

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1063

Filed 2 September 2026

Pasquotank County, No. 22CR050243-690

STATE OF NORTH CAROLINA

v.

LESSELLE CORNELIUS SPENCER

Appeal by Defendant from judgment entered 28 January 2025 by Judge Jeffery B. Foster in Pasquotank County Superior Court. Heard in the Court of Appeals 11 August 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General I. Faison Hicks, for the State-Appellee.

The Sweet Law Firm PLLC, by Kaelyn N. Sweet, for Defendant-Appellant.

COLLINS, Judge.

Defendant, Lesselle Spencer, appeals from judgment entered upon a jury's verdict of guilty of first-degree murder. Defendant argues that the trial court plainly erred by failing to instruct the jury on second-degree murder and by instructing the jury on both lying in wait and flight. We find no error, much less plain error.

I. Background

Defendant was indicted for first-degree murder, and his case came on for trial in January 2025. The evidence at trial tended to show the following:

In April 2022, Defendant lived with his girlfriend, Holly Mangus, in her apartment. The apartment was located twenty feet from a Big Lots where Holly worked as an associate manager. Defendant would often “hang around the apartment complex” and went to Holly’s workplace “all the time.” Defendant was familiar with the area and “pretty much everybody in the store[.]”

On 4 April 2022, Big Lots terminated Holly for violating company policy. Defendant, Holly, and a friend drove to the beach between 5:00 pm and 5:30 pm. On the way to the beach, the group rolled marijuana blunts, and Defendant purchased a bottle of liquor. The group smoked the blunts at the beach and left to go back to Holly’s apartment between 8:00 pm and 8:30 pm.

When they returned to Holly’s apartment, the lights in Big Lots were on and cars were in the parking lot. Holly began cleaning the apartment, and Defendant went into the bedroom and bathroom. Holly did not see Defendant for approximately 45 minutes after they arrived at the apartment. Holly next saw Defendant when he approached her while putting on a white hoodie to tell her that he was leaving to buy beer. Defendant left the apartment between 9:50 pm and 10:00 pm. He called Holly twice while he was out, once to tell her that there were police outside and he could not get into Food Lion, and then to tell her that he had entered Food Lion. Defendant returned to the apartment approximately twenty minutes after he left.

During the time Defendant was out of Holly’s sight but before he told her he was leaving to buy beer, Cassandra Maher, the Big Lots manager, and Kevin

Chambers, a Big Lots employee, closed the store and walked towards their cars at 9:30 pm. Kevin's wife, Lisa, was waiting in her car to pick him up. Cassandra saw a man walking towards her from Holly's apartment building wearing a COVID mask and a tan hoodie. After entering her car, Cassandra heard a "banging" on the driver's side. She "floored it to get out of there" and drove to a nearby Chinese restaurant where she called 911.

Lisa heard the noise from the altercation between Cassandra and her assailant and ducked down in her car. She heard Kevin exchange words with someone and saw someone chasing Kevin around the parking lot. She heard Kevin say, "well, you got me now, what you going to do, you going to shoot me" and then heard a bang. Lisa called 911 at 9:39 pm and opened the driver's side door of her car. Kevin's assailant was gone, and Kevin was lying on the ground with a gunshot wound in his chest. EMS pronounced Kevin dead in the Big Lots parking lot at 10:07 pm.

Security footage from Holly's apartment building and Food Lion and information from Big Lots and Food Lion employees led law enforcement to Defendant. Holly identified Defendant in the footage as both the man in the face mask and tan hoodie outside her apartment building and the man in the white hoodie entering Food Lion based on his clothes, gait, and build. When identifying him as the man in the tan hoodie, she noted that "this is normally how he would stand or symbol when he has had a lot to drink."

Defendant was arrested and transported to Albemarle County Jail for pretrial

confinement. While incarcerated, Defendant told inmate Maurice Green that he became upset when Big Lots fired his girlfriend, shot a man with a nine-millimeter gun while two women were nearby, and “got rid of” the gun and the clothing he wore during the shooting. He said that his “initial intention[]” when he went to Big Lots that night was to “kill everybody.” He also told Green that he ran from the scene and changed from a dark hoodie to a “white color.”

Defendant told inmate George Harris, an acquaintance of thirty years, that he “went over to Big Lots, . . . had on a dark-colored hoodie with his face tied up,” and “got into it with the male that worked there because he had fired his girlfriend[.]” He further told Harris that he used a nine-millimeter gun that he later sold to another tenant in his apartment complex, and “he had on a dark-colored hoodie but they had never seen him change hoodies[.]”

A jury found Defendant guilty of first-degree murder by both premeditation and deliberation and by lying in wait. The trial court sentenced Defendant accordingly. Defendant timely appealed.

II. Discussion

Defendant makes three arguments on appeal, all of which allege plain error based on jury instructions that Defendant argues should or should not have been included by the trial court.

“For error to constitute plain error, a defendant must 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. Lawrence*, 365 N.C. 506, 518 (2012) (quotation marks and citation omitted). “Moreover, because plain error is to be applied cautiously and only in the exceptional case, the error will often be one that seriously affects the fairness, integrity or public reputation of judicial proceedings[.]” *Id.* (cleaned up).

A. Second-Degree Murder Jury Instruction

Defendant argues that the trial court plainly erred by failing to instruct the jury on the lesser-included offense of second-degree murder where the State presented contradictory evidence that Defendant was intoxicated at the time of the shooting.

“[T]he trial court must submit and instruct the jury on a lesser included offense when, and only when, there is evidence from which the jury could find that defendant committed the lesser included offense.” *State v. Boykin*, 310 N.C. 118, 121 (1984). “Where the State’s evidence is positive as to each element of the offense charged and there is no contradictory evidence relating to any element,” lesser included instructions are not required. *State v. Millsaps*, 356 N.C. 556, 562 (2002). “When determining whether there is sufficient evidence for submission of a lesser included offense to the jury, we view the evidence in the light most favorable to the defendant.” *State v. Ryder*, 196 N.C. App. 56, 64 (2009).

“First-degree murder is the intentional and unlawful killing of a human being

with malice and with premeditation and deliberation.” *State v. Leazer*, 353 N.C. 234, 237 (2000). “Murder in the second degree is the unlawful killing of a human being with malice but without premeditation and deliberation.” *Id.* “Second-degree murder is a lesser included offense of first-degree murder. *Id.* “If the [S]tate’s evidence establishes each and every element of first-degree murder and there is no evidence to negate these elements, it is proper for the trial court to exclude second-degree murder from the jury’s consideration.” *Id.*

To negate the specific intent element of first-degree murder, “the evidence must show that at the time of the killing the defendant’s mind and reason were so completely intoxicated and overthrown as to render him utterly incapable of forming a deliberate and premeditated purpose to kill.” *State v. Strickland*, 321 N.C. 31, 41 (1987) (cleaned up).

Here, the evidence indicates that Defendant formed and executed a plan to conceal his identity and deceive Holly about his whereabouts on the night of the murder. Defendant admitted to having the intention to “kill everybody” and the forethought to ensure he was not seen leaving the apartment when he went to perpetrate the murder and change his clothes when he returned. Under *Millsaps*, the State’s evidence was positive and uncontradicted as to the specific intent element. 356 N.C. at 562.

In contrast, the evidence showed only that Defendant purchased liquor between 5:00 pm and 5:30 pm, Defendant smoked marijuana between 7:00 pm and

8:30 pm, and Holly testified that “this is normally how [Defendant] would stand or symbol when he has had a lot to drink” when identifying Defendant as the assailant in the tan hoodie. This evidence was insufficient to show that Defendant was so intoxicated at the time of the shooting that he was incapable of forming the intent necessary for first degree murder.

Viewing the evidence in the light most favorable to Defendant, there is no rational basis on which a jury could find that Defendant’s intoxication rendered him “utterly incapable of forming a deliberate and premeditated purpose to kill.” *Strickland*, 321 N.C. at 41. Accordingly, the trial court did not err, much less plainly err, by failing to instruct the jury on the lesser-included offense of second-degree murder.

B. Lying In Wait Jury Instruction

Defendant next argues that the trial court plainly erred by instructing the jury on lying in wait because Defendant did not attempt to conceal his identity when approaching Cassandra and Kevin or law enforcement outside Food Lion.

A jury instruction on first-degree murder by lying in wait is appropriate when there is sufficient evidence in the record to support that specific theory of guilt. *See State v. Lynch*, 327 N.C. 210, 218-19 (1990). “Murder perpetrated by lying in wait refers to a killing where the assassin has stationed himself or is lying in ambush for a private attack on his victim.” *State v. Leroux*, 326 N.C. 368, 375 (1990) (quotation marks omitted). “The assassin need not be concealed, nor need the victim be unaware

of his presence.” *Id.* “If one places himself in a position to make a private attack upon his victim and assails him at a time when the victim does not know of the assassin’s presence or, if he does know, is not aware of his purpose to kill him, the killing would constitute a murder perpetrated by lying in wait.” *Id.*

Defendant admitted to having the intention to “kill everybody” and the forethought to ensure he was not seen leaving the apartment when he went to perpetrate the murder and to change his clothes when he returned. Furthermore, the evidence showed that Defendant knew the Big Lots’ schedule, knew Holly’s schedule, was familiar with the Big Lots employees, and was familiar with the area surrounding the apartments and Big Lots. This evidence supports a reasonable inference that Defendant stationed himself to make a private attack because he knew employees would be leaving the store at the time of the murder and the parking lot would be largely empty, and he waited to approach Cassandra and Kevin after they left the store. This evidence is sufficient to support a jury instruction on lying in wait. Accordingly, the trial court did not err, much less plainly err, by instructing the jury on lying in wait.

C. Flight Jury Instruction

Defendant finally argues that the trial court plainly erred by instructing the jury on flight.

A jury instruction on flight is appropriate when “there is some evidence in the record reasonably supporting the theory that defendant fled after commission of the

crime charged.” *State v. Levan*, 326 N.C. 155, 164-65 (1990). The relevant inquiry is “whether there is evidence that defendant left the scene of the murder and took steps to avoid apprehension.” *Id.* at 165 (holding that a jury instruction on flight was not error where the defendant “open[ly] and conspicuous[ly] return[ed] to his home” and approached “five law enforcement officers within forty-eight hours of” the murder when he also attempted to hide the body and remove fingerprints from the murder weapon).

Here, Defendant openly and conspicuously returned to Holly’s apartment after the shooting and later went to Food Lion where he approached law enforcement. Defendant also deceived Holly about his whereabouts, changed clothes before going to Food Lion, and disposed of the murder weapon. Thus, there was sufficient evidence to support a jury instruction on flight. Accordingly, the trial court did not err, much less plainly err, by instructing the jury on flight.

III. Conclusion

Having examined the evidence in the light most favorable to Defendant, we hold that Defendant received a fair trial free of error.

NO ERROR.

Judges STROUD and GRIFFIN concur.