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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-840

Filed: 6 June 2017

Guilford County, Nos. 13 CRS 24481 and 75989

STATE OF NORTH CAROLINA

v.

CURTIS LEON ABNEY

Appeal by Defendant from judgments entered 12 January 2016 by Judge David L. Hall in Superior Court, Guilford County. Heard in the Court of Appeals 3 April 2017.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Sonya M. Calloway-Durham, for the State.*

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

McGEE, Chief Judge.

Curtis Leon Abney (“Defendant”) appeals his convictions for first-degree murder and possession of a firearm by a convicted felon. We find no error.

I. Background

Marwan “Mike” Mujali (“Mr. Mujali”) and his wife owned and managed an apartment complex in Greensboro, North Carolina known as Wendover Manor

Apartments, which was comprised of four buildings located at 2500, 2502, 2504, and 2506 E. Wendover Avenue (“the apartment complex”).

Mr. Mujali was shot at approximately 10:45 a.m. on 16 April 2013, while standing next to the driver’s side of his van in the parking lot next to building 2504. Mr. Mujali died that same day as the result of a single gunshot wound to the head. Mr. Mujali was alive, but unresponsive when officers from the Greensboro Police Department arrived a few minutes after the shooting. While being treated by Emergency Medical Services, Mr. Mujali’s shirt was removed and a small revolver (“the gun”) was observed in a holster on Mr. Mujali’s right hip. The restraining snap across the top of the holster was secured, and later examination confirmed that the gun was inoperable because of a broken firing pin. An officer seized the gun before Mr. Mujali was transported to the hospital, where he died later that day.

An anonymous woman approached one of the officers and handed him a note indicating she had information about the shooting. The woman was later determined to be Chevey Houghton (“Ms. Houghton”), a resident of the apartment complex. An officer had knocked on Ms. Houghton’s door while canvassing the apartment complex and asked if she knew anything about the shooting, but she denied any knowledge at that time. After handing over the note, Ms. Houghton met with a detective at a separate location and indicated she could identify the assailant. Ms. Houghton stated

she had not wanted to speak to an officer at the scene because she was concerned about her safety.

Ms. Houghton stated she was at home the morning of 16 April 2013, when she heard an argument in the parking lot. She looked out from an upstairs window and saw Mr. Mujali and Defendant. She saw Defendant raise his hands and saw Mr. Mujali, with both hands raised, back away from Defendant. Ms. Houghton heard gunshots and jumped back from the window. When she returned to the window, she saw Mr. Mujali lying on the ground and Defendant running toward nearby woods.

Ms. Houghton was able to identify Mr. Mujali and Defendant because she was familiar with both of them. Mr. Mujali was her landlord, and she had seen Defendant, known to her as “Money,” around the apartment complex “all the time.” Ms. Houghton told the detective that “Money” lived in apartment 2504-G (hereafter “2504-G”) with a black female later determined to be his aunt, Yolanda Pittman. Ms. Houghton described Defendant as “a black male, 26 to 27 years of age, long dreadlock hair, always armed with a handgun.”

Officers checked databases for the nickname “Money” and determined Defendant went by that nickname and that he also used the alias “Javon Pittman.” Officers showed Ms. Houghton a photo lineup containing Defendant’s photograph and she identified Defendant’s picture immediately, stating “[t]hat’s Money, 100 percent.” Based on Ms. Houghton’s identification, the police searched for a “dark-skinned,

slender black male, shoulder length dreads, approximately five foot seven to five foot nine feet tall[,] last seen wearing a white T-shirt[,] running east from 2504 . . . Wendover Avenue.” Officers attempted to track the suspect using a canine unit and also continued to canvass the residents of the apartment complex.

Officers obtained a search warrant for 2504-G and, during their search, discovered a bag of .22 caliber bullets and paperwork with Defendant’s name. Outside 2504-G, officers found a Cook Out cup and a Minute Maid bottle on one of the air conditioning units. Officers noticed that all other air conditioning units were covered in pollen, but that the one for 2504-G appeared to have been “wiped clean of the pollen.” Fingerprints were lifted from the Minute Maid bottle and from the air conditioning unit for 2504-G. An analysis showed the fingerprints belonged to Defendant. However, a fingerprint examiner later testified that it was not possible to determine when the prints were left on the Minute Maid bottle and on the air conditioning unit. Based on Ms. Houghton’s identification of Defendant, and the items recovered in the search of 2504-G, police obtained an arrest warrant for Defendant, and charged him with first-degree murder. Defendant was indicted on charges of first-degree murder and possession of a firearm by a felon on 15 July 2013 and was later tried non-capitally.

At trial, Brittany Mathis (“Ms. Mathis”) testified that the afternoon of the shooting, Defendant called her and asked her to pick him up so he could visit her.

Defendant and Ms. Mathis had met weeks earlier at a Cook Out restaurant in Greensboro and had daily phone contact thereafter. Ms. Mathis was a student at Campbell University and resided in Buies Creek, North Carolina. Defendant, known to Ms. Mathis as “Javon,” had not visited Ms. Mathis in Buies Creek because he had no transportation, but Ms. Mathis had visited Defendant in Greensboro several times. Each time she visited Defendant, they met in 2504-G. Ms. Mathis never spent the night and she and Defendant had little privacy during those visits, although they were able to be intimate together. They had talked several times about Defendant coming to Buies Creek to visit her.

Ms. Mathis assumed she would pick Defendant up at 2504-G on 16 April. However, Defendant directed Ms. Mathis to pick him up at a Wal-Mart in Greensboro. Ms. Mathis testified Defendant’s demeanor was “normal” when she picked him up at the Wal-Mart. On the way to Buies Creek, they stopped at another Wal-Mart in Garner, North Carolina and Defendant bought personal items, such as undergarments and a toothbrush. Ms. Mathis drove on to her apartment in Buies Creek and she and Defendant spent the night together.

The next morning, Ms. Mathis went to her classes, but returned to her apartment during breaks in her schedule so she and Defendant could spend time together. Ms. Mathis described Defendant’s demeanor that day as “normal.” That

evening, while Ms. Mathis was at work, she received a phone call from a detective requesting that she return to her apartment.

On the day of the shooting, officers had received information from an informant that Defendant could be at Ms. Mathis's apartment. The next day, approximately fifteen to twenty officers from various agencies assembled to arrest Defendant. Officers knocked on the door of Ms. Mathis's apartment, while also using a public address system to announce their presence, and calling Defendant by name. After approximately fifteen minutes, Defendant opened the door and surrendered to the officers. Officers asked Defendant if anyone else was in the apartment, and he responded: "That attic door is open because I was up there."

Officers searched Ms. Mathis's apartment and noted that the attic opening had no pull-down stairs. No ladder or step stool was observed, but a chair was near the attic opening. The access panel had been moved and there was insulation on the ground. In the attic, officers noted what appeared to be a "forced hole in the wall." Officers seized items in Ms. Mathis's apartment that belonged to Defendant, including several items of clothing and two cell phones.

After the search of Ms. Mathis's apartment, officers transported Defendant to Greensboro. The officers noted that Defendant's demeanor and behavior seemed odd, stating Defendant appeared "[v]ery relaxed . . . almost happy" and that he flirted with

a worker at a McDonald's drive-through. Defendant was processed upon his arrival in Greensboro and had his photograph, a DNA sample, and fingerprints taken.

Detectives began a recorded interview with Defendant at approximately 1:45 a.m. on 18 April 2013. Officers described Defendant's demeanor as "confident." Detectives asked Defendant if he resided at the apartment complex and he said he did not, but stated: "I come there a lot." When asked what he knew about the shooting on 16 April 2013, Defendant responded: "Yeah, I heard what went on over there, but that's got nothing to do with me." Defendant continued, stating: "They said landlord got killed. That's not my problem. I don't have nothing to do with that."

Defendant had two cell phones — a Verizon Motorola Droid and a Cricket Hauwei. The police seized both phones. Analysis of the phones showed that the Cricket phone records were consistent with the phone being used in the vicinity of the apartment complex at the approximate time of the shooting on 16 April 2013.

The medical examiner testified that Mr. Mujali was shot in the left side of his head, near the temple, and that the bullet traveled through the brain from left to right at a slight downward trajectory, and did not exit the skull. The bullet recovered from Mr. Mujali's body was a .22 caliber bullet.

The State called as a witness Mark Whitsett ("Mr. Whitsett"), an inmate who came into contact with Defendant in a holding cell about a year after the shooting. Guilford County Jail Inmate records showed that at 9:00 a.m. on 6 May 2014, jailors

moved inmates Mark Whitsett and Defendant from the jail to superior court in Greensboro. Mr. Whitsett testified that he had not met Defendant before 6 May 2014 and had not seen him since that day, but he recalled that Defendant went by the name “Money.” Mr. Whitsett also stated he was not familiar with any media reports about the shooting on 16 April 2013.

Mr. Whitsett testified he heard Defendant speaking to other inmates. He stated Defendant first complained his bond hearing had been denied and that “this wasn’t the first time he had gotten off on a charge like this.” Mr. Whitsett further testified Defendant said:

all they were doing anyway . . . at the apartment complex, was smoking weed and having a good time and this guy walked up to him and told him to leave the premises . . . [and] showed him . . . a gun on his side. And so he said, it was like that. And so he went in the house. And he said, I can get a gun, too. So he went in the house and came out with a gun and shot the individual.

Mr. Whitsett said that Defendant stated that the person who showed him the gun was an individual named “Mike” who worked at the apartment complex. Mr. Whitsett stated Defendant said he was outside smoking weed and talking at the air conditioning units “when the guy [called] Mike approached.” Mr. Whitsett testified Defendant said, “once [Mike] had showed the pistol, [Defendant] said, ‘Oh, that’s how you want to play[,]’ [and] [s]o at that time, [Defendant] walked in the house and he got . . . a gun and came and got him [Mr. Mujali].” When asked to describe



Defendant's demeanor, Mr. Whitsett stated it was: "Loud, angry at first. And then once he started talking about what was going on with the other guy . . . he wasn't sad anymore, that's for sure . . . [i]t wasn't like he was regretting it."

Mr. Whitsett notified authorities about what he had heard Defendant saying on 6 May 2014 by sending a letter to the district attorney's office. Detectives interviewed Mr. Whitsett on 5 June 2014. After meeting with the detectives, Mr. Whitsett entered into a plea agreement with the State. As part of Mr. Whitsett's plea agreement, a habitual felon indictment was dismissed and Mr. Whitsett pleaded guilty to three charges of obtaining property by false pretenses.

Defendant was convicted on all charges. Defendant appeals.

## II. Flight Instruction

### A. Standard of Review

Defendant's sole argument is that the trial court erred in instructing the jury on flight over Defendant's objection. Defendant contends the instruction was not supported by the evidence. "Assignments of error 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).

"Where jury instructions are given without supporting evidence, a new trial is required." *State v. Porter*, 340 N.C. 320, 331, 457 S.E.2d 716, 721 (1995). "[A]n 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) (quoting N.C. Gen. Stat. § 15A-1443(a) (2007)). A defendant bears the burden of showing prejudice. *See* N.C. Gen. Stat. § 15A-1443(a) (2015). In determining whether a flight instruction was supported by sufficient evidence, this Court views the evidence in the light most favorable to the State. *See State v. Grooms*, 353 N.C. 50, 80, 540 S.E.2d 713, 732 (2000).

## B. Analysis

### 1. Preservation

The State argues Defendant did not preserve this issue for appellate review in failing to distinctly state his grounds for objection, thereby waiving his right to raise the issue on appeal. Specifically, although Defendant did object to the flight instruction, the State contends he failed to argue insufficiency of the evidence to support a flight instruction.

At the close of the State’s evidence, the trial court asked whether the parties had any motions or other matters to be heard. Defense counsel renewed a motion to dismiss all charges based on insufficiency of the evidence, arguing “[t]he [S]tate’s evidence was so insufficient that to submit these charges to the jury would violate his due process rights under the U.S. and [S]tate constitutions.” The court denied

Defendant's motion. During the charge conference, the trial court set forth the instructions it intended to give to the jury that included "flight in first degree murder cases with the caveat that the defendant denies." The court asked defense counsel for motions or objections to the proposed jury instructions. As to the flight instruction, defense counsel stated:

I understand that the court's going to give the flight instruction. For appellate purpose only, this is just an issue that I thought with the North Carolina Supreme Court in the past, it's the modern trend not to instruct on flight . . . I'm going to say for the record that we believe the instruction on flight would violate the defendant's right to due process under the state and federal constitution, and I would object to it. And I don't want to be heard any further on that.

The trial court responded to Defendant's objection as follows:

Now, with respect to flight in first degree murder cases . . . , let the record reflect I do not give this instruction lightly. This is after great deliberation and great thought on my part and after reading...all of the case law dealing with this instruction in first degree murder cases.

And I think [defense counsel's] description that there is a trend perhaps not to give the charge, I do not disagree with that.

In this particular case, however, the [S]tate's evidence, if believed, . . . more than casually reflects flight, in that there is a witness who allegedly sees the defendant at the scene, allegedly, at the point of the shooting.

There has been evidence . . . related to the phones found in the defendant's presence that a jury could believe show

movement from the scene of the offense all the way to the Buies Creek . . . area of the state, which the court knows is roughly 90 miles from here.

Furthermore, there is direct evidence, if the jury chooses to believe it, that the young lady actually drove the defendant from . . . Greensboro to the Buies Creek area shortly after the alleged offense.

There is evidence that the defendant was located in the . . . Buies Creek area . . . the day after this alleged offense.

There is evidence that a track was conducted from the point of the alleged homicide offense through the woods and to and adjacent commercial area where the dog may or may not have lost some type of track.

All of that taken together, the court believes, based upon the case law, more than justifies the giving of [the flight instruction]. And the court does intend to leave in the parenthetical that the defendant requests, "and the defendant denies."

During the charge conference, the trial court asked defense counsel twice more if he wanted to be heard further on the jury charge, but defense counsel declined.

"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). Rule 10 further states:

[a] party may not make any portion of the jury charge or omission therefrom the basis of an issue presented on appeal unless the party objects thereto before the jury retires to consider its verdict, stating distinctly that to which objection is made and the grounds of the objection;

provided that opportunity was given to the party to make the objection out of the hearing of the jury, and, on request of any party, out of the presence of the jury.

N.C.R. App. P. 10(a)(2). We therefore consider whether, in the present case, Defendant (1) presented to the trial court a timely objection, (2) before the jury retired to continue its verdict, (3) based on sufficiency of the evidence.

It is clear from the record that Defendant presented a timely objection on the flight instruction before the jury retired to consider its verdict, and the State did not challenge Defendant's objection. Thus, the question before this Court is whether Defendant objected to the flight instruction on the ground of insufficient evidence.

The State argues Defendant's failure to cite insufficient evidence as the basis for his objection violated Rule 10(a)(2), which requires that a party "state distinctly" his grounds for objection. The State contends Defendant argued *only* that giving a flight instruction would violate his due process rights and that there was a "modern trend" against giving the instruction on flight.) In *State v. Carroll*, 356 N.C. 526, 540, 573 S.E.2d 899, 909 (2002), the Supreme Court held the defendant could not argue on appeal that the trial court's wording of jury instructions implied he was guilty where his only objection at trial concerned the order that the instructions were given to jury. See *State v. Beck*, 346 N.C. 750, 759, 487 S.E.2d 751, 757 (1997) (the defendant could not raise wording of flight instruction on appeal where he made only a general objection to flight instruction at trial).

The State's argument fails because the present case is not analogous to *Carroll* or *Beck*. In those cases, the defendants raised specific and pointed issues before the appellate court without making those same specific objections at trial. Here, however, Defendant made a general objection to the trial court and now raises that same general objection on appeal. The underlying basis for a general objection to jury instructions is lack of sufficient evidence, as shown by authority stating that a trial court should only give jury instructions supported by the evidence presented at trial. *See State v. Cameron*, 284 N.C. 165, 171, 200 S.E.2d 186, 191 (1973) (“[A] trial judge should not give instructions to the jury which are not supported by the evidence produced at the trial.”) .

Furthermore, it is clear from the record that the trial court was aware that Defendant's objection was based on insufficient evidence. Immediately prior to the charge conference, defense counsel moved to dismiss all charges, arguing “[t]he [S]tate's evidence was so insufficient that to submit these charges to the jury would violate [Defendant's] due process rights under the U.S. and [S]tate constitutions.” Thus, during the charge conference when defense counsel stated he objected to the flight instruction because it would violate Defendant's due process rights, the context showed that he was repeating his prior argument and reiterating that Defendant's due process rights would be violated if the jury instruction was given despite insufficient evidence.

More importantly, the trial court's response to Defendant's objection showed a clear understanding that the objection was based on insufficient evidence. After overruling Defendant's objection, the trial court then explained its ruling by detailing the evidence that supported the flight instruction. That exchange clearly showed that the trial court was aware of the basis for Defendant's objection.

The State complains that Defendant did not "state distinctly" his grounds for objection because Defendant did not use the words "insufficient evidence" or "lack of evidence." However, the purpose of Rule 10 is not to require specific language, but "to encourage the parties to inform the trial court of errors in its instructions so that it can correct the instructions and cure any potential errors before the jury deliberates on the case and thereby eliminate the need for a new trial." *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). Here, Defendant has met the requirements of Rule 10 because it is apparent from the record that Defendant's ground for objecting to the flight instruction was insufficiency of the evidence. We conclude Defendant preserved the right to appeal the trial court's instruction on flight.

## 2. Merits

"In order to justify an instruction on flight there must be some evidence in the record reasonably supporting the theory that the defendant fled after the commission of the crime charged." *State v. Fisher*, 336 N.C. 684, 706, 445 S.E.2d 866, 878 (1994). A flight instruction also requires "some evidence that defendant took steps to avoid

apprehension.” *State v. Thompson*, 328 N.C. 477, 490, 402 S.E.2d 386, 392 (1991). In addition, “[e]vidence which merely shows it possible for the fact in issue to be as alleged, or which raises a mere conjecture that it was so . . . should not be left to the jury.” *State v. Lee*, 287 N.C. 536, 540, 215 S.E.2d 146, 149 (1975) (citation omitted).

In the present case, the trial court instructed the jury as follows:

The [S]tate contends and the defendant denies that the 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 the defendant's guilt.

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

*See State v. Self*, 280 N.C. 665, 672, 187 S.E.2d 93, 97 (1972) (“North Carolina has long followed the rule that an accused’s flight from a crime shortly after its commission is admissible as evidence of guilt.”); *see also State v. Rainey*, 198 N.C. App. 427, 439, 680 S.E.2d 760, 770 (2009) (“Evidence of flight does not create a presumption of guilt, but is to be considered with other factors in deciding whether the circumstances ‘amount to an admission of guilt or reflect a consciousness of guilt.’”) (citation omitted).

Defendant contends that the evidence “raises no more than ‘suspicion or conjecture’ that [he] engaged in behavior constituting ‘flight.’” He argues that



“[v]isiting a friend at their residence is not an act that, by itself, raises a reasonable inference that [a] defendant was attempting to avoid apprehension.” *State v. Holland*, 161 N.C. App. 326, 330, 588 S.E.2d 32, 36 (2003) (holding the trial court erred in instructing the jury on flight where the evidence showed that the defendant left the crime scene and drove to the home of an accomplice, then was driven to a girlfriend’s residence). The evidence in the present case shows that Defendant contacted Ms. Mathis on the afternoon of 16 April 2013 in order to spend time with her at her apartment in Buies Creek. Although Defendant and Ms. Mathis had met only several weeks earlier, they had spent a significant amount of time together and had discussed being alone with each other because they did not have much privacy at 2504-G in Greensboro. Thus, even though Defendant had not visited Ms. Mathis in Buies Creek prior to this visit, Defendant contended the visit was not abnormal based on their prior discussions and the visit did not indicate an attempt to avoid apprehension.

Defendant further argues the mere fact that he left the scene of the crime is not enough to warrant an instruction on flight, as there “must also be some evidence that defendant took steps to avoid apprehension.” *Thompson*, 328 N.C. at 490, 402 S.E.2d at 392 (holding that the trial court erred in instructing on flight where the defendant, a military serviceman, fled the crime scene and drove to an off-limits area of the military base where he was stationed, and then drove off when approached by

a military police car). In the present case, Defendant points out that he acted “normal” while with Ms. Mathis; that there was no evidence he asked her to keep his location a secret; that the officers who arrested him had no apparent difficulty locating him in Buies Creek and, thus, there was no evidence he was trying to conceal his whereabouts; and that he cooperated with police instructions when apprehended. **(Def. br. at 18-19)**

The State responds to Defendant’s arguments by pointing out that: “So long as there is some evidence in the record reasonably supporting the theory that defendant fled after commission of the crime charged, the [flight] instruction is properly given. The fact that there may be other reasonable explanations for defendant's conduct does not render the instruction improper.” *State v. Irick*, 291 N.C. 480, 494, 231 S.E.2d 833, 842 (1977). The State further argues that our Courts have found evidence sufficient to support a flight instruction under similar circumstances.

The State argues it was not part of Defendant’s normal routine to stay away from his aunt’s apartment at 2504-G. In *State v. Shelly*, this Court held that the trial court did not err in instructing the jury on flight where:

evidence presented at trial established that [d]efendant left the scene of the shooting and did not return home. Rather, he spent the night at the home of his cousin's girlfriend, an action that was not part of [d]efendant's normal pattern of behavior and could be viewed as a step to avoid apprehension.

*State v. Shelly*, 181 N.C. App. 196, 209, 638 S.E.2d 516, 526 (2007); *see also State v. Blakeney*, 352 N.C. 287, 315, 531 S.E.2d 799, 819 (2000) (finding sufficient evidence defendant took steps to avoid apprehension where defendant fled crime scene and “[r]ather than return home, as originally intended, defendant . . . went to [another individual’s] house and remained there overnight.”). Defendant responds that it was never established at trial that he actually lived at the apartment complex and thus there was no evidence to support a claim that his failure to go back to 2504-G was not part of his normal routine.

The facts in the present case are similar to *State v. Hope*, where the defendant argued he was equally “at home” at both his girlfriend’s apartment in Durham, North Carolina and at a relative’s home in Grifton, North Carolina and, thus, the fact that the defendant went to Grifton after commission of the crime did not indicate an intent to avoid apprehension. *State v. Hope*, 189 N.C. App. 309, 319-320, 657 S.E.2d 909, 915 (2008). This Court rejected this argument, reasoning:

Defendant’s conduct did not seem to be a part of his normal pattern of behavior and could be viewed as steps to avoid apprehension. Moreover, regardless of whether defendant’s home can be regarded as his girlfriend’s or his relative’s home, he returned to neither immediately after leaving the scene of the crime.

*Id.* at 320, 657 S.E.2d at 915. Here, as in *Hope*, whether 2504-G was Defendant’s residence is not relevant; Defendant did not return there, or to any other place he claimed to call “home,” after the shooting. Furthermore, it appears it was part of

Defendant's normal routine to spend a significant amount of time at 2504-G because Ms. Houghton recognized him and knew him by name, and it was the location where he had Ms. Mathis visit him on her trips to Greensboro. It was also clearly not part of Defendant's normal routine to visit Ms. Mathis at her apartment in Buies Creek. Ms. Mathis and Defendant had talked about him visiting her, but he had not yet done so. This was the first time he had called Ms. Mathis to ask her to pick him up rather than come and visit him in Greensboro. Thus, this visit could not have been part of a "normal routine." In addition, Defendant's asking Ms. Mathis to pick him up at a Wal-Mart rather than at 2504-G where she had always met him before, showed that this visit was different from past visits.

The State identifies additional factors that support a flight instruction, including the distance traveled and an attempt to hide. Defendant allegedly left Greensboro after the shooting and traveled approximately two hours to Buies Creek. *See State v. Allen*, 346 N.C. 731, 741, 488 S.E.2d 188, 193 (1997) (finding evidence supported flight instruction where defendant drove away from the scene of the crime and was apprehended later that night in another county). In addition, Defendant volunteered to the police that he had been in the attic of Ms. Mathis's apartment, where an officer observed a "forced hole in the wall." Defendant's presence in the attic of an apartment he was visiting, plus the "forced hole," is evidence of an attempt to hide and thus supports an inference that Defendant attempted to avoid

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apprehension. *See State v. Abraham*, 338 N.C. 315, 362, 451 S.E.2d 131, 156-157 (1994) (finding no error in an instruction on flight where defendants were found three weeks after the shooting hiding in a closet underneath a pile of clothing); *see also State v. Green*, 321 N.C. 594, 607, 365 S.E.2d 587, 595 (1988) (sufficient evidence of flight to support an instruction where police discovered defendant hiding in a closet).

We conclude there was sufficient evidence that Defendant took steps to avoid apprehension in the hours and days after leaving the scene of the crime on 16 April 2013. Accordingly, we hold that the trial court did not err in instructing the jury on flight.

NO ERROR.

Judges HUNTER, JR. and ZACHARY concur.

Report per Rule 30(e).