210 N.C. App. 110, 125, 707 S.E.2d 744, 755 (2011); *see State v. Carrillo*, 164 N.C. App. 204, 210, 595 S.E.2d 219, 223 (2004), *appeal dismissed, disc. rev. denied*, 359 N.C. 283, 610 S.E.2d 710 (2005). This Court has concluded, however, that although it may be error to allow law enforcement officials to provide their opinions regarding a defendant's guilt, it is not plain error if the defendant fails to show that, without this testimony, the jury would have reached a different verdict. *Carrillo*, 164 N.C. App. at 211, 595 S.E.2d at 224; *see State v. Caballero*, 382 N.C. 464, 481, 880 S.E.2d 661, 672 (2021) ("Although this Court has held that the opinions of law enforcement officers can carry great weight with the members of a jury, . . . that fact alone does not suffice to necessitate a finding of plain error in this case given the strength of the State's case against [the] defendant.").

Here, Deputy Shaffer testified he told Defendant in the post-arrest interview that "[Deputy Shaffer] felt like there was some plan . . . to get [Hudson] [to the trailer] and then for [Defendant] to . . . assault [Hudson][,]" and that "based on the information we had, there was really no other reason for [Defendant] to attack

[Hudson]." According to Defendant, it was error for the trial court to allow this testimony. *See Elkins*, 210 N.C. App. at 125, 707 S.E.2d at 755. In review of the whole Record, however, the trial court's admission of this allegedly erroneous testimony, alone, does not necessitate a finding of plain error. *See Carrillo*, 164 N.C. App. at 211, 595 S.E.2d at 224. The State in this case provided ample, admissible testimonial evidence as to Defendant's guilt: Defendant expressed to Moody his wish to "hurt" and "kill" Hudson; Defendant was "calm" in expressing his wishes to Moody; Defendant attacked Hudson outside the trailer after Hudson had retreated; by Defendant's own disclosure to Deputy Clayton and Deputy Shaffer, Hudson was no longer a threat after his retreat; Defendant threatened to harm Moody if Moody refused to dispose of the hammer; Defendant threatened to kill Darlene if she failed to corroborate his account of the incident; and Defendant admitted to Deputy Clayton and Deputy Shaffer that he struck Hudson with a hammer. The State also presented physical evidence in the form of the blood splatter found on the trailer's porch, as well as the bloody hammer Defendant used to strike Hudson. In light of this evidence, it cannot be said that the trial court's admittance of Deputy Shaffer's testimony had a probable impact on the jury's finding of guilt in Defendant. *See Carrillo*, 164 N.C. App. at 211, 595 S.E.2d at 224; *see McNeil*, 196 N.C. App. at 400, 674 S.E. 2d at 817. The trial court did not plainly err.

D. Ineffective Assistance of Counsel

Defendant argues that, in the alternative, he received ineffective assistance of counsel for his counsel's failure to redact Deputy Shaffer's improper testimony. We disagree.

1. Standard of Review

Defendant raises his ineffective assistance of counsel claim for the first time on appeal. "In general, claims of ineffective assistance of counsel should be considered through motion for appropriate relief and not on direct appeal." *State v. Warren*, 244 N.C. App. 134, 144, 780 S.E.2d 835, 841 (2015) (citation and internal quotation marks omitted). Ineffective assistance of counsel claims brought on direct review will be decided on the merits, however, "when the cold record reveals that no further investigation is required[.]" *State v. Fair*, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001). On direct appeal, this Court "limits its review to material included in the record on appeal and the verbatim transcript of the proceedings[.]" *Id.* at 166, 557 S.E.2d at 524–25 (citation omitted).

2. Analysis

Under *Strickland v. Washington*, a defendant must satisfy a two-part test to show ineffective assistance of counsel:

> First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense.

466 U.S. 668, 687, 104 S. Ct. 2025, 2064, 80 L. Ed. 2d 674, 693; *State v. Braswell*, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985). To demonstrate 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." *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. "[T]here is no reason for a court deciding an ineffective assistance of counsel claim to . . . address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697, 104 S. Ct. at 2069, 80 L. Ed. 2d at 699.

As explained above, even if the trial court had struck Deputy Shaffer's testimony, the State's remaining evidence was such that the trial court did not plainly err in allowing the allegedly erroneous portion of Deputy Shaffer's testimony regarding the attack. Had Defendant's counsel moved to redact Deputy Shaffer's testimony, the result of the proceeding would have been the same. *See Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698. Thus, the cold Record reveals Defendant was not prejudiced and did not receive ineffective assistance of counsel.

V. Conclusion

After careful review, we conclude: the trial court did not plainly err when it failed to instruct on defense of another and on attempted voluntary manslaughter, as these alleged errors did not have a probable impact on the verdict; the trial court did not plainly err when it allowed Deputy Shaffer's alleged improper testimony, as this testimony did not have a probable impact on the verdict; and Defendant did not

receive ineffective assistance of counsel. For the foregoing reasons, we affirm the trial court's rulings and the jury's verdict.

NO ERROR.

Judges TYSON and CARPENTER concur.

Report per Rule 30(e).