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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1047

Filed 6 August 2024

Mecklenburg County, Nos. 20 CRS 215389-90

STATE OF NORTH CAROLINA

v.

DANIEL OWEN ST. ONGE

Appeal by Defendant from judgment entered 22 February 2023 by Judge Donald Ray Cureton in Mecklenburg County Superior Court. Heard in the Court of Appeals 12 June 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Michael T. Henry, for the State.

Goodman Carr, PLLC, by W. Rob Heroy, for the Defendant.

WOOD, Judge.

On 22 February 2023, a jury convicted Daniel St. Onge (“Defendant”) of two counts of discharging a firearm into an occupied vehicle. Defendant appeals, arguing the trial court erred in instructing the jury that the Castle Doctrine would not apply if Defendant used excessive force to defend his home; denying Defendant’s motion to

dismiss the charges based on the immunity available under the Castle Doctrine; and declining to provide the jury with a flight instruction. For the reasons stated herein, we hold Defendant received a fair trial, free from error.

I. Factual and Procedural History

On the night of 2 May 2020, Rodney Walker Ellenburg (“Walker”), and three friends, Trey, Levi, and Cayden, all teenaged juveniles, attended a party in Mint Hill. Walker was approximately twenty-three years old. Trey had “lost count” of how much beer he had consumed and was feeling “[p]retty bad off.” Walker had a “few” drinks but was not “heavily under the influence.” Cayden did not drink any alcohol. After the party, the group decided to steal street signs and “speed around town” in a vehicle. The group rode in Walker’s vehicle, a Ford Mustang.

Walker had previously been in a relationship with one of Defendant’s daughters, Anna, who had ended her relationship with Walker in September 2018. Walker was “upset” with Anna and wanted to go to her home. At approximately 1:00 or 2:00 a.m. the following morning, the group drove to Anna’s home in Charlotte, where she lived with her parents and her two sisters. Trey and Walker threw bottles toward the home, and Trey bent and pulled the mailbox door. They did not see or hear any signs of anyone exiting Walker’s home. They got back into Walker’s Mustang and drove to Levi’s home at approximately 3:00 a.m.

Anna awoke to a “ruckus” at approximately 1:45 or 2:00 a.m.¹ She looked out the window and saw somebody behind her vehicle. She used her key fob to activate the lights on her vehicle, and the person who was tampering with the vehicles jumped into the Mustang, which sped away. Anna went into her parents’ bedroom to wake them up. Defendant had his wife call 911 then went outside to investigate what had happened. Anna also went outside and “as soon as [she] opened the door,” she observed “beer bottles all over the ground.” Defendant drove through the neighborhood to determine whether any suspicious persons were still in the area. When he returned home, he observed “a litany, 15 or more” of beer bottles smashed against the doorbell, front door, portico, windows, and cars. The yard was littered with shattered beer bottles that had been thrown against the house.

After midnight, Charlotte Police Officer Kevin Crespi (“Officer Crespi”) responded to a service call reporting a suspicious person “around” Defendant’s property messing with vehicles. When he arrived at Defendant’s home, Defendant discussed the damage that he had observed on his property. They contacted CPI Home Security to retrieve doorbell camera footage, but the footage only depicted “cracklings” because Walker and Trey had “busted” the camera. Because Officer Crespi did not observe “evidence of any crimes” nor any suspicious person still in the

¹ Defendant’s youngest daughter also awoke to the “commotion” outside her door during Trey’s and Walker’s first visit to Defendant’s home. She stepped outside and noticed beer bottles on the front porch, underneath the portico, and on the sidewalk. Defendant sent her back inside because he did not want her to cut her feet on broken glass.

vicinity of Defendant's home, he informed Defendant that officers "would circulate the area." Anna recalls Officer Crespi stating that what happened was "petty theft" and that whoever did it "should not come back."

Later that morning, Walker persuaded the group to return to Defendant's home. According to Cayden, Walker wanted to tamper with Anna's license plate.² Her vehicle was parked on the street in front of Defendant's home. They left Levi's home and arrived at Defendant's home at approximately 4:00 a.m.

At approximately 4:45 a.m., Anna awoke once again, this time to the noise of a car engine revving. She looked out her window and saw someone walking toward the family's vehicles with a sledgehammer. She ran out of her bedroom to tell her parents that the perpetrators had returned. Defendant told her to call the police. While Anna was on the phone with the 911 operator, she heard gunshots and feared Defendant had been shot.

According to Defendant, he awoke shortly before 5:00 a.m. to his daughter running into his room, crying, telling him that the perpetrators were back and had a sledgehammer. Defendant immediately grabbed a pistol and went downstairs to investigate. When Defendant stepped outside, he saw two individuals. One was in Defendant's driveway walking toward his house, and the other was in the yard.

² There were two vehicles parked on the street in front of Defendant's home, Anna's red Jeep and a Nissan Rogue. Cayden testified they tampered with a "white SUV-type vehicle" parked in front of Anna's Jeep.

Defendant yelled, “Hey stop,” and at the same time heard something “whiz” past his head and “pop.” It was the noise of a glass bottle thrown past him and shattering behind him, although at the time Defendant thought it “sounded like a gunshot.” Defendant fired his pistol in the direction from which he believed the projectile came. The two individuals disappeared in different directions.

Defendant walked to the end of his driveway “to figure out what was happening next.” He then heard a Mustang start, rev its engine, and “burn rubber or spin the tires” and advance directly toward him with the high beams on. Defendant thought the vehicle was going to hit him and “obviously kill” him. Defendant stepped back and fired two shots toward the vehicle. The car swerved and a door “flew open.” Out of the corner of Defendant’s eye, he saw someone emerge from a cluster of trees and run directly toward him. Defendant later learned this individual was Trey. Defendant observed Trey holding a sledgehammer, and he believed Trey was going to kill him. Defendant fired four shots, and Trey continued running into the street. Defendant saw one individual get into the Mustang first and then saw Trey initially fumble as he attempted to enter the Mustang. The vehicle’s occupants pulled him inside, and the Mustang “sped off” out of the neighborhood.

According to Cayden, all four members of the group returned to Defendant’s home a second time that night. Trey and Cayden got out of the Mustang, and Cayden lost sight of Trey. One of them had a sledgehammer, which they intended to use on the mailbox. Trey began tampering with a vehicle’s license plate. Cayden heard

Defendant exit the home and yell, “Hey,” at which point Cayden ran away down the street toward the Mustang. Cayden did not know where Trey was, but believed he had a delayed reaction to Defendant’s gunshots and was running somewhere behind him. Cayden was the first to reach the Mustang and jumped into the passenger seat. Defendant continued firing his pistol after Cayden shut the door. A bullet shattered the passenger door window, and Cayden ducked down behind the door to take cover. He testified he could still hear gunshots “before, during, and after” the time he entered the car. Trey managed to jump into the back seat where Levi was sitting. Levi pointed out to Trey that he had been shot. They discovered he had been hit on a forearm and a leg.

According to Trey, he only traveled to Defendant’s home once, on the second occasion when Defendant fired gunshots.³ Trey testified he and Cayden tampered with a license plate for “a minute or two” before Defendant exited his home and fired nine to ten shots at them. He and Cayden then ran toward the Mustang. Trey testified he was shot while attempting to get into the Mustang. He did not notice that he had been shot in the arm and leg until after he entered the vehicle. According to Trey, he did not remember having a sledgehammer.

³ However, Cayden testified that Trey was lying when he testified that he was not present during the group’s first visit to Defendant’s home. Cayden testified that he, Walker, Levi, *and* Trey were present for both their first and second visits to Defendant’s home.

Walker chose to change vehicles to avoid driving one with bullet holes in it before driving to a hospital. Cayden later realized that Walker drove by two closer hospitals in order to do so. At the hospital, Trey learned the gunshot to his arm fractured or split a bone. Hospital personnel conducted surgery to remove a bullet. Trey required four to six months to recover and could not do anything such as work or school.

At approximately 5:00 a.m., Officer Crespi received a call regarding shots fired at Defendant's home. Officer Crespi received a report of a white Mustang with a group of people on or near Defendant's property. For the second time that night, Officer Crespi responded to Defendant's home. On his way there, he observed a white Mustang traveling at a high rate of speed. He turned his vehicle around and attempted to catch up to the Mustang to conduct a traffic stop, but he lost sight of it and continued to drive to Defendant's home. When he arrived, Defendant handed over his firearm and concealed weapon carry permit. Defendant was "relaxed" while speaking with responding officers. Defendant explained to responding officers that this was the second time that night that people came to vandalize his property and that he "was in fear for his life" and fired his pistol.

Officers discovered spent shell casings scattered in the street, a sledgehammer at an intersection approximately 119 feet from Defendant's mailbox, and a bent and damaged license plate. During the investigation, one of the officers gave Defendant a citation for discharging a firearm within city limits. Later that same day, 3 May

2020, warrants were issued for Defendant's arrest for assault with a deadly weapon inflicting serious injury and for two counts of discharging a firearm into an occupied vehicle.

On 19 October 2020, a grand jury indicted Defendant on the charge of discharging a firearm into an occupied vehicle. On 1 August 2022, a grand jury indicted Defendant on charges of discharging a firearm into an occupied vehicle and three counts of attempting to discharge a firearm into an occupied vehicle.

Defendant's trial was held during the 13 February 2023 criminal session of Mecklenburg County Superior Court. At the close of the State's evidence, Defendant's counsel made a motion to dismiss all the charges. However, while arguing in support of this motion, defense counsel stated regarding the charge of assault with a deadly weapon:

[W]e [have] a self-defense issue and, obviously, there's enough by itself right now to go to the jury on that charge. We have no objection to that at this point. We're going to renew our objection at the end of all the evidence. But as far as the three charges -- sorry, the four charges of shooting at a moving vehicle, there is no evidence that vehicle was moving, Your Honor, and no evidence that three of those shots were at the vehicle.

The trial court denied "the motion to dismiss the five charges." At the close of all evidence, defense counsel "again move[d] . . . to dismiss all five counts." The trial court again denied the motion.

The jury found Defendant guilty of two counts of discharging a firearm into an occupied vehicle and not guilty of the remaining charges. On 22 February 2023, the trial court made findings of extraordinary mitigation and imposed a mitigated sentence of 38-51 months of imprisonment suspended for 36 months of supervised probation.

On 3 March 2023, Defendant filed written notice of appeal.

II. Analysis

Defendant argues the trial court erred in (1) instructing the jury that the Castle Doctrine would not apply if Defendant used excessive force to defend his home from intruders; (2) declining to dismiss the case based on the immunity available under the Castle Doctrine; and (3) declining to provide the jury with a flight instruction. We address each argument in turn.

A. Castle Doctrine Jury Instructions

Defendant argues the trial court erroneously instructed the jury that the Castle Doctrine would not apply if Defendant used excessive force to defend his home from the intruders.

At trial, Defendant did not object to the trial court's instructions to the jury regarding the charged offense of discharging a firearm into an occupied vehicle in operation. N.C. R. App. P. 10(a)(4) states:

In criminal cases, an issue that was not preserved by objection noted at trial and that is not deemed preserved by rule or law without any such action nevertheless may be

made the basis of an issue presented on appeal when the judicial action questioned is specifically and distinctly contended to amount to plain error.

Therefore, the plain error standard of review applies. This standard requires that a defendant “demonstrate that a fundamental error occurred at trial. To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury’s finding that the defendant was guilty.” *State v. Juarez*, 369 N.C. 351, 358, 794 S.E.2d 293, 299–300 (2016) (quotation marks omitted).

Generally, “a person is justified in the use of deadly force” if “[h]e or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.” N.C. Gen. Stat. § 14-51.3(a)(1). The Castle Doctrine creates a *presumption* that “the lawful occupant of a home . . . held a reasonable fear of imminent death or serious bodily harm” when:

- (1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.
- (2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

N.C. Gen. Stat. § 14-51.2(b). The Stand Your Ground Doctrine provides:

a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to herself or another.

(2) Under the circumstances permitted to G.S. 14-51.2.

N.C. Gen. Stat. § 14-51.3(a).

The relevant difference between the Castle Doctrine and the Stand Your Ground Doctrine is that the latter prohibits the use of deadly force *unless* it is shown that the defendant reasonably believed such force was necessary to prevent imminent death or great bodily harm to himself or another, while the former *presumes* that the defendant had a reasonable fear of imminent death or serious bodily harm when the appropriate circumstances apply. In other words, under the Castle Doctrine it is presumed that a person is justified in using deadly force. *Compare* N.C. Gen. Stat. § 14-51.2(b) *with* N.C. Gen. Stat. § 14-51.3(a). Therefore, a trial court should not give an instruction on excessive force in conjunction with an instruction on the Castle Doctrine, because a person is justified in using deadly force in a Castle Doctrine scenario. N.C. Gen. Stat. § 14-51.2(b). A jury would have to determine, first, that the presumption afforded by the Castle Doctrine has been rebutted before considering whether a person used excessive force in defending him- or herself.

Here, the trial court instructed the jury on the elements of discharging a firearm into an occupied vehicle in operation. It then instructed the jurors that if they were satisfied beyond a reasonable doubt that Defendant committed the offense, they would next “consider whether the defendant’s actions are excused and the defendant is not guilty because the defendant acted in self-defense or defense of habitation.” The trial court then instructed the jury on self-defense, the Stand Your Ground Doctrine, and that it was the State’s burden to prove “beyond a reasonable doubt that the defendant’s action was not in self-defense or defense of others.” Next, the trial court instructed the jury to determine the reasonableness of defendant’s belief that shooting into the vehicle was necessary to protect himself from imminent death or great bodily injury. The trial court then gave an instruction on the use of excessive force:

A defendant does not have the right to use excessive force. The defendant had the right to use only such force as reasonably appeared necessary to the defendant under the circumstances to protect the defendant or another from death or great bodily harm. In making this determination, you should consider the circumstances as you find them to have existed from the evidence, including the size, age, and strength of the defendant as compared to the victim, and whether the victim possessed a weapon. Again, you, the jury, determine the reasonableness of the defendant’s belief from the circumstances appearing to the defendant at the time.

In sum, the trial court instructed the jury that if it found the elements of the charged offense existed and that Defendant did not act in self-defense, meaning that

Defendant used excessive force or he did not reasonably believe the use of such force was necessary, it could return a verdict of guilty.

The trial court then gave the jury the Castle Doctrine instruction. It stated, “The State has the burden of proving from the evidence beyond a reasonable doubt that the defendant’s action was not in *defense of habitation*.” (Emphasis added). The trial court explained that Defendant’s use of force was excused if he used it to prevent a forcible entry into his home. The trial court instructed the jury that a defendant’s home includes the curtilage. It further instructed:

The defendant was justified in using deadly force if: (1) such force was being used to prevent a forcible entry into the defendant’s home; (2) the defendant reasonably believed that the intruder would kill or inflict serious bodily injury to the defendant or others in the home; and (3) the defendant reasonably believed that the degree of force the defendant used was necessary to prevent a forcible entry into the defendant’s home.

Importantly, the trial court instructed the jury that it should presume Defendant held a reasonable fear of imminent death or serious bodily injury if Trey or Cayden were in the process of or attempting to unlawfully and forcefully enter Defendant’s home or already had done so. The trial court did not give an instruction on excessive force in conjunction with the Castle Doctrine instruction, nor did it repeat any instruction regarding excessive force until it gave instructions regarding count two, attempted discharging a firearm into an occupied vehicle.

The trial court properly instructed the jury on excessive force in conjunction with the standard self-defense and Stand Your Ground Doctrine instructions. The trial court did *not* instruct the jury to consider whether Defendant used excessive force when considering whether the Castle Doctrine applied, nor did it imply that the Castle Doctrine would not apply if Defendant used excessive force. Accordingly, we hold the trial court did not err in its instructions on discharging a firearm into an occupied vehicle in operation.

B. Motion to Dismiss and Castle Doctrine Immunity Protection

Defendant argues the trial court erred in denying Defendant's motion to dismiss the charges based on the immunity available pursuant to the Castle Doctrine. On appeal, Defendant does not challenge that substantial evidence existed for each element of the offense of discharging a firearm into an occupied vehicle in operation. Rather, Defendant argues the State failed to submit substantial evidence that Defendant did not have a reasonable fear of imminent death or serious bodily harm. In the alternative, Defendant requests this Court to remand the matter for a new immunity hearing because the State failed to present substantial evidence that Defendant did not have a reasonable fear of imminent death or serious bodily harm.

“This Court reviews the trial court's denial of a motion to dismiss *de novo*.” *State v. Austin*, 279 N.C. App. 377, 382, 865 S.E.2d 350, 354 (2021). In reviewing a trial court's denial of a motion to dismiss, we must determine “whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser

offense included therein, and (2) of defendant's being the perpetrator of such offense." *State v. Summey*, 228 N.C. App. 730, 733, 746 S.E.2d 403, 406 (2013) (quotation marks omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Austin*, 279 N.C. App. at 382, 865 S.E.2d at 354 (quotation marks omitted). We consider the evidence "in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *Id.*

The Castle Doctrine states, "[a] person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force." N.C. Gen. Stat. § 14-51.2(e). Immunity is only available when an individual uses force "as permitted by this section." *Id.* Further, the jury decides whether a defendant uses force as permitted by the statute because the jury is the finder of fact. *See State v. Hoff*, 224 N.C. App. 155, 160, 736 S.E.2d 204, 208 (2012). "[I]f the State presents substantial evidence from which a reasonable juror could conclude that a defendant did not have a reasonable fear of imminent death or serious bodily harm, the State can overcome the presumption and create a fact question for the jury." *Austin*, 279 N.C. App. at 384, 865 S.E.2d at 356.

This Court has noted that the Castle Doctrine does not afford "a traditional immunity from prosecution that must be resolved by the court before trial." *Austin*, 279 N.C. App. at 381, 865 S.E.2d at 354. The court in *Austin* explained that "the [C]astle [D]octrine provides immunity from 'criminal liability,' " in other words, it

provides immunity “from a conviction and judgment, not the prosecution itself.” *Id.* A case cannot be dismissed simply because there is some evidence that a defendant acted in self-defense. “The reasonableness of [a defendant’s] belief is to be determined by the jury from the facts and circumstances as they appeared to him at the time.” *State v. Coley*, 375 N.C. 156, 161, 846 S.E.2d 455, 458 (2020). Therefore, the trial court did not err in refusing to adjudicate Defendant’s claim of immunity under the Castle Doctrine prior to trial because the Castle Doctrine does not provide immunity from prosecution.

We next address whether the State in fact presented substantial evidence that Defendant did not have a reasonable fear of imminent death or serious bodily harm. The record evidence tends to show there were two instances in which Defendant shot into an occupied vehicle while in operation. According to Defendant, during the second assault on his home that night, he walked to the end of his driveway. He testified that the Mustang turned on its high beams and accelerated directly toward him. In response, Defendant fired two shots toward the vehicle. It is unlikely that the jury based its convictions of Defendant on this instance because of the substantial evidence Defendant presented indicating that he fired at the Mustang because he believed it would strike and kill him.

According to Cayden, Defendant continued firing his gun after Cayden leaped into the Mustang. Cayden specifically testified that Defendant discharged his firearm “before, during, and after” the moment Cayden entered the vehicle. A bullet

shattered the passenger door window. Trey testified that he believed he was shot while attempting to enter the Mustang.

The trial court instructed the jury regarding the defense of self-defense:

If the circumstances would have created a reasonable belief in the mind of a person of ordinary firmness that the assault was necessary or appeared to be necessary to protect that person or another from imminent death or great bodily injury, and the circumstances did create such belief in the defendant's mind at the time the defendant acted, such assault would be justified by self-defense.

You, the jury, determine the reasonableness of the defendant's belief from the circumstances appearing to the defendant at that time.

The trial court further instructed the jury that, pursuant to the Castle Doctrine, it should presume Defendant "held a reasonable fear of imminent death or serious bodily injury to himself or another" if "[o]ne, Trey . . . or Cayden . . . were in the process of, or attempting to, unlawfully and forcefully enter or had unlawfully and forcibly entered [Defendant's] home; and two, [Defendant] knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred." The trial court further instructed the jury that in order to find that Defendant did not act in lawful defense of his home, it was required to find:

(1) that the defendant did not use such force to prevent a forcible entry into the defendant's home; (2) that the defendant did not reasonably believe that the intruder would kill or inflict serious bodily harm to the defendant or others in the home; and (3) that the defendant did not reasonably believe that the degree of force the defendant

used was necessary to prevent a forcible entry into the defendant's home.

The trial court correctly instructed the jury on the relevant law given the facts in evidence. The jury likely based its convictions of Defendant on Cayden's and Trey's testimony that Defendant fired at them while they attempted to get into the Mustang to retreat and that he continued to fire even after they—or at least Cayden—had entered the vehicle. Cayden's and Trey's testimony provided substantial evidence that Defendant did not have a reasonable belief that deadly force was necessary to prevent imminent death or serious bodily harm as he continued firing because they were running away from him while he was firing. Their testimony also provided evidence that Defendant “did not use such force to prevent a forcible entry into [his] home.” Therefore, we hold the State presented substantial evidence Defendant did not hold a reasonable fear of imminent death or serious bodily harm when he fired at Cayden and the other occupants of the Mustang after Cayden had entered it. Accordingly, the trial court did not err in allowing the offense of discharging a firearm into an occupied vehicle in operation to proceed to the jury.

We now address Defendant's argument that, alternatively to reversing the trial court's denial of his motions to dismiss, this Court should remand the matter for a new immunity hearing.

On 27 July 2021, Defendant filed a “Motion for Immunity Hearing.” The motion argues that N.C. Gen. Stat. §§ 14-52.2(e) and 14-51.3(b) create “an immunity

from prosecution.” The motion further stated “[i]mmunity under North Carolina law should be a judicial determination of the trial court, not the trier of fact.” Defendant requested the trial court to “hold a hearing and following a hearing to grant the immunity provided to the Defendant under North Carolina Statute § 15A-954(a)(9).” N.C. Gen. Stat. § 15A-954(a)(9) states, “The court on motion of the defendant must dismiss the charges stated in a criminal pleading if it determines that [t]he defendant has been granted immunity by law from prosecution.”

On 13 February 2023, the trial court held a hearing on pretrial motions. Defense counsel presented the trial court with the motion for immunity. Defense counsel argued N.C. Gen. Stat. § 14-51.2 provides a presumption that one has a reasonable fear of death or serious bodily injury when one is in his home. Defense counsel explained to the trial court that in his experience in prior trials in which he presented motions for immunity hearings, “the judge takes it under advisement pending what the evidence tends to show.” Defense counsel stated, “instead of having a formal hearing” on the issue of immunity, “[I] just ask you to take it under advisement and decide, at some point we’ll make a motion after all the evidence on that issue is heard.” The trial court asked defense counsel, “So if I’m clear as well, it may be that after all evidence has been presented, both by State and on your behalf, that I can then readdress the motion?” Defense counsel responded, “Yes.” The prosecutor stated, “I do not believe [defense counsel] is requesting a pretrial determination on immunity.” Defense counsel responded, “That’s right.” The trial

court told defense counsel, “So you have those two issues that will be addressed at the appropriate time as [has] been mentioned.”

After the close of all evidence, the trial court heard defense counsel’s “motion to dismiss for immunity.” Defense counsel argued that he had presented “a prima facie case for immunity [from] criminal prosecution in this matter,” and he requested that the trial court “allow this motion for immunity.” The trial court highlighted that the State presented evidence that Cayden and Trey were running away when Defendant continued shooting at them. The prosecutor argued there were facts in dispute regarding whether Defendant held a reasonable fear of imminent death or serious bodily harm. The prosecutor further argued the presumption available under the Castle Doctrine is a rebuttable presumption and that the jury decides whether the State has presented evidence rebutting the presumption. The prosecutor pointed out that there was a defense of habitation jury instruction and that the question should proceed to the jury. The trial court found that there was an issue of fact regarding whether the presumption should end when Cayden and Trey ran away from Defendant and that the issue should go to the jury and denied Defendant’s motion to dismiss.

As noted *supra*, this Court’s holding in *Austin* is contrary to Defendant’s contention that the Castle Doctrine protects a criminal defendant from prosecution: “the immunity is from a conviction and judgment, not the prosecution itself.” 279 N.C. App. at 381, 865 S.E.2d at 354. Because we hold the State presented substantial

evidence that Defendant did not hold a reasonable fear of imminent death or serious bodily harm when he fired at the Mustang after Cayden got into it, we decline to remand the matter for a second immunity hearing.

C. Flight Instruction

Defendant next argues that the trial court erred by declining to provide the jury with a flight instruction. Specifically, Defendant argues there was evidence Walker and his group fled the scene and that a flight instruction would have “direct[ed] the jury that it may infer that a person’s flight from the scene of a crime is an admission of guilt and evidence of consciousness of guilt.” Defendant contends the instruction is relevant “to a jury determination of whether [the perpetrators] w[ere] committing a forcible entry at the time [Defendant] acted in self-defense.”

The trial court is required to give a requested jury instruction “only if the proposed charge is a correct statement of the law and is supported by evidence.” *State v. Benner*, 380 N.C. 621, 628, 869 S.E.2d 199, 204 (2022). “[C]hallenge[s to] the trial court’s decision 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).

“A trial court may properly instruct on flight where there is some evidence in the record reasonably supporting the theory that *the defendant* fled after the commission of the crime charged.” *State v. Miller*, 275 N.C. App. 843, 852, 852 S.E.2d 704, 711 (2020) (quotation marks omitted) (emphasis added). Here, Cayden and Trey testified that Defendant fired at them and the Mustang as they were running away

and trying to get into the vehicle. After approximately an hour of driving, Walker's group eventually decided to take Trey to a hospital. In the hour they were driving around, they drove past two hospitals and swapped vehicles. In his testimony, Cayden explained that he later learned they had driven past two closer hospitals because Walker wanted to use a vehicle without bullet holes in it.

Defendant argues he was entitled to an instruction on flight to allow the jury to consider flight by the witnesses as evidence of consciousness of guilt. Defendant's argument fails because Walker's group fled the scene, not Defendant. A flight instruction is relevant to a criminal defendant's guilt, not the guilt of any witness in a criminal trial. *Miller*, 275 N.C. App. at 852, 852 S.E.2d at 711. Accordingly, we hold the trial court did not err in denying Defendant's request for a jury instruction on flight.

III. Conclusion

The trial court did not err in its instructions to the jury on the Castle Doctrine or the charged offense of discharging a firearm into an occupied vehicle in operation. Neither did the trial court err in denying Defendant's motion to dismiss the case based on the immunity available under the Castle Doctrine. Finally, the trial court did not err in declining to instruct the jury regarding flight. We hold that Defendant received a fair trial, free from error.

NO ERROR.

Judge HAMSON concurs.

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Opinion of the Court

Judge MURPHY concurs by separate opinion.

Report per Rule 30(e)

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MURPHY, Judge, concurring.

Flight remains a problematic concept in our jurisprudence and provides the State with an unjust carveout to the detriment of the accused. Though I am blue in the face, I reiterate the principles behind my concurrence in *State v. Edwards*, 276 N.C. App. 45, *disc. rev. denied*, 860 S.E.2d 920 (Mem) (2021):

I concur in the portion of the Majority which properly summarizes the current status of the law that an instruction on lack of flight is unavailable to Defendant.^[4] However, in writing separately, and of little solace to Defendant, I agree that if we are going to continue to instruct jurors on flight, the opposite instruction must also be available to a defendant who does not flee.

As Defendant accurately observes in his brief, whether appropriate or not in our secular system, the principles underlying the flight instruction derive from Proverbs, “the wicked flee when no one pursues, but the righteous are bold as a lion.” Proverbs 28:1 (English Standard Version); *see State v. Irick*, 291 N.C. 480, 494 (1977); *State v. Dickerson*, 189 N.C. 327, 331 (1925). Flight is either important for the

⁴ Note that the law as correctly stated by the Majority [in *Edwards*] traces back to an 1868 decision by our Supreme Court, which begins:

It is no ground to quash an indictment, that it was found by a grand jury drawn from a *venire* in which there were no colored freeholders—the jury list, as constituted by the county court in accordance with the law in force at the time of its constitution, not conta[in]ing the names of such colored freeholders.

State v. Taylor, 61 N.C. 508, 508 (1868). To suggest it is time for our Supreme Court to revisit the application of and reference to such an outdated case and one-sided application of jury instructions is self-evident. (footnote in original).

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MURPHY, J., concurring

jury's consideration of the evidence of Defendant's guilt, or it is not.^[5]

As we are bound by caselaw to reject Defendant's argument as to the availability of his requested instruction, I concur in the analysis and result reached by the Majority.

Id. at 49-50 (Murphy, J., concurring in part); *see also State v. Thorne*, 267 N.C. App. 692, 2019 WL 4803677, *2 n.1 (2019) (unpublished) (internal marks and citation omitted) (“[T]he probative value of flight evidence has been consistently doubted in our legal system. Nevertheless, a flight instruction may be given upon the showing of some evidence reasonably supporting the theory that [the] defendant fled after the commission of the crime charged.”), *rev. denied*, 373 N.C. 590 (2020); *accord State v. Ellis*, 274 N.C. App. 157 (2020) (unpublished).

⁵ I would also point out that the availability of an instruction that helps carry the burden of only one party in a criminal prosecution is itself constitutionally questionable. However, no such arguments have been raised at any point in this action and are not before us in this appeal. (footnote in original).