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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-798

Filed 04 April 2023

Forsyth County, No. 18 CRS 57956

STATE OF NORTH CAROLINA

v.

TORRIAN KANE FAGGART, Defendant.

Appeal by defendant from judgment entered 3 February 2022 by Judge Richard S. Gottlieb in Forsyth County Superior Court. Heard in the Court of Appeals 7 March 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Mary Carla Babb, for the State.

Anne Bleyman for Defendant-Appellant.

CARPENTER, Judge.

Torrian Kane Faggart (“Defendant”) appeals from judgment after a jury convicted him of first-degree felony murder. On appeal, Defendant argues the trial court committed prejudicial error by excluding jury instructions on: (1) first-degree murder, under the theory of premeditation and deliberation; (2) second-degree

murder; and (3) voluntary manslaughter. Defendant further argues the indictment, which purported to charge him with first-degree murder, was fatally defective, violating his constitutional rights and depriving the trial court of jurisdiction. After careful review, we discern no error.

I. Factual Background

A. The State's Evidence

The State's evidence presented at trial tended to show the following: On the afternoon of 25 August 2018, Defendant shot and killed Timothy Ford ("Mr. Ford") on the porch of Mr. Ford's Cleveland Homes apartment in Winston-Salem. In 2015 or 2016, Defendant began dating Nasharae King ("Ms. King"), with whom he shared a residence and had a son. Defendant and Ms. King lived about five to seven minutes from Mr. Ford's apartment. Ms. King is the daughter of Shannon Mitchell ("Ms. Mitchell"), who was in a dating relationship with Mr. Ford at the time of his death.

Ms. Mitchell testified as a witness for the State. Ms. Mitchell met Defendant soon after Ms. King began dating him, and Ms. Mitchell was aware that Mr. Ford knew Ms. King and Defendant. Before 25 August 2018, Ms. Mitchell had never seen Defendant at Mr. Ford's apartment.

According to Ms. Mitchell, Defendant obtained a handgun; thereafter his demeanor changed, and he "became very cocky." Since the time Defendant obtained the handgun, Ms. Mitchell observed Defendant openly carry the handgun in a holster on his hip every time she saw him. Ms. Mitchell could not remember the date or

month when Defendant began to carry the gun.

On 25 August 2018, Mr. Ford arrived home from work “a little before 3:00 [p.m.]” and had a conversation with Ms. Mitchell about Defendant. Mr. Ford and Ms. Mitchell walked to the nearby convenience store to purchase beer. When they returned from the store, Ms. Mitchell called Ms. King about the conversation she had with Mr. Ford regarding Defendant. Ms. Mitchell told Ms. King that she was concerned about Ms. King’s relationship with Defendant because “[Defendant] was chasing women” in his vehicle. Ms. Mitchell told Ms. King that she “needed to take care of herself and be aware of what was going on.” Ms. King did not immediately respond but stayed on the phone; when she finally responded to Ms. Mitchell, Ms. King stated she “fussed [Defendant] out.” Ms. Mitchell testified Ms. King was ranting, raving, and venting on their phone call. Ms. Mitchell then asked Ms. King about Defendant’s location, and Ms. King replied that Defendant had left their home.

Shortly thereafter, Ms. Mitchell was standing on the porch of Mr. Ford’s apartment—still on the phone with Ms. King—when Ms. Mitchell noticed a Jeep SUV driving down the street outside Mr. Ford’s apartment. Ms. Mitchell observed Defendant “with his arm out the passenger window,” making a hand gesture resembling a shooting gun.

Ms. Mitchell stated to Ms. King through the phone, and to Mr. Ford who was sitting in the living room drinking a beer: “Torrian is over here. Why in the hell is he over here?” Mr. Ford got up and said, “What the hell is he doing over here? What is

this mother-f**ker doing here?” Ms. Mitchell walked from the front door to the back door, expecting the vehicle to pass by, but she did not see the vehicle pass by. As Ms. Mitchell came from the front door, Mr. Ford walked to the front door from the living room.

Ms. Mitchell testified that Mr. Ford did not seem upset nor was he “act[ing] as if something was getting ready to happen.” Ms. Mitchell heard the front door open as Mr. Ford went outside. She did not hear any voices or conversation. Soon after the front door opened, Ms. Mitchell heard multiple gunshots as she stood in the kitchen. Ms. Mitchell then heard Mr. Ford telling her to call for an ambulance because Defendant shot him. Ms. Mitchell applied pressure to a gunshot wound on Mr. Ford’s chest, and 911 was called. She noticed Mr. Ford’s big toe appeared as though “a bullet had grazed” it, and she saw “a lot of blood.”

Ms. Mitchell further testified that Mr. Ford did not carry a weapon but likely owned a BB gun, which he kept inside his apartment. On the day of the incident, she did not see Mr. Ford with a weapon.

Officer Adam Burak of the Winston-Salem Police Department’s (“WSPD”) patrol division also testified for the State. Officer Burak responded to Mr. Ford’s apartment on 17th Street in reference to a report of a male being shot. He initially provided first aid to Mr. Ford. Five minutes after Officer Burak’s arrival, emergency medical services arrived to provide aid to Mr. Ford. Officer Burak then walked outside to the front porch and found a single shell from a firearm. He did not move

or touch the casing in order to preserve the evidence for processing. Officer Burak did not find any firearms or other weapons in the residence. During the crime scene investigation that day, a forensic services technician of the WSPD found a BB gun “propped up in the [front] corner of the living room,” near the porch.

Mr. Ford’s apartment complex, as part of the Winston-Salem Housing Authority’s (the “Housing Authority”) public housing development portfolio, had working exterior cameras on the date of the shooting. WSPD officers downloaded recordings from the date of the shooting, taken from multiple cameras and different angles. The surveillance videos were admitted into evidence and played for the jury. WSPD Detective Sean Flynn (“Detective Flynn”) testified he “[did not] see a ‘struggle’” in the video footage.

On the same day of the shooting, the WSPD identified the owner of the Jeep as Justin Miles Daniels (“Mr. Daniels”). Officers ran the registration, obtained an address, and responded to that location. When the officers arrived at the home, the Jeep was parked in the driveway and two passengers, including Mr. Daniels in the driver’s seat, were inside the vehicle. Officers found an AR-15 rifle, which they did not believe was the weapon used in the shooting. Upon request, Mr. Daniels voluntarily turned over his cell phone to the officers. Mr. Daniels stated his communications with Defendant were deleted from his phone that day, and the WSPD confirmed all information on the phone had been deleted. Law enforcement unsuccessfully searched for Defendant and for Defendant’s vehicle.

STATE V. FAGGART

Opinion of the Court

Mr. Ford was transported to the local hospital where he passed away. The autopsy report revealed Mr. Ford sustained, *inter alia*, gunshot wounds to the chest and each thigh, and a grazing wound to the big toe on his left foot. Mr. Ford's death was caused by acute blood loss resulting from gunshot wounds to the extremities. Mr. Ford was reported as weighing 166 pounds and measuring five feet, eight inches tall at the time of his death.

On 2 September 2018, Defendant turned himself in to the WSPD. At that time, Defendant presented a typed and signed statement to Detective Flynn. In the statement, Defendant described his relationship with Mr. Ford, and he recounted the incident as follows:

I knocked on the door and stepped back to the steps to wait on [Mr. Ford] to come to the door. Mr. Ford came out the door aggressively saying f**k me, f**k my gun. I clearly stated to Mr. Ford I did not come over here for that. [Mr. Ford] is 6 feet tall, well built man, approximately 220 pounds. I am 135 standing 5'8".

I told [Mr. Ford] I'm only here to clear the air. He then swung with his right fist at me and missed. He then grabbed me with his right hand and with his left hand he grabbed for my gun. We then began to wrestle. I was in fear for my life and that he would get the gun out and shoot me. While we were wrestling, I was trying to make sure he didn't get the gun out. Somehow the gun came out while we both had our hands on the gun. I was trying to make sure he didn't get the gun -- I was trying to make sure the barrel of the gun did not turn on me.

The gun started going off while we are wrestling over the gun. I don't know how many times the gun went off. I was not aware if I was shot or if Mr. Ford was shot. Mr. Ford

let go of the gun and started running back to the house. I shot down into the ground twice to make sure Mr. Ford wouldn't come back and turn back around. I was afraid for my life thinking Mr. Ford would have shot me with my own gun. I dropped the gun and ran back to my car and went home.

I was not aware of Mr. Ford being shot or dying until later that night. On this day, I never intended to hurt Mr. Ford. On this day I never shot at Mr. Ford. I was only there to clear the air.

B. Defendant's Evidence

At trial, Defendant testified on his own behalf. He was twenty-one years old, about 135 pounds, and five feet, eight inches tall in August 2018. Defendant obtained his concealed carry permit in November 2017, following his twenty-first birthday. Defendant chose to carry a weapon due to violence that his family members had encountered, including his grandmother being shot in her vehicle near the Cleveland Homes in 2018, and because he lived in “a high violence area” of Winston-Salem.

Defendant knew Mr. Ford for approximately four or five years and previously worked with Mr. Ford at Food Lion for about fifteen months. According to Defendant, the two got along as friends and did not have any arguments. Defendant described Mr. Ford as a “[p]retty easy-going guy.”

Defendant recounted the events that occurred on 25 August 2018: Defendant got a haircut and left the barbershop at around 1:00 p.m. As he drove near his neighborhood, Defendant saw Mr. Ford walking down the street. At about the same time, Defendant almost hit another vehicle carrying two women as their vehicle drove

down the middle of the street. Defendant blew the horn at the vehicle to say “sorry” and kept driving.

When Defendant returned home, Defendant told Ms. King that his friend, Mr. Daniels, had called asking for weed and he was going into town with Mr. Daniels to get some. About ten or fifteen minutes later, Defendant left with Mr. Daniels to pick up the weed. They also stopped at a gas station to purchase snacks and gasoline.

When they returned, Mr. Daniels and Defendant saw Ms. King outside with Defendant’s newborn child. Defendant told Mr. Daniels “I’m willing to bet \$20 there’s some bullshit going on.” Defendant testified that Ms. King was “on the phone a lot with her mom and she would catch an attitude afterwards.”

When Defendant exited the car, Ms. King said, “I g[o]t a private call talking about you chasing hoes down” and “you blowing at hoes in a black Nissan.” Defendant replied that Mr. Ford had told her that information, which Ms. King denied. Defendant got back in the vehicle and told Mr. Daniels to drive to Mr. Ford’s home because Defendant was tired of Ms. King accusing him of cheating. Defendant believed he could have “a mutual conversation” with Mr. Ford, and the two could “come to a common ground.” Defendant did not anticipate any problems or issues with going to see Mr. Ford.

When they arrived, Defendant knocked on Mr. Ford’s front door. Mr. Ford immediately came to the door with his “chest poked out” and said to Defendant, “F**k you. F**k your gun. You pull it out, you better us[e] it.” Defendant responded “wait,”

and put his hand up. When Mr. Ford took another step on the porch, Defendant raised his gun and shot Mr. Ford.

Defendant testified he was in fear for his life when he fired his gun because of what Mr. Ford said to him and because Mr. Ford's demeanor made it "look[] like it was fixin' to go down." Defendant admitted to first shooting Mr. Ford in his big toe, then in both legs and his chest. As Defendant was walking away, he heard Mr. Ford say "baby, that mother-f**ker shot me. Give me my gun." Defendant then turned around toward the apartment and started shooting at the wall, ground, and porch. Defendant claimed he was not aiming at Mr. Ford, but rather, he was firing the shots as "warning shots" because he feared Mr. Ford could get a gun and shoot Defendant in the back. Defendant had never seen anyone at Mr. Ford's apartment with a gun.

According to Defendant, only two seconds passed between the time Mr. Ford spoke to Defendant and when Defendant raised his gun and started shooting. Defendant was unaware that law enforcement had video surveillance of the 25 August 2018 events at the time that he gave his written statement to Detective Flynn. After watching the footage, Defendant admitted that several events he alleged in his written statement were not depicted on the footage. Defendant testified the video did not show Mr. Ford swinging at Defendant, Mr. Ford grabbing at Defendant with his right hand., Mr. Ford grabbing for Defendant's gun with his left hand, Defendant and Mr. Ford wrestling, or Defendant dropping his gun as he ran to the vehicle.

On cross-examination, Defendant acknowledged that the surveillance footage

obtained from the cameras in front of Mr. Ford's apartment showed Defendant jumping out of Mr. Daniels's vehicle before it even came to a stop. Defendant also admitted to intentionally firing his gun toward the apartment when he believed Ms. Mitchell was inside and to causing damage to the porch and the exterior of the apartment by firing his gun. Finally, Defendant admitted that Mr. Ford was injured, and ultimately died, as a result of Defendant firing his gun.

Defendant got back into the vehicle with Mr. Daniels and told Mr. Daniels that he shot Mr. Ford. Mr. Daniels requested more details, but Defendant refused to say anything further. Mr. Daniels drove Defendant to his grandmother's house, where his son and Ms. King were staying.

Mr. Daniels testified as a witness for Defendant. Mr. Daniels did not know the reason Defendant wanted to go to the Cleveland Homes, nor did he know what Defendant did when he got out of the vehicle. Mr. Daniels listened to loud music as he waited in his Jeep and did not hear any noises that "raise[d his] alarm." Defendant ran back into the vehicle, and Mr. Daniels dropped Defendant off at his grandmother's home. Mr. Daniels denied knowing at the time he drove away that Defendant had shot Mr. Ford.

II. Procedural History

On 16 December 2019, Defendant was indicted on the charge of first-degree murder, in violation of N.C. Gen. Stat. § 14-17. On 31 January 2022, a jury trial began before the Honorable Richard S. Gottlieb in Forsyth County Superior Court.

Defendant moved to dismiss the charge at the close of the State's evidence and at the close of all evidence. The trial court denied both motions.

On 3 February 2022, the jury found Defendant guilty of first-degree murder in the perpetration of a felony, with the underlying felony being the discharge of a firearm into an occupied property. On the same day, the trial court sentenced Defendant to a mandatory term of life imprisonment without the possibility of parole.

III. Jurisdiction & Petition for Writ of Certiorari

As an initial matter, we consider whether this Court has jurisdiction to hear the merits of Defendant's appeal. On 4 January 2023, Defendant filed with this Court a petition for writ of *certiorari* contemporaneously with his brief, in the event his oral notice of appeal is deemed inadequate. The State does not take a position as to whether this Court should grant the petition.

A party entitled by law to appeal may do so by "giving oral notice of appeal at trial." N.C. R. App. P. 4(a)(1); *see State v Oates*, 366 N.C. 264, 268, 732 S.E.2d 571, 574 (2012) (explaining oral notice of appeal must be "given at the time of trial or . . . the pretrial hearing"), *appeal dismissed*, 366 N.C. 585, 740 S.E.2d 473 (2013). A defendant's oral notice of appeal is sufficient to confer jurisdiction upon this Court where the defendant manifests an intention to enter a notice of appeal, and the State does not contend it was "misled or prejudiced" by any defect in the notice. *State v. Daughtridge*, 248 N.C. App. 707, 712, 789 S.E.2d 667, 670 (2016), *disc. rev. denied*, 369 N.C. 482, 795 S.E.2d 363 (2017). This Court may consider the trial transcript

and documents in the record on appeal to determine whether a defendant gave sufficient oral or written notice of appeal. *See State v. Hughes*, 210 N.C. App. 482, 484–85, 707 S.E.2d 777, 778 (2011). Nonetheless, mere appellate entries in the record on appeal are insufficient to preserve a defendant’s right to appeal. *State v. Blue*, 115 N.C. App. 108, 113, 443 S.E.2d 748, 751 (1994).

Here, the trial court held an unrecorded bench conference at the close of sentencing. In an affidavit appended to Defendant’s petition for writ of *certiorari*—but not included in the record on appeal—Defendant’s trial counsel swore that during the bench conference, he notified Judge Gottlieb and the prosecutor of “Defendant’s intent to enter notice of appeal . . . from the trial court judgments to the Appellate Division.” After the bench conference, Judge Gottlieb pronounced: “For the purposes of the record, I will note [D]efendant’s notice of appeal. Court having reviewed the file will appoint the appellate defender.” On both the Judgment and Commitment form and the Appellate Entries form, a box was checked indicating that Defendant had given notice of appeal from the trial court’s judgments.

Although judgment and appellate entries forms alone are insufficient under this Court’s precedent to constitute notice of appeal under Rule 4, when coupled with the trial judge’s pronouncement, Defendant’s intent to give notice can be inferred from the record and transcript. *See Daughtridge*, 248 N.C. App. at 712, 789 S.E.2d at 670. Additionally, the State does not contend it was misled or prejudiced by Defendant’s purported notice of appeal. *See id.* at 712, 789 S.E.2d at 670.

Thus, we conclude Defendant gave oral notice of appeal at trial, which was acknowledged by the trial court on the record. The trial court's acknowledgment of Defendant's intent to appeal along with the other documentation in the record was sufficient to comply with Rule 4. *See* N.C. R. App. P. 4(a)(1). Defendant's petition for writ of *certiorari* is unnecessary, and we therefore dismiss the petition. *See State v. Howard*, 247 N.C. App. 193, 205, 783 S.E.2d 786, 794–95 (2016) (dismissing a petition for writ of *certiorari* where this Court deemed the petition was not needed to confer the Court's jurisdiction). Hence, this Court has jurisdiction to address Defendant's appeal from a final judgment pursuant to N.C. Gen. Stat. § 15A-1444(a) (2021).

IV. Issues

The issues before this Court are whether: (1) the trial court committed prejudicial error by excluding jury instructions on first-degree murder, under the theory of premeditation and deliberation; second-degree murder; and voluntary manslaughter; and (2) the indictment was sufficient to charge Defendant with first-degree murder.

V. Jury Instructions

In his first argument, Defendant contends the trial court prejudicially erred in excluding jury instructions on first-degree murder, under the theory of premeditation and deliberation; second-degree murder; and voluntary manslaughter. Because we conclude all the evidence supports felony murder, and the trial court was not required

to instruct the jury on any lesser-included offenses, we are unpersuaded by Defendant's argument.

A. Issue Preservation & Standard of Review

We first address whether Defendant properly preserved the jury instruction issue for appellate review. "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 . . . stating distinctly that to which objection is made and the grounds of the objection." N.C. R. App. P. 10(a)(2). Our Supreme Court has held Rule 10(a)(2) does not require parties "to repeat their objections to the jury instructions after the charge was given in order to preserve their objections for appellate review[.]" *State v. Young*, 196 N.C. App. 691, 697, 675 S.E.2d 704, 708 (2009) (quoting *Wall v. Stout*, 310 N.C. 184, 188, 311 S.E.2d 571, 574 (1984)). It is enough that a request to alter an instruction has been submitted, and the trial judge has considered and refused the request. *Id.* at 697–98, 675 S.E.2d at 708.

"Where a defendant has properly preserved [a] challenge to jury instructions, an appellate court reviews the trial court's decisions regarding jury instructions *de novo*." *State v. Richardson*, 270 N.C. App. 149, 152, 838 S.E.2d 470, 473 (2020) (citation omitted and emphasis added). A defendant must show on appeal that there was error in the jury instructions, and that the error was prejudicial to the defendant. N.C. Gen. Stat. § 15A-1442(4)(d) (2021). An error is prejudicial if "there is a reasonable probability that, had the error in question not been committed, a different

result would have been reached[.]” N.C. Gen. Stat. § 15A-1443(a) (2021).

Here, Defendant’s trial counsel objected at the charge conference:

[Defense Counsel]: [O]bjection to the exclusion of first, second -- first-degree murder, second-degree murder and voluntary manslaughter for -- if they found excessive force under [premeditation and deliberation]. I do not wish to be heard, simply objecting on the record.

[Trial Court]: Those objections are noted and overruled.

Assuming, without deciding, that trial counsel’s objection was sufficient to preserve the issue for appellate review, we review *de novo* Defendant’s argument concerning jury instructions. *See Richardson*, 270 N.C. App. at 152, 838 S.E.2d at 473.

B. Lesser-Included Offenses

Specifically, Defendant argues on appeal that he was entitled to receive additional instructions because: (1) the evidence regarding the underlying felony to the felony-murder charge was in conflict, and (2) the jury could have rationally acquitted Defendant of felony murder but convicted him of premeditated and deliberated murder, second-degree murder, or voluntary manslaughter. We disagree.

Due process requires that a lesser-included offense instruction be given only “if the evidence would permit the jury rationally to find [the] defendant guilty of the lesser offense and acquit [the defendant] of the greater.” *State v. Millsaps*, 356 N.C. 556, 561, 572 S.E.2d 767, 771 (2002); *see Beck v. Alabama*, 447 U.S. 625, 635, 100 S. Ct. 2382, 2388, 65 L. Ed. 2d 392, 401 (1980). A judge is not required to instruct on a

lesser offense “when there is no evidence to support such an instruction by the court or finding by the jury.” *State v. Strickland*, 307 N.C. 274, 291, 298 S.E.2d 645, 657 (1983), *overruled in part on other grounds by State v. Johnson*, 317 N.C. 193, 344 S.E.2d 775 (1986). Where a charge of first-degree murder is submitted on the theory of premeditation and deliberation, and there is evidence tending to negate the element of premeditation and deliberation, a defendant would be entitled to the instruction on lesser included offenses supported by the evidence. *See id.* at 286, 298 S.E.2d at 654.

In *State v. Millsaps*, our Supreme Court set forth the following principal:

If the evidence of the underlying felony supporting felony murder is in conflict and the evidence would support a lesser-included offense of first-degree murder, the trial court must instruct on all lesser-included offenses supported by the evidence whether the State tries the case on both premeditation and deliberation and felony murder or only on felony murder.

356 N.C. at 565, 572 S.E.2d at 773 (citation omitted). If, however, the evidence as to the underlying felony is not in conflict “and all the evidence supports felony murder, the trial court is not required to instruct on the lesser offenses included within premeditated and deliberate murder if the case is submitted on felony murder only.” *Id.* at 565, 572 S.E.2d at 774 (citation omitted). Any conflicting evidence must relate to whether the defendant committed the underlying felony, not whether the defendant might have been justified in doing so. *State v. Juarez*, 369 N.C. 351, 356, 794 S.E.2d 293, 299 (2016) (citations omitted).

Premeditated and deliberate murder and felony murder are separate theories under which a defendant may be convicted of first-degree murder. *See* N.C. Gen. Stat. § 14-17(a) (2021). “It is a well established rule that when the law and evidence justify the use of the felony-murder rule, then the State is not required to prove premeditation and deliberation[.]” *State v. Swift*, 290 N.C. 383, 407, 226 S.E.2d 652, 669 (1976); *see Strickland*, 307 N.C. at 292–93, 298 S.E.2d at 657 (holding where evidence is sufficient to support felony murder or premeditation and deliberation, “the State would have been fully justified in submitting either or both theories to the jury”).

First-degree felony murder is statutorily defined as a murder “committed in the perpetration or attempted perpetration of any arson, rape, or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon[.]” N.C. Gen. Stat. 14-17(a). With respect to the underlying felony of discharging a firearm into an occupied property, the State was required to prove (1) that Defendant intentionally, without legal justification or excuse, discharged or attempted to discharge a firearm into property that was occupied, and (2) that Defendant knew or had reasonable grounds to believe the property was occupied at the time. *See State v. Williams*, 284 N.C. 67, 73, 199 S.E.2d 409, 412 (1973); *see also* N.C. Gen. Stat. § 14-34.1(a) (2021). This Court has held that a porch falls within the meaning of an occupied property, as contemplated by the statute. *See State v. Miles*, 223 N.C. App. 160, 163, 733 S.E.2d 572, 575 (2012).

Here, the State, in arguing against Defendant's motion to dismiss at the close of all evidence, announced that it would proceed only on the theory of felony murder, with the underlying felony being discharging a weapon into an occupied property. The State correctly explained that because it proceeded only on the felony-murder theory, the instructions for lesser-included offenses of premeditated and deliberate first-degree murder would only be required if evidence of the underlying felony was in conflict.

Our review of the record and transcript reveals there is no conflicting evidence regarding whether Defendant committed the underlying felony. *See Millsaps*, 356 N.C. at 565, 572 S.E.2d at 774; *Strickland*, 307 N.C. at 291, 298 S.E.2d at 657. Defendant testified that he shot Mr. Ford in his toe, both legs, and chest while Mr. Ford was standing on the porch. Defendant also admitted to firing additional shots at the porch and apartment, and to knowing Ms. Mitchell was inside the apartment at the time of the shooting. Additional evidence, including Ms. Mitchell's testimony, the surveillance camera footage, and the physical evidence collected from the scene, supports the finding that Defendant committed the underlying felony of discharging a firearm into an occupied property. *See* N.C. Gen. Stat. § 14-34.1(a).

Furthermore, we conclude all evidence supports felony murder. *See Millsaps*, 356 N.C. at 565, 572 S.E.2d at 774; *see also* N.C. Gen. Stat. 14-17(a). Mr. Ford's autopsy revealed he sustained gunshot wounds to the chest and each thigh, and a grazing wound to the big toe on his left foot. Mr. Ford's death was caused by acute

blood loss resulting from the gunshot wounds to his extremities. Defendant's shooting Mr. Ford was the cause of Mr. Ford's death, and Defendant admitted as much while testifying. Additionally, Defendant concedes in his brief that he "killed Mr. Ford by shooting him with a gun."

Accordingly, we hold the State presented sufficient evidence to prove all elements of N.C. Gen. Stat. §§ 14-34.1(a) and 14-17(a). *See Richardson*, 270 N.C. App. at 152, 838 S.E.2d at 473; *see also* N.C. Gen. Stat. §§ 14-34.1(a), 14-17(a). Therefore, the trial court did not err in declining to instruct the jury on the first-degree murder theory of premeditation and deliberation, or any lesser included offenses of premeditated and deliberate murder. *See Millsaps*, 356 N.C. at 561, 565, 572 S.E.2d at 771, 774. Because we discern no error in the trial court's jury instructions, we need not consider Defendant's argument that the error was prejudicial. *See* N.C. Gen. Stat. § 15A-1442(4)(d).

VI. Short-Form Murder Indictment

In his second argument, Defendant maintains the short-form indictment charging him with first-degree murder was fatally defective because it did not sufficiently allege the elements of first-degree murder; rather, the indictment "alleged only the elements of second-degree murder." Defendant contends this defect violated his constitutional rights and deprived the trial court of jurisdiction. Defendant notes in his brief that he included this argument for preservation purposes only and acknowledges that our Supreme Court has held a short-form indictment does not

violate a defendant's constitutional protections. *See State v. Braxton*, 352 N.C. 158, 175, 531 S.E.2d 428, 437–38 (2000) (rejecting the defendant's argument that facts alleging premeditation and deliberation must be included in a short-form indictment alleging first-degree murder), *writ denied*, 531 U.S. 1130, 121 S. Ct. 890, 148 L. Ed. 2d 797 (2001).

In North Carolina, an indictment for murder sufficiently describes the crime if it “allege[s] that the accused person feloniously, willfully, and of his malice aforethought, did kill and murder,” and the indictment names the person killed. N.C. Gen. Stat. § 15-144 (2021). “An indictment that complies with the requirements of [N.C. Gen. Stat.] § 15-144 will support a conviction of both first-degree and second-degree murder.” *Braxton*, 352 at 174, 531 S.E.2d at 437. Our Supreme Court “has consistently held that indictments for murder based on the short-form indictment statute are in compliance with both the North Carolina and United States Constitutions.” *Id.* at 174, 531 S.E.2d at 437. Moreover, short-form murder indictments “that comply with [N.C. Gen. Stat.] § 15-144 are sufficient to charge first-degree murder on the basis of *any theory* set forth in [N.C. Gen. Stat. §] 14-17.” *State v. Garcia*, 358 N.C. 382, 388, 597 S.E.2d 724, 731 (2004) (citations omitted and emphasis in original).

Here, the short-form murder indictment alleged that Defendant “unlawfully, willfully and feloniously and of malice aforethought did kill and murder [Mr. Ford].” The “first degree” box was checked on the indictment form. Thus, the indictment

satisfied the requirements for describing the offense of first-degree murder and naming the victim. *See Braxton*, 352 at 174, 531 S.E.2d at 437; *see also* N.C. Gen. Stat. § 15-444. Accordingly, we reject Defendant's argument.

VII. Conclusion

In sum, we hold the trial court did not err in excluding jury instructions on first-degree murder under the theory of premeditation and deliberation, second-degree murder, and voluntary manslaughter because the State proceeded only under the felony-murder rule, and the evidence relating to the underlying felony was not in conflict. We further hold the short-form indictment was sufficient to charge Defendant with first-degree murder.

NO ERROR.

Judges ZACHARY and WOOD concur.

Report per Rule 30(e).