IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1115

Filed: 6 August 2019

Clay County, Nos. 15 CRS 44, 15 CRS 50154, 16 CRS 28, 17 CRS 115

STATE OF NORTH CAROLINA

v.

CHARLES ALAN FANCHER, Defendant.

Appeal by Defendant from judgments entered 15 March 2018 by Judge Bradley B. Letts in Superior Court, Clay County. Heard in the Court of Appeals 23 April 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Donna B. Wojcik, for the State.

Paul F. Herzog for Defendant-Appellant.

McGEE, Chief Judge.

Charles Alan Fancher ("Defendant") appeals from judgments entered after a jury found him responsible for driving left of center and guilty of driving while impaired, assault with a deadly weapon with intent to kill, two counts of misdemeanor assault with a deadly weapon, and three counts of assault with a deadly weapon on a government official. Defendant argues (1) the trial court erred in not

instructing the jury on the elements of self-defense and (2) Defendant's attorney at trial provided ineffective assistance of counsel to Defendant. We hold the trial court did not err in not instructing the jury on self-defense, and Defendant's attorney at trial did not provide ineffective assistance of counsel to Defendant.

I. Factual and Procedural History

The State's evidence at trial tended to show Defendant was driving a white Chevy Impala on U.S. Highway 64 West in Clay County toward Cherokee County around midnight on 24 April 2015. Deputy Chris Moral ("Deputy Moral") of the Clay County Sheriff's Department, testified he drove behind Defendant and witnessed him crossing over the center line multiple times. Upon reaching "the top of the Buck's Straight . . . going into the Sweetwater Gap," Deputy Moral initiated blue lights and siren, but Defendant failed to stop.

Deputy Moral testified Defendant suddenly slammed on his brakes when they reached "somewhere in [the] general area . . . [of] Sweetwater Church." Deputy Moral stopped his vehicle and attempted to exit his car to approach Defendant, but Defendant "turned [his vehicle] around and went back east towards Hayesville." Deputy Moral radioed his partner, Deputy Shon Crisp ("Deputy Crisp"), about Defendant's driving. Deputy Crisp blocked U.S. Highway 64 West with his vehicle. However, because Defendant veered his vehicle toward Deputy Crisp's vehicle, Deputy Crisp reversed out of Defendant's way, and Defendant "continued back east

towards Hayesville." Deputy Moral then contacted Investigator Bobby Deese ("Investigator Deese") and Investigator Chad Hall ("Investigator Hall"), with the Clay County Sheriff's Office. Investigators Deese and Hall were further down U.S. Highway 64 West, in front of the Smokehouse restaurant ("the Smokehouse").

Investigator Deese testified he saw both Deputy Moral's and Deputy Crisp's vehicles with their "blue lights on" chasing Defendant's vehicle. When Investigator Hall saw Defendant's vehicle swerving toward him and Investigator Deese, he parked their vehicle sideways on U.S. Highway 64 West to stop Defendant. Defendant drove around the vehicle and turned to drive toward Cherokee County. Deputy Moral testified he kept his lights and sirens on throughout the entire chase, and he pursued Defendant up to "the intersection of U.S. Highway 64 West and N.C. 69." Defendant then "made a right-hand turn back onto U.S. Highway 64 West heading back towards Murphy." Deputy Moral, Deputy Crisp, and Investigators Hall and Deese "followed [Defendant] all the way to the Cherokee County line." Deputy Moral testified that, up to this point, he had been following Defendant's vehicle for approximately "six, seven minutes[.]"

Upon reaching Cherokee County, the officers slowed down because Sergeant Dan Sherrill ("Sergeant Sherrill") with the Cherokee County Sheriff's Department, informed them that he had deployed "stop sticks." Sergeant Sherrill parked his vehicle on Mission Road at the Cherokee County line and observed Defendant

speeding toward the "stop sticks." After Defendant hit the "stop sticks" with his vehicle, he crashed into an embankment. Defendant reversed out of the embankment and drove head-on toward Sergeant Sherrill's vehicle. Sergeant Sherrill "had to swerve to get out of . . . [Defendant's] way."

Defendant's tires deflated, and he turned into an embankment. Deputy Moral, Deputy Crisp, and Investigators Hall and Deese used their vehicles to block Defendant's vehicle from leaving the embankment, but Defendant accelerated quickly in the direction of Investigator Hall. Defendant struck the door on the driver's side of Investigator Hall's vehicle, which was the side where Investigator Hall was standing. Investigator Deese believed Defendant had hit Investigator Hall and drew his weapon, but did not fire because he realized Defendant did not actually hit Investigator Hall. Defendant then drove "back east towards Clay County" with flat tires and exposed rims.

Deputy Moral spoke with Captain Alan Rocky Sampson ("Captain Sampson") with the Clay County Sheriff's Department, who was also involved with the chase. Captain Sampson parked his SUV in the middle of the two-lane highway with "his blue lights on" to set up a roadblock, and remained in his vehicle. As Defendant approached Captain Sampson's SUV, Defendant "swerve[d] from right to left," did not slow down, and drove head-on into the driver's side of Captain Sampson's SUV.

Sergeant Sherrill witnessed Defendant hit Captain Sampson's SUV, then exited his vehicle to stop Defendant from driving.

Sergeant Sherrill used his hands to "str[ike] [Defendant] a few times" in an effort to stop Defendant from fleeing because he saw Defendant "trying to get [his vehicle] into reverse." Defendant drove with Sergeant Sherrill's arm still inside Defendant's vehicle, and Defendant's vehicle briefly pulled Sergeant Sherrill's arm before Sergeant Sherrill could remove his arm from Defendant's vehicle, resulting in bruising around Sergeant Sherrill's right arm.

Captain Sampson stepped out of his SUV, and Defendant reversed his vehicle and drove toward Captain Sampson. Because Defendant's vehicle "was so close" to him, Captain Sampson drew his weapon and fired six times at Defendant's vehicle "as [Defendant's vehicle] nearly hit [Captain Sampson] going by."

Defendant continued driving "east towards Hayesville," and the officers followed him. Captain Sampson drove in front of Defendant and reduced his speed to force Defendant to slow down. However, Defendant "accelerated and slammed" his vehicle into the back of Captain Sampson's SUV, causing Captain Sampson's brakes to lock. Sergeant Sherrill, driving behind Defendant's vehicle, "pinned [his] vehicle up against [Defendant's] back bumper to stop him from getting away." Defendant reversed his vehicle and hit Sergeant Sherrill's vehicle, but Defendant could not flee because his vehicle was pinned between the vehicles of Captain Sampson and

Sergeant Sherrill. Defendant locked his car and rolled up the windows. Sergeant Sherrill then used an asp and a sidearm baton to shatter the driver's side window of Defendant's vehicle, but Defendant still tried to reverse his vehicle.

Deputy Moral testified he observed Defendant trying to find something on the passenger side floorboard—possibly "a weapon" —and Defendant did not listen to the officers' commands to show his hands. Deputy Moral used his Taser on Defendant, but it was ineffective because only one of the two prongs connected to Defendant. Deputy Moral physically touched Defendant with the Taser gun (a "dry stun") to shock him effectively, and the officers pulled Defendant out of his vehicle. After a struggle, the officers handcuffed Defendant, and Deputy Moral transported Defendant to the Clay County Sheriff's Office. Deputy Moral testified the entire incident lasted "probably 12 to 15 minutes"—from the point he "initially observed the vehicle and began following it until . . . [Deputy Moral] placed [Defendant] in [his] patrol car."

Deputy Moral observed Defendant had red and glassy eyes, possessed a strong odor of alcohol, slurred his speech, and refused to take a breathalyzer test. Defendant repeatedly told Deputy Moral that Defendant acted in an erratic manner because he wanted the officers "to kill him." Defendant complained of chest pains and was transported to the hospital. Deputy Moral obtained a search warrant for a blood test of Defendant, and Deputy Moral gave the warrant to a nurse at the hospital

to draw Defendant's blood. Defendant's blood alcohol content was .07 at 2:36 a.m. on 24 April 2015.

Defendant testified at trial that, for three weeks prior to his arrest, he had been visiting his aunt and her boyfriend and working as a mechanic in Clay County. Defendant met Susan Green ("Ms. Green") at a local restaurant ("the restaurant") at 8:30 p.m. on 24 April 2015 and drank two beers and a "Jack and Coke" over the course of their dinner. Defendant testified he saw Investigator Deese, Investigator Hall, and Deputy Crisp driving around the restaurant and "coming in and out of [the parking lot]," while Defendant was with Ms. Green. After Ms. Green left the restaurant, both a waitress and a bartender informed Defendant that Ms. Green was previously married to Detective Fred Green of the Clay County Sheriff's Office.

Defendant left the restaurant between 9:30 p.m. and 10:00 p.m. and drove toward Wal-Mart to buy more minutes for his cellphone. Defendant testified he was not impaired while driving. Defendant also said he generally has red, glassy eyes and slurred speech. Defendant stated he was not swerving while driving and did not encounter Deputy Moral's vehicle until much later in the evening.

Defendant stopped at Jane's Tractor Supply to charge his phone and saw an SUV (the "SUV") with its lights on parked a "football field" away from him. The SUV drove toward him approximately thirty minutes later. Defendant testified he exited his car to speak to the driver of the SUV, but the driver told him to get off his property.

Defendant then got back into his car. The SUV driver yelled at Defendant to leave, and Defendant tried to leave the scene. However, the SUV driver blocked Defendant from entering Highway U.S. 64 West, and Defendant told the SUV driver he needed to move. The two continued exchanging words, and Defendant heard a gunshot and a bullet passed him. Defendant asked the SUV driver to move so he could leave because he did not "want to die," and Defendant sped east on Highway U.S. 64 West toward Hayesville.

Outside Hayesville, Defendant saw two "police cars" around the Smokehouse. Defendant testified he saw the SUV driver, who was continuing to fire multiple gunshots, behind him. Defendant made a u-turn toward Cherokee County to follow the law enforcement vehicles, which had their lights and sirens on. Defendant noticed the SUV driver and another law enforcement vehicle were behind him. Defendant passed other officers who "were firing at [Defendant's] car like crazy," and he "had bullet holes coming through the side of [his] car like nothing." Defendant stopped his vehicle briefly near a bridge, but then resumed driving because "the bullets [flew] by [his] head . . . [and] one hit [his] shirt." Defendant testified Investigator Hall ran "across the bridge firing his weapon" at Defendant's vehicle. According to Defendant, Investigators Hall and Deese never blocked the road with their vehicle, and Defendant neither hit their vehicle nor attempted to hit Investigator Hall.

Defendant testified he drove to the other side of the bridge to avoid the officers' gunfire and dented his car running into an embankment. Bullets penetrated Defendant's vehicle in all directions and glass shattered in Defendant's face. Defendant pulled over, and Deputy Moral parked behind him and started walking toward Defendant. Defendant testified he "didn't see . . . [and] [d]idn't hear [Deputy Moral's siren]." Defendant testified Deputy Moral told him to leave because "we're going to kill you," and Defendant offered Deputy Moral a cigarette to calm down and talk. Defendant said Deputy Moral reached for his weapon, and Defendant then drove away toward Cherokee County. Defendant said he made a u-turn at a stop sign because he did not want to bring the vehicle chase into town and possibly hurt someone. Defendant searched for a state trooper to help him as the officers continued to chase, shoot, and use a "pit" tactic on Defendant. Defendant described the "pit" tactic as officers using their vehicles to "rock[] [him] off from side to side off the road" and "hitting the back end [of his vehicle], trying to get on the front end [of his vehicle], [and] jumping on the brake[.]"

Officers forced Defendant onto the embankment, but Defendant drove around the officers toward Clay County. Defendant made another u-turn toward Cherokee County and drove over the "stop sticks." Defendant saw Sergeant Sherrill on the right side of the road and drove on the far left side of the road to avoid Sergeant Sherrill's vehicle. Defendant denied attempting to hit Sergeant Sherrill and his

vehicle. Defendant made another u-turn because his car was difficult to drive with flat tires.

Defendant denied swerving toward and hitting Captain Sampson's vehicle head-on, and Defendant testified committing that action would be "worse than running over a little kid." Defendant also denied attempting to hit Captain Sampson with his vehicle, and stated that Captain Sampson fired his weapon at Defendant's vehicle. Defendant pulled over, and Sergeant Sherrill approached him. Defendant rolled down his window to explain the situation and to ask for help. Sergeant Sherrill asked Defendant, "[W]hat are you trying to do, turn me against my buds?," and he punched Defendant through Defendant's open window multiple times. Defendant testified he drove away and denied dragging Sergeant Sherrill by his arm with Defendant's vehicle because, at that time, Sergeant Sherrill's arm was no longer in Defendant's vehicle. Defendant claimed Sergeant Sherrill's injuries resulted from Defendant "deflecting [Sergeant Sherrill] with [his] hands," while Sergeant Sherrill punched him.

Initially, Defendant testified he stopped his vehicle because it was "ruined." In later testimony, Defendant explained he stopped because Sergeant Sherrill hit Defendant's vehicle from behind, causing Defendant's vehicle to run into Captain Sampson's SUV, resulting in Defendant's vehicle being caught between Captain Sampson's and Sergeant Sherrill's vehicles. Defendant denied intentionally

ramming into the back of Captain Sampson's SUV. When Defendant shifted his vehicle into "park," he said he accidentally reversed his car, running into Sergeant Sherrill's vehicle. Defendant rolled up his windows, and officers kicked his vehicle and shattered the windows. Defendant testified Deputy Moral told the other officers "to hold on" and called for Deputy Crisp, who appeared "looking like Robocop," with a hardhat, face shield, and rifle.

Defendant said the officers fired a gun to shatter the windows of Defendant's vehicle, which resulted in glass wounds for Defendant. Defendant said five officers shot their Tasers at him. Defendant testified Deputy Moral asked him, "[H]ow does it feel for you cowboys [to] come out here to my town and mess with our wives and girlfriends?" and that Deputy Moral then used a dry Taser on Defendant's chest multiple times. The officers pulled Defendant out of his vehicle onto the road, and Defendant asked, "why don't you guys finish killing me?" Deputy Moral tied Defendant's arms together and handcuffed his ankles, and the officers put Defendant in Deputy Moral's vehicle.

Defendant further testified Deputy Moral removed Defendant's cigarettes and placed them on the hood of the vehicle for the officers to smoke. Deputy Moral, Investigator Hall, Investigator Deese, and Captain Sampson discussed how they were going to frame and charge Defendant. Defendant commented on the officers planning in front of him. Deputy Moral then drove Defendant to the detention center.

According to Defendant, Deputy Moral took Defendant to the Intoxilizer room and told the booking employees to turn off the lights and leave the area. Deputy Moral and another officer told Defendant they were "[g]oing to teach [him] a lesson." However, the officers took Defendant to a hospital because Defendant began "stroking out." Defendant said he had high blood pressure and glass wounds. A nurse drew Defendant's blood to check the blood alcohol level.

In testifying, Defendant referred to his vehicle as his "shield," not a "deadly weapon or any kind of a weapon at all." Defendant said he remained in his vehicle because "[it] was [his] protection" against officers hurting him.

Defendant was indicted on 2 May 2016 for driving while impaired, driving left of center, four counts of assault with a deadly weapon on a government official, and two counts of assault with a deadly weapon with intent to kill. Defendant filed a written notice on 21 February 2018 of his intent to rely on the defense of self-defense as to all charges. The charges were tried before a jury beginning on 13 March 2018 in Clay County Superior Court. Defendant failed to request an instruction on self-defense at trial. At the close of all the evidence, the trial court noted Defendant did give notice of a defense, that being self-defense. The trial court stated:

> The court next notes in these charges, margin two, 17-CRS-115, margin three, 15-CRS-44, margin five, 15-CRS-50154, margin nine, 16-CRS-28. Mr. Johnson, on behalf of his client, did give appropriate notice of a defense, that being self-defense.

> After hearing all of the evidence the court would determine as a matter of law that there was no evidence which was presented which would support the submission of the issue of self-defense to the jury, and as such the issue of self-defense, while notice was properly given, was not appropriate in this case, there being no evidence to support it, and the court therefore as a matter of law and in its discretion did not instruct on self-defense.

Defendant did not object to the trial court not instructing the jury on self-defense. The jury found Defendant responsible for driving left of center, and guilty of driving while impaired, assault with a deadly weapon with intent to kill, two counts of misdemeanor assault with a deadly weapon, and three counts of assault with a deadly weapon on a government official on 15 March 2018. Defendant appeals.

II. Analysis

On appeal, Defendant argues (1) the trial court erred in not instructing the jury on the elements of self-defense and (2) Defendant's attorney at trial provided ineffective assistance of counsel to Defendant.

A. Jury Instructions

1. Standard of Review

In the present case, Defendant filed a written pre-trial notice of his intent to rely on the defense of self-defense as to all charges. However, Defendant failed to request an instruction on self-defense. Moreover, when the trial court did not instruct the jury on self-defense, Defendant did not object. If a "defendant neither request[s] [an] instruction nor object[s] to the court's failure to give [an] instruction, we review

the assignment of error under the plain error standard." *State v. Davis*, 177 N.C. App. 98, 102, 627 S.E.2d 474, 477 (2006). Therefore, this Court must review the issue for plain error.

This Court applies plain error "only in the exceptional case where, after reviewing the entire record, it can be said the claimed error is a '*fundamental* error, something so basic, so prejudicial . . . that justice cannot have been done[.]'" *State v. Lawrence*, 365 N.C. 506, 516-17, 723 S.E.2d 326, 333 (2012) (quoting *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983)) (emphasis in original). We must determine (1) whether an error exists and (2) if so, whether "absent the error, the jury probably would have reached a different result." *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993). To determine if an error in jury instructions amounts to plain error, this Court "must examine the entire record and determine if the instructional error had a probable impact on the jury's finding of guilt." *State v. Haire*, 205 N.C. App. 436, 440, 697 S.E.2d 396, 399 (2010).

2. Self-Defense Instruction

Defendant contends the trial court erred by not instructing the jury on the elements of self-defense. Specifically, Defendant argues the trial court erred because "there was a plethora of evidence that [Defendant] believed he was acting in self-defense," but the trial court did not view the evidence presented in the light most favorable to Defendant. We disagree.

Self-defense is an affirmative defense and is a justification for a defendant's actions: "[a] defendant says, 'I did the act charged in the indictment, but I should not be found guilty of the crime charged because * * *.'" *State v. Irabor*, ___ N.C. App. ___, ___, 822 S.E.2d 421, 424 (2018). A defendant may contend "self-defense is based upon necessity, real or apparent, and a person may use such force as is necessary or apparently necessary to save himself from death or great bodily harm in the lawful exercise of his right of self-defense." *State v. Pearson*, 288 N.C. 34, 38-39, 215 S.E.2d 598, 602 (1975) (citing *State v. Deck*, 285 N.C. 209, 214, 203 S.E.2d 830, 834 (1974)).

A defendant is entitled to a jury instruction on self-defense "when there is evidence from which it may be inferred that a defendant acted in self-defense[.]" *State v. Marsh*, 293 N.C. 353, 354, 237 S.E.2d 745, 747 (1977). "Where there is evidence that [a] defendant acted in self-defense, the court must charge on this aspect even though there is contradictory evidence by the State or discrepancies in [the] defendant's evidence." *State v. Whetstone*, 212 N.C. App. 551, 555, 711 S.E.2d 778, 781 (2011) (internal citations omitted). However, "[a] trial court is only required to give such an instruction where the evidence supports *each element* of self-defense." *State v. Thomas*, 153 N.C. App. 326, 338, 570 S.E.2d 142, 149 (2002) (emphasis added). In *Thomas*, this Court outlined the elements a defendant must satisfy to receive a jury instruction on self-defense:

> (1) the defendant believed it necessary to kill or use force against the victim in order to save himself from death or

> great bodily harm; (2) 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; (3) the defendant was not the aggressor in bringing on the affray . . . and (4) the defendant did not use excessive force other than what was necessary or reasonably appeared necessary to protect himself from death or great bodily harm.

Id. at 338, 570 S.E.2d at 149 (internal citations omitted).

To determine whether a defendant is entitled to an instruction on self-defense, the trial court must consider the evidence "in the light most favorable to [the] defendant." *State v. Watkins*, 283 N.C. 504, 509, 196 S.E.2d 750, 754 (1973); *see also Whetstone*, 212 N.C. App. at 555, 711 S.E.2d at 781-82 ("[I]f the defendant's evidence, taken as true, is sufficient to support an instruction for self-defense, it must be given[.]") (internal citations omitted).

In the present case, we must first determine whether Defendant is able to satisfy the first element required under the self-defense instruction: "the defendant believed it necessary to kill or use force against the victim in order to save himself from death or great bodily harm[.]" *Thomas*, 153 N.C. App. at 338, 570 S.E.2d at 149 (internal citations omitted). Defendant testified that he never used his vehicle as "a deadly weapon or any kind of a weapon at all," and he maintained that the vehicle was strictly his "shield." Because Defendant stated he never actually used any force against the officers but, rather remained in his vehicle for safety, Defendant did not establish he "believed it [was] necessary to kill or use force against the [officers] in

order to save himself[.]" *Id.* at 326, 570 S.E.2d at 149. Therefore, the trial court was not required to instruct the jury on self-defense because there was insufficient "evidence support[ing] *each element* of self-defense." *Thomas*, 153 N.C. App. at 338, 570 S.E.2d at 149 (emphasis added).

Moreover, even if a defendant provides sufficient evidence to support a self-defense instruction at trial, the instruction is inappropriate if the defendant denies ever committing the crime alleged. *See State v. Coley*, ___ N.C. App. ___, ___, 822 S.E.2d 762, 765 (2018) ("An instruction on self-defense is not appropriate where a defendant testifies he did not intend to hit anyone when he fired his weapon."); *see also State v. Ayers*, ___ N.C. App. ___, ___, 819 S.E.2d 407, 412 (2018) (explaining when a defendant testifies "he did not intend to strike [a] blow" against a victim, the defendant is not entitled to a jury instruction on self-defense).

In *State v. Williams*, the defendant "fired his pistol three times into the air to scare [the victim]," 342 N.C. 869, 873, 467 S.E.2d 392, 394 (1996), and the third bullet struck and killed the victim. *Id.* at 871, 467 S.E.2d at 393. The defendant was convicted of first-degree murder and appealed, contending "that the trial court erred by refusing to instruct the jury on the theory of self-defense." *Id.* at 872, 467 S.E.2d at 394. However, our Supreme Court held the trial court did not err in refusing to instruct the jury on self-defense:

> [t]he defendant [was] not entitled to an instruction on self-defense while still insisting that he did not fire the pistol

> at anyone, that he did not intend to shoot anyone[,] and that he did not know anyone had been shot. Clearly, a reasonable person believing that the use of deadly force was necessary to save his or her life would have pointed the pistol at the perceived threat and fired at the perceived threat. The defendant's own testimony, therefore, disproves the first element of self-defense.

Id. at 873, 467 S.E.2d at 394 (emphasis added); *see also State v. Harvey*, ___ N.C. ___, ___, ___ S.E.2d ___, ___, No. 290A18, 2019 WL 2479971, at *4 (June 14, 2019) (holding the defendant was not entitled to an instruction on self-defense because he depicted "his act of killing [the victim] as an accident, his decision to obtain the knife due to being motivated by fear, and his intention to use the knife in order to persuade [the victim] to leave").

Similarly, in *State v. Cook*, this Court held the trial court did not err in not instructing the jury on self-defense because "the defendant's own words show[ed] that he did not believe he was in reasonable fear of imminent harm." ___ N.C. App. ___, ___, 802 S.E.2d 575, 577 (2017), *aff'd*, 370 N.C. 506, 809 S.E.2d 566 (2018). Law enforcement officers entered the defendant's home with a search warrant, and the defendant fired his weapon at his bedroom door twice when the officers kicked in his bedroom door. *Id.* at ___, 802 S.E.2d at 576. The defendant testified he "fired shots because 'he was scared for [his] life,'" *id.* at ___, 802 S.E.2d at 577, but "did not take aim or otherwise have any specific intent to shoot the 'intruder[.]'" *Id.* at ___, 802 S.E.2d at 577. Because the defendant claimed the use of deadly force was necessary

to protect himself against a threat of deadly force, this Court reasoned the defendant must have intended to "shoot to kill or injure the attacker to be entitled to the instruction," *id.* at ___, 802 S.E.2d at 577, not merely fire a warning shot. *Id.* at ___, 802 S.E.2d at 577; *see also State v. Hinnant*, 238 N.C. App. 493, 497, 768 S.E.2d 317, 320 (2014) (holding the "[d]efendant was not entitled to an instruction on self-defense" because his "own testimony was that he did not intend to shoot anyone when he fired his weapon").

In the present case, even viewing and accepting the evidence supporting Defendant's self-defense theory in the light most favorable to Defendant, he was not entitled to a jury instruction on self-defense. Similar to the defendant's use of a firearm in *Williams*, Defendant testified he used his vehicle as a method of protection, not as a use of force against individuals he perceived as a threat. When asked about his vehicle, Defendant insisted it was his "shield," not a "deadly weapon":

> [Defendant:] That car was my shield. It wasn't a deadly weapon or any kind of a weapon at all. It was my shield. It was protecting me[.]
>
> [Defense attorney:] So when you say your automobile was your shield, are you saying it was like your protection?
>
> [Defendant:] Yeah. My car was my shield, was my protection. It was protecting me. I figured as long as I could stay in that car [the officers] could not hurt me.

Moreover, Defendant denied ever committing the acts involving force underlying each of his convictions. The jury convicted Defendant of driving while

impaired and driving left of center. N.C. Gen. Stat. § 20-138.1(d) states driving while impaired is a misdemeanor, and N.C. Gen. Stat. § 20-146(a) states driving left of center is an infraction. N.C. Gen. Stat § 20-138.1(d) (2017); N.C. Gen. Stat. § 20-146(a) (2017); *see State v. Hamrick*, 110 N.C. App. 60, 66, 428 S.E.2d 830, 833 (1993) ("[A] violation of N.C. Gen. Stat. § 20-146 for driving a vehicle left of center is considered an infraction."). Defendant denies both that he drove while impaired and that he drove left of center. However, self-defense is not available for a charge lacking an element of force because self-defense requires a defendant to use reasonable and necessary force to protect himself or herself. N.C. Gen. Stat. § 14-51.3(a) (2017) ("A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself."); *see also Thomas*, 153 N.C. App. at 338, 570 S.E.2d at 149 ("[T]he defendant believed it necessary to kill or use force against the victim in order to save himself from death or great bodily harm."). Therefore, Defendant's request for a jury instruction on self-defense does not apply to his charges of driving while impaired and driving left of center.

The jury also convicted Defendant of assault with a deadly weapon with intent to kill and assault with a deadly weapon on a government official, involving Captain Sampson; two counts of assault with a deadly weapon on a government official and misdemeanor assault with a deadly weapon, involving Sergeant Sherrill; and

misdemeanor assault with a deadly weapon involving Investigator Hall. Regarding Defendant's two assault charges as to Captain Sampson, Defendant denied both hitting Captain Sampson's vehicle head-on and attempting to hit Captain Sampson. Defendant also denied intentionally ramming into the back of Captain Sampson's vehicle and stated Sergeant Sherrill hit Defendant's vehicle from behind, which caused Defendant's vehicle to run into Captain Sampson's vehicle. Regarding Defendant's three assault charges on Sergeant Sherrill, Defendant denied using his vehicle to drag Sergeant Sherrill by his right arm, claiming Sergeant Sherrill's bruising resulted from the Sergeant's attack on Defendant. Moreover, Defendant also denied attempting to hit Sergeant Sherrill and his vehicle. Defendant testified he saw Sergeant Sherrill on the right side of the road, and Defendant drove on the far left side to avoid Sergeant Sherrill. As to Defendant's assault on Investigator Hall, Defendant denied hitting Investigator Hall and Investigator Deese's vehicle and denied attempting to use his vehicle to hit Investigator Hall.

Self-defense is a justification for a defendant's use of force against another. Defendant denied using any force against the officers and their property. According to Defendant's own testimony, Defendant is not entitled to an instruction on self-defense because he cannot use self-defense to justify an act that he never committed. Therefore, the trial court did not err in not instructing the jury on self-defense.

Assuming *arguendo* the trial court erred by not instructing the jury on self-defense, this error did not rise to the level of plain error. In the present case, Defendant failed to satisfy his heavy burden under plain error of "convinc[ing] this Court not only that there was error, but that absent the error, the jury probably would have reached a different result." *State v. Reid*, 335 N.C. 647, 667, 440 S.E.2d 776, 787 (1994) (internal citations omitted). The State presented ample evidence of testimony of officers from different jurisdictions and counties corroborating the chain of events on 24 April 2015. Moreover, Defendant, who presented only his own testimony as evidence, changed and contradicted his story multiple times. Based on the overwhelming evidence presented by the State and Defendant's contradictory evidence, we cannot hold "absent the error, the jury probably would have reached a different result." *Jordan*, 333 N.C. at 440, 426 S.E.2d at 697. Therefore, the trial court not instructing the jury on self-defense did not amount to plain error.

B. Ineffective Assistance Of Counsel

1. Standard of Review

"On appeal, this Court reviews whether a defendant was denied effective assistance of counsel de novo." *State v. Wilson*, 236 N.C. App. 472, 475, 762 S.E.2d 894, 896 (2014).

2. Two-Prong Test

"A successful ineffective assistance of counsel claim based on a failure to request a jury instruction requires [a] defendant to prove that without the requested jury instruction there was plain error in the charge." *State v. Pratt*, 161 N.C. App. 161, 165, 587 S.E.2d 437, 440 (2003). When asserting a claim for ineffective assistance of counsel, a defendant must satisfy two components. *See Strickland v. Washington*, 466 U.S. 668, 687, 80 L.Ed.2d 674, 693 (1984). A defendant must first "show that counsel's performance fell below an objective standard of reasonableness." *State v. Blakeney*, 352 N.C. 287, 307, 531 S.E.2d 799, 814-15 (2000). A defendant must then "show that the error committed was so serious that a reasonable probability exists that the trial result would have been different absent the error." *Id.* at 307-08, 531 S.E.2d at 815.

In the present case, we hold Defendant has failed to show his counsel provided ineffective assistance to Defendant. As we concluded above, Defendant's argument on appeal that the trial court erred in not instructing the jury on self-defense was unsuccessful because Defendant failed to present evidence on the necessary elements required for a trial court to instruct a jury on self-defense. Therefore, "[D]efendant's ineffective assistance of counsel claim lacks merit[.]" *State v. Turner*, 237 N.C. App. 388, 396, 765 S.E.2d 77, 84 (2014). In that a jury instruction on self-defense was not appropriate in the present case, Defendant's trial attorney did not provide ineffective assistance of counsel to Defendant.

III. Conclusion

For the reasons stated above, this Court holds that the trial court did not err in not instructing the jury on self-defense, and Defendant failed to show he received ineffective assistance of counsel.

NO PLAIN ERROR.

Judges TYSON and BERGER concur.

Report per Rule 30(e).