

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-425

Filed 16 January 2024

Iredell County, Nos. 20 CRS 1501, 52949–51, 52968

STATE OF NORTH CAROLINA

v.

GRADY STEELE

Appeal by defendant from judgment entered 19 September 2022 by Judge Joseph N. Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals 31 October 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Dylan Sugar, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellant Defender Jillian C. Franke, for defendant-appellant.

ZACHARY, Judge.

Defendant Grady Steele appeals from the judgment entered upon his convictions for felony larceny of motor vehicles, misdemeanor fleeing to elude arrest with a motor vehicle, misdemeanor resisting a public officer, misdemeanor first-degree trespass, and his plea to attaining the status of an habitual felon. Defendant

argues that the trial court erred in instructing the jury on flight. After careful review, we conclude that the trial court did not err in instructing the jury on flight, and that Defendant received a fair trial, free from prejudicial error.

BACKGROUND

On 9 July 2020, the Statesville Police Department received a call for “an alarm at Great Western Motorcycle,” a power sports dealership. Video surveillance showed several individuals removing vehicles from the property. The first officers to respond to the scene saw that “two ATVs and one jet ski” had been moved off the dealership property through a hole cut into the chain link fence. There was a “very large” U-Haul positioned nearby.

As Officer Travis Chapman approached the U-Haul, he saw “a couple of pairs of feet” running on the other side of the U-Haul. “As [Officer Chapman] saw the feet running, [he saw] the vehicles['] brake lights turn on and then the U-Haul truck, the engine start and begin to take off or pull off[,]” despite the officer’s commands to stop. While other officers, in their separate vehicles, pursued the U-Haul, Officer Chapman pursued another individual who fled into the woods. Troutman Police Department officers assisted in the chase of the U-Haul, and deployed stop sticks in an attempt to disable the U-Haul’s tires. The second time, the stop sticks disabled three of the U-Haul’s tires; the U-Haul then ran a red light and ran off the road. Defendant, who was the driver of the U-Haul, exited the U-Haul and ran. A K-9 officer eventually located Defendant in some bushes, from which officers removed him. Officers found

Defendant's driver's license and the rental agreement in the cab of the U-Haul, which had been rented to Defendant a few hours earlier.

Officers arrested Defendant, and on 12 November 2020, an Iredell County grand jury indicted him for felony larceny of motor vehicles, possession of burglary tools, felony fleeing to elude arrest, misdemeanor resisting a public officer, misdemeanor injury to real property, conspiracy to commit felony larceny, first-degree trespass, and attaining the status of an habitual felon.

On 12 September 2022, this matter came on for trial. On 19 September 2022, a jury found Defendant guilty of felony larceny of motor vehicles, misdemeanor fleeing to elude arrest with a motor vehicle, misdemeanor resisting a public officer, and misdemeanor first-degree trespass. Defendant pleaded guilty on 19 September 2022 to attaining the status of an habitual felon, and the trial court entered judgment upon the jury verdicts and Defendant's guilty plea, sentencing him to 90 to 120 months in the custody of the North Carolina Division of Adult Correction, with credit for 326 days spent in confinement as a result of these charges prior to the date of the judgment. Defendant gave oral notice of appeal.

DISCUSSION

Defendant argues that the trial court erred by instructing the jury on flight over Defendant's objection that "there was no evidence that [Defendant] fled separate and apart from the conduct underlying the charges of fleeing to elude arrest by motor vehicle and resisting arrest" by a public officer. We disagree.

Jury instructions are reviewed *de novo*; this Court considers the matter anew and freely substitutes its judgment for that of the trial court. *State v. Pender*, 218 N.C. App. 233, 243, 720 S.E.2d 836, 842, *appeal dismissed and disc. review denied*, 366 N.C. 233, 731 S.E.2d 414 (2012). For an erroneous jury instruction to require a new trial, there must be a “reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial[.]” *State v. Castaneda*, 196 N.C. App. 109, 116, 674 S.E.2d 707, 712 (2009) (citation omitted). “The defendant has the burden of demonstrating prejudice.” *Id.*; *see also* N.C. Gen. Stat. § 15A-1443(a) (2021).

“[O]ur courts have long held that a trial court may not instruct a jury on [a] defendant’s flight unless there is some evidence in the record reasonably supporting the theory that [the] defendant fled after commission of the crime charged.” *State v. Levan*, 326 N.C. 155, 164–65, 388 S.E.2d 429, 433–34 (1990) (cleaned up); *see also State v. Allen*, 346 N.C. 731, 740–41, 488 S.E.2d 188, 193 (1997) (concluding that an instruction on flight was proper where the defendant “drove away from the scene of the crime and was not apprehended until later that night in another county”). “[T]he relevant inquiry concerns whether there is evidence that [the] defendant left the scene of the [crime] and took steps to avoid apprehension.” *Levan*, 326 N.C. at 165, 388 S.E.2d at 434. Moreover, “evidence of flight does not create a presumption of guilt but is only some evidence of guilt which may be considered with the other facts and

circumstances in the case in determining guilt.” *State v. Irick*, 291 N.C. 480, 494, 231 S.E.2d 833, 842 (1977).

Here, Defendant does not contend that the trial court improperly instructed the jury on the elements of the offenses of misdemeanor fleeing to elude arrest and resisting a public officer. Additionally, it is undisputed that Defendant fled and took steps to avoid apprehension after officers arrived at the scene. Nevertheless, Defendant asserts that the trial court erred by instructing the jury on flight in that he “did not flee after the commission of [those] crimes”—misdemeanor fleeing to elude arrest and resisting a public officer—because as to those crimes “his flight was the crime.” (Emphasis omitted). Defendant argues that “[i]t was improper for the jury to be able to consider those ‘flights’—two other offenses—to presume guilt of the larceny or any other charge.”

To begin, it is well settled that “evidence of flight does not create a presumption of guilt but is only some evidence of guilt which may be considered with the other facts and circumstances in the case in determining guilt.” *Id.* Therefore, the jury cannot have considered flight “to presume guilt of the larceny or any other charge.” Nonetheless, the fact remains that there was evidence of flight in this case, and the trial court’s instruction on flight was explanatory and relevant to the charges of felony larceny of motor vehicles and misdemeanor first-degree trespass and could have aided the jury in its determination regarding these charges. *See id.* at 494, 231 S.E.2d at 843.

Even assuming, *arguendo*, that the trial court erred by instructing the jury that it could consider Defendant's flight as evidence of his guilt, Defendant has not shown that he was prejudiced by the jury's instruction. *See Castaneda*, 196 N.C. App. at 116, 674 S.E.2d at 712. "A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when 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." N.C. Gen. Stat. § 15A-1443(a). In the case at bar, there is ample other evidence from which a jury could find Defendant guilty of the charges against him. There was video surveillance of the crimes; Defendant rented the U-Haul a few hours prior to the commission of the crimes; officers found Defendant's driver's license and the rental documents in the cab of the U-Haul; and Defendant was discovered and apprehended in the bushes after fleeing from the U-Haul. Moreover, any prejudice was cured by the trial court's instruction on the correct elements of the charges, that Defendant denied fleeing the scene, and that "proof of [flight] is not sufficient in itself to establish [D]efendant's guilt." *See Irick*, 291 N.C. at 494, 231 S.E.2d at 842; *State v. Demick*, 288 N.C. App. 415, 433, 886 S.E.2d 602, 615 (2023). "Nothing else appearing, we assume the jury followed the court's instructions." *Demick*, 288 N.C. App. at 433, 886 S.E.2d at 616 (cleaned up).

Based on the foregoing, we are unable to conclude that Defendant met his burden of showing that "there is a reasonable possibility that," had the trial court

declined to instruct the jury on flight, “a different result would have been reached at the trial.” *Castaneda*, 196 N.C. App. at 116, 674 S.E.2d at 712 (citation omitted). Accordingly, we conclude that there was no prejudicial error.

CONCLUSION

For the reasons stated herein, we conclude that Defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges STADING and THOMPSON concur.

Report per Rule 30(e).