

105.21 FALSE, CONTRADICTORY, OR CONFLICTING STATEMENTS OF DEFENDANT.<sup>1</sup>

*NOTE WELL: This instruction is ONLY proper where the defendant's statements and/or trial testimony is contradictory to highly relevant facts proven at trial. HOWEVER, this instruction should NOT be used if the statements are completely irrelevant and without substantial probative force in tending to show a consciousness of guilt. EXTREME care should be used in first degree murder cases as such evidence may not be considered as tending to show premeditation and deliberation.<sup>2</sup> EXTREME care should also be taken to insure that the defendant's fifth amendment right to remain silent is not used against the defendant.<sup>3</sup>*

The State contends (and the defendant denies) that the defendant made false, contradictory, or conflicting statements. If you find that the defendant made such statements, they may be considered by you as a circumstance tending to reflect the mental process of a person possessed of a guilty conscience, seeking to divert suspicion or to exculpate the person, and you should consider that evidence, along with all the other believable evidence in this case. However, if you find that the defendant made such statements, they do not create a presumption of guilt, and such evidence standing alone is not sufficient to establish guilt. (Such evidence may not be considered as tending to show premeditation and deliberation.)

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1. See *State v. Walker*, 332 N.C. 520 (1992).

2. See *State v. Myers*, 309 N.C. 78, 87-8 (1983).

3. [State v. Ward](#), 354 N.C. 231, 266 (2001), [State v. Shores](#), 155 N.C. App. 342, 573 S.E.2d 237 (2002).