

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-470

Filed 16 April 2025

Mecklenburg County, Nos. 18CRS210502-590, 18CRS210503-590

STATE OF NORTH CAROLINA

v.

JEFFREY JEVON BOGGS

Appeal by defendant from judgment entered 28 June 2023 by Judge Carla N. Archie in Mecklenburg County Superior Court. Heard in the Court of Appeals 19 March 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Caden W. Hayes, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Heidi Reiner, for defendant.

ARROWOOD, Judge.

Jeffrey Jevon Boggs (“defendant”) appeals from judgment entered 28 June 2023 upon his convictions of first-degree felony murder and possession of a firearm by a person with a felony conviction. On appeal, defendant argues: (1) the trial court erred in denying defendant’s motion to dismiss where there was

STATE V. BOGGS

Opinion of the Court

insufficient evidence defendant was involved in Mr. Pegues's death or that an attempted robbery with a deadly weapon occurred; (2) the trial court plainly erred by failing to instruct the jury properly of its duty to return a not guilty verdict if the State failed to meet its burden to prove felony murder beyond a reasonable doubt and erred by failing to give a not guilty mandate at all when it reinstructed the jury; and (3) North Carolina's statute prohibiting possession of a firearm by a convicted felon is facially unconstitutional under both the United States and North Carolina Constitutions. For the following reasons, we find no error in part and dismiss in part.

I. Background

The evidence at trial tended to show the following:

On 29 March 2018, Demarco Pegues ("Mr. Pegues") was found unresponsive and slumped over in his car in a Panera Bread parking lot. Paramedics responded to the scene and initiated lifesaving efforts. The paramedics observed that Mr. Pegues had been shot twice and despite their efforts, Mr. Pegues passed away on the scene.

Several witnesses testified at trial. First, Hector Lopez Sanchez ("Mr. Lopez") stated he went to the Panera Bread with his fiancé. When they arrived, Mr. Lopez noticed a woman in the parking lot, later identified as Mr. Pegues's girlfriend Catherine O'Donnell ("Ms. O'Donnell"), looking frantic and asking around for help. He had not heard any gunshot sounds when he arrived at the Panera. Mr. Lopez went with Ms. O'Donnell to her vehicle where he saw Mr. Pegues sitting in the driver seat. Mr. Lopez described seeing Mr. Pegues as non-responsive, leaned back in his

STATE V. BOGGS

Opinion of the Court

seat, with his eyes closed and his mouth open. Mr. Lopez told Ms. O'Donnell to call 911; shortly after Ms. O'Donnell made the call, a firetruck arrived followed by an ambulance.

Another witness, Annabelle Suddreth ("Ms. Suddreth"), was at the Panera where Mr. Pegues was found unresponsive. When Ms. Suddreth parked her vehicle, she heard a "pop-pop" which she believed to be gunshots. Ms. Suddreth looked in the general direction of the noise but the surrounding area was quiet. Ms. Suddreth saw two men talking on their cell phones in front of a commercial dumpster, and shortly thereafter saw another individual walk quickly to a vehicle. Ms. Suddreth testified that the car she saw was silver, had a South Carolina license plate, and that the two passenger-side windows were covered by a "plastic coating[.]" Ms. Suddreth took a photo of the car as it passed in front of her; although she was unable to get a clear image of the driver, she described the driver as "a man in his mid-twenties, light brown skin, either Hispanic or light African-American, in a kind of a light-colored T-shirt."

Around the same time, Chris Cona ("Mr. Cona") was parked in an IHOP parking lot about 100 yards from the Panera. While parked at the IHOP, Mr. Cona heard two gunshots being fired out of his passenger window on his right side. His window was open when he heard the sounds. After he heard the gunshots, Mr. Cona saw a man running to a silver or white sedan. The man "had dreadlocks, straight down, about shoulder length" and wore "jeans . . . and a brown shirt." Mr. Cona took

STATE V. BOGGS

Opinion of the Court

a picture of the person with his phone within seconds of hearing the gunshots. Although Mr. Cona did not contact law enforcement on that day, he contacted the police a few days later after reading about Mr. Pegues's death at the Panera in the news.

Corey Hutchins ("Mr. Hutchins") worked at the Panera as a general manager. During lunchtime, Mr. Hutchins was taking a break and standing around the dumpster area of the Panera. Mr. Hutchins observed a silver or white car pulling out of the parking lot and heard squealing tires. Mr. Hutchins testified that he did not recall hearing gunshots. Later that day, when the police arrived at the Panera and questioned Mr. Hutchins about the incident, he described the car to them and what he remembered about the car driving away.

CMPD Investigation

Officer Robert Latimer ("Officer Latimer"), was on patrol with the Charlotte Mecklenburg Police Department ("CMPD") on the day of Mr. Pegues's death. Officer Latimer responded to an "assist medic call" and was the first officer to respond to the scene. When Officer Latimer arrived at the scene, he heard Ms. O'Donnell yelling for help. She explained that she had gone inside Panera to order food while Mr. Pegues stayed in the vehicle, and upon returning to the vehicle found Mr. Pegues slumped over and unresponsive.

Alexa Thompson ("Ms. Thompson") was a crime scene investigator trainee with CMPD on 29 March 2018. Upon arriving at the Panera, Ms. Thompson noted that

STATE V. BOGGS

Opinion of the Court

Mr. Pegues was found in an off-white Chevy Impala and that the passenger door of the vehicle was open. She collected a .380 discharged cartridge casing and blood found around the vehicle, as well as a bag with white powder from Mr. Pegues's pant pocket and an amount of cash from an interior jacket pocket. She further noted that on the driver side front seat of the vehicle, there were two LG model phones, one Samsung flip phone, and another discharged cartridge casing. Upon examining Mr. Pegues, Ms. Thompson observed gunshot wounds to his neck and on his right shoulder. Finally, Ms. Thompson took latent fingerprints from the driver's side of the vehicle.

Amanda Free ("Ms. Free") was another crime scene investigator who reported to the Panera on 29 March 2018. She collected green leafy plant material from Mr. Pegues's vehicle. She also found a bag in the trunk of the car with suspected drugs.

Detective Franchot Pack ("Detective Pack") was the lead investigator for the case. Along with interviewing witnesses on the scene and collecting any photos they took, Detective Pack was able to pull videos from real-time cameras in the area; however, the cameras were not able to provide identifying details of any vehicles passing by. Detective Pack also recovered the phones belonging to Mr. Pegues found in his vehicle.

Detective Pack downloaded information from one of the phones, which Ms. O'Donnell stated was the phone Mr. Pegues had been using primarily and at the time they arrived at Panera. Detective Pack followed up on the last two calls that were

STATE V. BOGGS

Opinion of the Court

made from the phone. One call was made by someone saved under the contact name “White Gurl Sam,” who was later identified as Sam Christenbury. The second call was made to a phone number tied to defendant.

Detective James Helms (“Detective Helms”) with the Homicide Unit at CMPD also responded to the Panera where Mr. Pegues was found and assisted in analyzing the data from Mr. Pegues’s phone. Upon confirming that the last call made on the phone was to defendant, Detective Helms began researching defendant and was able to trace a police report back to an address for defendant in Rock Hill, South Carolina. Detective Pack sent Detectives Helms, Burkard, and James to defendant’s home, where they found a Ford Fusion car matching descriptions from the scene. After obtaining a search warrant, Detective Helms searched the car, finding a Ruger .380 handgun and a bag of white powder in the center console. Inside the home, other detectives found a box of .380 ammunition. Defendant’s vehicle was impounded and brought to the CMPD Law Enforcement Center in Charlotte.

Inside the vehicle, Detective Pack found a wallet belonging to defendant along with receipts from restaurants and a gas station defendant had visited on 29 March 2018. Detective Pack was able to pull video footage from the gas station and observed two people in the vehicle that was later seen at the Panera where Mr. Pegues was shot.

The Violent Criminal Apprehension Team of CMPD then informed Detective Helms that defendant was at a hotel in Charlotte and had been taken into custody.

Detective Helms went with Detective Burkard to the hotel where defendant was apprehended and received consent to search defendant's hotel room. The detectives collected a cell phone found in the bathroom, which was identified as defendant's phone. The detectives also found and collected a vacuum-sealed bag of marijuana from under the mattress of the hotel bed, which Detective Helms stated was similar to bags found in Mr. Pegues's car.

Forensic Evidence

Fingerprints lifted from the passenger side rear door of Mr. Pegues's vehicle were lifted and examined by Todd Roberts ("Mr. Roberts"), who worked in the CMPD Crime Laboratory. Mr. Roberts concluded that the fingerprints lifted from the passenger side rear door belonged to defendant. Fingerprints and swabs were taken of the gun found in defendant's vehicle and the DNA profile of the swabs were consistent with defendant's DNA profile. Furthermore, DNA swabs taken from the Ford Fusion were matched to defendant.

Christopher McNeil ("Mr. McNeil"), a police detective with the CMPD Computer Forensics and Cyber Crimes Unit, examined the Samsung flip phone found in Mr. Pegues's car. There was only a week of data stored on the phone that could be retrieved by forensics. Mr. McNeil's examination of the phone revealed that on 29 March 2018, Mr. Pegues received one call from Samantha Christenbury at 10:29 a.m. and two calls from defendant at 10:31 a.m. and 11:02 a.m. The examination also

revealed that Mr. Pegues had called defendant at 11:39 a.m. and called Ms. Christenbury twice at 10:48 a.m. and 11:43 a.m.

Mr. McNeil also examined two phones belonging to defendant as part of his investigation, an iPhone and a Samsung Galaxy. Several photos found on the iPhone were photos defendant took of himself, as well as photos of a gun. The Samsung Galaxy contained multiple images of firearms, including a Ruger LCP model handgun. Facebook messages downloaded from the Samsung phone showed defendant speaking with Raquail Brooks ("Mr. Brooks") on the morning of 29 March 2018:

Mr. Brooks: They piss me off early cuh smdh

Defendant: On God I was bout to hit u up she said we can do it today

Defendant: Li m tryna see if its gone rain I hope not if so we need to make moves early

Mr. Brooks: Ight

Defendant: N[****] I'm dead ass

Mr. Brooks: I'm hungry to smdh she cooked ain't save a nice gga shit

Defendant: SMFH

Defendant: Why they acting like that

Mr. Brooks: That shit crazy I hope this shit go smooth I'm hungry AF

Mr. Brooks: Cuh Idk shit crazy AF

Defendant: Fucc a Smooth n[****] this a robbery

Defendant: Bra I'm getting this n[****] bra

Defendant: Money n[****]

Defendant: Yeah

Defendant: ima call him make seem like me n u going in on a 8 ball so that way u can jump in the car too

Defendant: Then when I get in there ima see if the white bitch in there or not once I see there hands ima whip out that's when we trun up put yo hands up all that good shit

STATE V. BOGGS

Opinion of the Court

search EVERY thing take keys and cell phone
Mr. Brooks: Bet

Furthermore, defendant messaged a woman named Kadajah Clark (“Ms. Clark”) on Facebook at 10:59 a.m. telling her “ok we here now waiting on him to pull up.” Ms. Clark responded to him saying “Ok baby please be careful.” Later, defendant messaged “Deelo WestTrade” on Facebook telling him “I got sand and some green.”

The autopsy exam performed on Mr. Pegues indicated that he had suffered two gunshot wounds and two minor blunt trauma injuries. Furthermore, the autopsy exam showed that Mr. Pegues was shot from very close range, within an inch of his body. Examinations done on the Ruger LCP found in defendant’s vehicle and the bullet casings found near Mr. Pegues at the Panera indicated that the two bullets that hit Mr. Pegues were fired from the Ruger LCP gun.

Trial

Defendant was indicted for first-degree murder and possession of a firearm by a person with a felony conviction. During trial, defendant stipulated to having a prior felony conviction on his record.¹ After the State rested, defendant moved to dismiss the charges against him for insufficient evidence. This motion was denied. Defendant renewed his motion at the close of evidence and the motion was again denied.

¹ Defendant had previously been convicted in Mecklenburg County Superior Court on 12 February 2012.

During jury instructions, the trial court gave a blanket instruction stating: “You should weigh all the evidence in this case. After weighing all the evidence, if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty.” The trial court gave instructions on the charge of first-degree murder, stating that defendant may be found guilty of first-degree murder on the basis of malice, premeditation, and deliberation or on the basis of the felony murder rule. The trial court gave the following instruction on finding defendant guilty of first-degree murder under the felony murder rule:

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the Defendant acting either by himself or together with others intended to rob a person, and that in furtherance of this intent he possessed a firearm which he used or threatened to use in such a manner as to endanger or threaten the life of another person, and that this was an act designed to bring about the robbery, and which in the ordinary course of things would have resulted in robbery had it not been stopped or thwarted, and that while attempting to commit robbery, the Defendant acting by himself or together with others killed the victim, and that the Defendant’s act was the proximate cause of the victim’s death, and that the Defendant attempted to commit robbery with the use of a deadly weapon, it would be your duty to return a verdict of guilty of first-degree murder under the felony murder rule.

If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first-degree murder under the felony murder rule, but must determine whether the Defendant is guilty of second-degree murder.

During jury deliberations, the jurors submitted a question to the trial court asking: “What are the six elements of first-degree felony murder rule, specifically number five[?]” The trial court reinstructed the jury on the six elements of first-degree murder under the felony murder rule. The trial court when on to say: “Now ladies and gentlemen, I would encourage you not to take those instructions out of context along with all of the other instructions and for that reason I am going to send a printed copy of all of the instructions back with you for your deliberation.”

After deliberations, the jury returned a guilty verdict on the charge of first-degree murder under the felony murder rule and guilty of possession of a firearm by a convicted felon. Defendant gave oral notice of appeal in open court on 28 June 2023.

II. Discussion

On appeal, defendant argues: (1) the trial court erred in denying defendant’s motion to dismiss where there was insufficient evidence defendant was involved in Mr. Pegues’s death or that an attempted robbery with a deadly weapon occurred; (2) the trial court plainly erred by failing to instruct the jury properly of its duty to return a not guilty verdict if the State failed to meet its burden to prove felony murder beyond a reasonable doubt and erred by failing to give a not guilty mandate at all when it reinstructed the jury; and (3) North Carolina’s statute prohibiting possession of a firearm by a convicted felon is facially unconstitutional under both the United States and North Carolina Constitutions. We address each argument in turn.

A. Motion to Dismiss

Defendant first argues the trial court erred by denying his motion to dismiss the felony murder charge against him where there was insufficient evidence defendant was involved in Mr. Pegues's death. We disagree.

1. Standard of Review

Our "Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62 (2007) (citation omitted). "Upon defendant's motion for dismissal, the question for the Court is 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. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378 (2000). Substantial evidence exists if there "is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78–79 (1980). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192–93 (1994) (citation omitted).

2. Attempted Robbery and Felony Murder

Defendant argues the trial court erred in denying defendant's motion to dismiss where there was insufficient evidence defendant was involved in Mr. Pegues's death or that an attempted robbery with a deadly weapon occurred.

The elements of felony murder are (1) that a defendant, or

STATE V. BOGGS

Opinion of the Court

someone with whom the defendant was acting in concert, committed or attempted to commit a predicate felony under N.C. Gen. Stat. § 14-17(a) (2013); (2) that a killing occurred in the perpetration or attempted perpetration of that felony; and (3) that the killing was caused by the defendant or a co-felon.

State v. Maldonado, 241 N.C. App. 370, 376 (2015) (internal quotations omitted).

Attempted robbery is an appropriate predicate felony for a felony murder conviction. N.C.G.S. § 14-17(a) (2024). The elements of attempted robbery with a dangerous weapon are: “(1) the unlawful attempted taking of personal property from another, (2) the possession, use or threatened use of firearms or other dangerous weapons, implement or means, and (3) danger or threat to the life of the victim.” *State v. Wilson*, 203 N.C. App. 110, 114 (2010) (internal quotations omitted). Specifically, “[a]n attempted robbery with a dangerous weapon occurs when a person, with the specific intent to unlawfully deprive another of personal property by endangering or threatening his life with a dangerous weapon, does some overt act calculated to bring about th[at] result.” *State v. Wilson*, 385 N.C. 538, 545 (2023) (citation omitted). In order to constitute an overt act, the act “must reach far enough toward the accomplishment of the desired result to amount to the commencement of the consummation. It must not be merely preparatory.” *State v. Melton*, 371 N.C. 750, 756–57 (2018) (internal citations omitted).

Here, evidence presented at trial, considered in the light most favorable to the State, establishes each element of both attempted robbery and felony murder. First,

ample evidence was provided to show that defendant intended to rob Mr. Pegues at the Panera on 29 March 2018. Facebook messages between defendant and Mr. Brooks established that not only did defendant intend to rob Mr. Pegues, but that he also made a plan to do so. In these Facebook messages, defendant told Mr. Brooks, “On God I was bout to hit u up she said we can do it today” and “Fucc a Smooth n[****] *this a robbery.*” (emphasis added). Furthermore, defendant told Mr. Brooks his plan to rob Mr. Pegues:

ima call him make seem like me n u going in on a 8 ball so that way u can jump in the car too. Then when I get in there ima see if the white bitch in there or not once I see there hands ima whip out that’s when we trun up put yo hands up all that good shit search EVERY thing take keys and cell phone[.]

These statements show that defendant intended to meet with Mr. Pegues at Panera to “take keys and cell phone[s].” Thus, there was sufficient evidence showing that defendant had the requisite intent to rob Mr. Pegues.

Next, defendant argues on appeal that the State failed to show that defendant took or attempted to take property from Mr. Pegues. However, our Supreme Court has previously upheld attempted robbery convictions in cases where the defendant never explicitly demanded property from the victim. *See State v. Smith*, 300 N.C. 71, 79–80 (1980) (finding that although defendant never explicitly demanded anything from anyone, defendant obtained a weapon and employed it in a manner sufficient to enable him to assume control and direction of the victim). Here, the State presented

evidence to show that defendant used a gun in the presence of Mr. Pegues. Furthermore, after the events at Panera, defendant messaged WestTrade to say he “got sand and some green”. Police also discovered suspected marijuana and cocaine that were contained in bags substantially similar to those found in Mr. Pegues’s vehicle.

Furthermore, the State presented sufficient evidence to establish that defendant took overt steps to rob Mr. Pegues outside the Panera. Defendant called Mr. Pegues shortly before the events at Panera took place, and additionally told Ms. Clark via Facebook message that he was “waiting on [Mr. Pegues] to pull up” right before shots were heard by eyewitnesses. These actions, taken with defendant’s previous statements to Mr. Brooks planning his attack on Mr. Pegues, amount to overt steps taken to rob Mr. Pegues. Finally, the State provided sufficient evidence to establish that a deadly weapon was used in the attempted robbery. Bullet casings recovered from around Mr. Pegues’s car were tied to the Ruger LCP gun found in defendant’s car. Thus, the State presented sufficient evidence to establish all the elements of attempted robbery.

Next, defendant argues the evidence presented at trial merely raises suspicion that defendant was involved in Mr. Pegues’s death and was insufficient to prove the first element of felony murder, “that a defendant, or someone with whom the defendant was acting in concert, committed or attempted to commit a predicate felony

under N.C. Gen. Stat. § 14-17(a) (2013).” *Maldonado*, 241 N.C. App. at 376. We disagree.

When evidence presented at trial as to whether the defendant is the perpetrator of a crime is circumstantial, “courts often look to proof of motive, opportunity, capability, and identity to determine whether a reasonable inference of the defendant’s guilt may be inferred or whether there is merely a suspicion that the defendant is the perpetrator.” *State v. Gray*, 261 N.C. App. 499, 503 (2018) (cleaned up). Here, defendant bases his argument that he was not involved in the crime on the fact that descriptions from two eyewitnesses on the person or persons getting into the Ford Fusion at Panera did not match each other.

However, evidence presented at trial showed defendant had the motive, opportunity, and capability of committing the murder. Defendant’s Facebook messages to Mr. Brooks established a motive: “Fucc a Smooth n[****] this a robbery . . . Bra I’m getting this n[****] bra . . . Money n[****] . . . ima call him make seem like me n u going in on a 8 ball so that way you can jump in the car too.” Furthermore, physical evidence established that defendant had both the opportunity and capability. Defendant’s vehicle was photographed by Ms. Suddreth outside the Panera on the day Mr. Pegues died, and Mr. Cona testified to seeing a man matching defendant’s appearance getting into a vehicle that matched defendant’s vehicle. Furthermore, fingerprints were found on the outside of Mr. Pegues’s vehicle that were later matched to defendant. Finally, the gun used to shoot Mr. Pegues was featured

in photographs found on defendant's phone and was found in defendant's vehicle with his fingerprints on it.

Thus, the evidence presented at trial, taken in a light most favorable to the State, establishes each element of felony murder and the underlying felony of attempted robbery and was sufficient for the jury to make a reasonable inference that defendant was the perpetrator of the crime. Accordingly, the trial court did not err in denying defendant's motion to dismiss for insufficient evidence.

3. Possession of a Firearm by a Felon

Defendant further argues the State did not provide sufficient evidence to sustain a conviction of possession of a firearm by a felon. Specifically, defendant argues the trial court did not provide sufficient evidence to show defendant was in possession of a firearm on the day Mr. Pegues was shot. We disagree.

In order to sustain a conviction for possession of a firearm by a felon, the State must show: "(1) defendant was previously convicted of a felony; and (2) thereafter possessed a firearm." *State v. Mitchell*, 224 N.C. App. 171, 176 (2012) (cleaned up). Here, the first element is satisfied by defendant's stipulation to having a previous felony conviction during trial. During jury instructions, the trial court instructed the jury to find defendant guilty if they believed, beyond a reasonable doubt, that defendant possessed the firearm on 29 March 2018, the day of the murder and indictment. As stated above, there was ample evidence to infer that defendant used the Ruger firearm to shoot Mr. Pegues. First, the bullets recovered from Mr. Pegues's

body during his autopsy were connected to the Ruger firearm found in defendant's vehicle. Second, fingerprints found on the firearm were later matched to defendant's fingerprints. And third, that firearm was recovered from defendant's vehicle. Accordingly, the State provided sufficient evidence to sustain a conviction for possession of a firearm by a felon and the trial court did not err in denying defendant's motion to dismiss.

B. Jury Instructions

Defendant contends the trial court plainly erred by failing to instruct the jury properly of its duty to return a not guilty verdict if the State failed to meet its burden to prove felony murder beyond a reasonable doubt. Defendant further argues the trial court compounded its error by failing to give a not guilty mandate at all when it reinstructed the jury after questions were submitted about the elements of felony murder. We disagree.

"Because defendant did not object at trial to the omission of the not guilty option from the trial court's final mandate to the jury, we review the trial court's actions for plain error." *State v. McHone*, 174 N.C. App. 289, 294 (2005). In order for this Court to find plain error,

[f]irst, the defendant must show that a fundamental error occurred at trial. Second, the defendant must show that the error had a probable impact on the outcome, meaning that absent the error, the jury probably would have returned a different verdict. Finally, the defendant must show that the error is an "exceptional case" that warrants plain error review, typically by showing that the error seriously affects

the fairness, integrity, or public reputation of judicial proceedings.

State v. Reber, 386 N.C. 153, 158 (2024) (internal citations omitted).

Defendant has failed to show that a fundamental error occurred. Defendant argues the trial court failed to instruct the jury as to a not guilty verdict for felony murder. “This Court reviews jury instructions contextually and in its entirety.” *State v. Clagon*, 279 N.C. App. 425, 433 (2021) (citing *State v. Blizzard*, 169 N.C. App. 285, 296–97 (2005)). Our Supreme Court has held that “the failure of the trial court to provide the option of acquittal or not guilty in its charge to the jury can constitute reversible error.” *McHone*, 174 N.C. App. at 294. However, “an instruction that gives the substance of the requested instructions is sufficient.” *State v. Conner*, 345 N.C. 319, 328 (1997).

Here, the trial court properly instructed the jurors on their duty to return a not guilty verdict if the State failed to meet its burden to prove all elements of felony murder beyond a reasonable doubt. The trial court instructed the jury as follows:

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the Defendant acting either by himself or together with others intended to rob a person, and that in furtherance of this intent he possessed a firearm which he used or threatened to use in such a manner as to endanger or threaten the life of another person, and that this was an act designed to bring about the robbery, and which in the ordinary course of things would have resulted in robbery had it not been stopped or thwarted, and that while attempting to commit robbery, the Defendant acting by himself or together with others killed the victim, and that the Defendant’s act was the

proximate cause of the victim's death, and that the Defendant attempted to commit robbery with the use of a deadly weapon, it would be your duty to return a verdict of guilty of first-degree murder under the felony murder rule.

If you do not so find or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of first-degree murder under the felony murder rule, but must determine whether the Defendant is guilty of second-degree murder.

The instruction given during the jury charge not only included instructing the jury on two theories of first-degree murder but also instructed the jury on the lesser-included offense of second-degree murder. This type of “linking instruction” is substantially similar to the instruction upheld in *McHone*, where the trial court instructed the jury that if the jury rejected the charge of armed robbery, they must consider the lesser-included offense of larceny. *See McHone*, 174 N.C. at 298. In that case, because the trial court still provided a not guilty mandate after instructing the jury on the lesser-included offense of larceny, no error was assigned to that instruction. *Id.*

Here, the trial court properly provided a not guilty mandate to the jury should they find that the State did not meet its burden of proving second-degree murder beyond a reasonable doubt, stating it would be the jury's “duty to return a verdict of not guilty.” Accordingly, the trial court did not commit a fundamental error in providing jury instructions. Assuming *arguendo* that the trial court's linking instruction was provided in error, defendant has failed to show that this error had a

STATE V. BOGGS

Opinion of the Court

probable impact on the outcome of the trial. As detailed above, there was substantial evidence presented at trial of defendant's guilt, including eyewitness testimony, forensic evidence tying defendant to the murder scene and murder weapon, and defendant's own statements made to others on the day of Mr. Pegues's death.

Defendant argues the trial court compounded its error when it further failed to instruct the jury on a not guilty mandate when the jury submitted a question to the trial court during deliberations. However, the jury specifically only asked about the six elements of first-degree felony murder. Furthermore, the trial court cautioned the jury by stating "Now ladies and gentlemen, I would encourage you not to take those instructions out of context along with all of the other instructions and for that reason I am going to send a printed copy of all of the instructions back with you for your deliberation." Therefore, because the jury received a full written account of the jury instructions during deliberations, defendant has failed to show he was prejudiced by the trial court's omission. Accordingly, the trial court did not err in providing jury instructions that failed to give a not guilty mandate after the felony murder instruction.

C. Possession of a Firearm by a Felon

Defendant argues that N.C.G.S. § 14-415.1 is facially unconstitutional under both the United States Constitution and North Carolina Constitution. However, defendant concedes on appeal that his argument is unpreserved. Defendant requests

that this Court exercise its discretion to invoke Rule 2 of the Rules of Appellate Procedure to reach the merits of his argument. We decline to do so.

Under Rule 2, “[t]o prevent manifest injustice to a party . . . either court of the appellate division may . . . suspend or vary the requirements or provisions of any of these rules in a case pending before it . . . upon its own initiative[.]” N.C. R. App. P. 2. An appellate court’s decision to invoke Rule 2 and suspend the appellate rules is always an exercise of discretion. *State v. Bursell*, 372 N.C. 196, 201 (2019). However, “Rule 2 relates to the residual power of our appellate courts to consider, *in exceptional circumstances*, significant issues of importance in the public interest or to prevent injustice which appears manifest to the Court *and only in such instances*.” *State v. Campbell*, 369 N.C. 599, 603 (2017) (emphasis in original) (citation omitted).

Here, defendant has failed to show that his case falls under an “exceptional circumstance” warranting us to review this argument under Rule 2. Defendant argues the United States Supreme Court decision, *New York State Rifle & Pistol Association, Inc. v. Bruen*, renders N.C.G.S. § 14-415.1 facially unconstitutional. Specifically, defendant argues this holding by the U.S. Supreme Court requires states to identify “an American tradition” justifying a law that restricts the Second Amendment. *Bruen*, 597 U.S. 1, 70 (2022). However, the Fourth Circuit later held in *United States v. Canada* that although the “law of the Second Amendment is in flux, and courts (including this one) are grappling with many difficult questions in the wake of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen* . . . the facial

STATE V. BOGGS

Opinion of the Court

constitutionality of [possession of a firearm by a felon] is not one of them.” *United States v. Canada*, 123 F.4th 159, 161 (2024). Thus, defendant has failed to show why his specific case is an “extraordinary circumstance” requiring this Court to invoke Rule 2. Accordingly, we dismiss defendant’s constitutional argument.

III. Conclusion

For the foregoing reasons, we find no error in part and dismiss in part.

NO ERROR IN PART AND DISMISSED IN PART.

Judges WOOD and FLOOD concur.

Report per Rule 30(e).