

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA01-1117

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

Wayne County  
Nos. 00 CRS 52024-25

MARCUS JAMAL ROUSE

Appeal by defendant from judgment entered 2 March 2001 by Judge Donald M. Jacobs in Wayne County Superior Court. Heard in the Court of Appeals 1 July 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Kathy R. Everett-Perry, for the State.*

*MacQueen & Turnage, LLP, by Kevin F. MacQueen, for defendant-appellant.*

BRYANT, Judge.

On 11 September 2000, defendant was indicted on three counts of discharging a firearm into occupied property and one count of possession of a firearm by a convicted felon. The cases were tried at the 1 March 2001 Criminal Session of Wayne County Superior Court.

The State presented evidence at trial which tended to show the following: On 7 March 2000, Terry Graham was living at the Tanglewood Trailer Park in Grantham, North Carolina. Sometime after midnight, Graham was locking up his home and checking to make

sure the outside lights were on when his dog ran out the door of his home and ran down the street. Graham grabbed his keys, got in his car and proceeded after him. Graham found his dog at the far end of the trailer park, by a vacant lot, and called his dog and the dog jumped in the car. Graham then attempted to back up the car onto the empty lot so he could turn around and head back home.

As Graham was backing up, he spotted the defendant walking in his direction and motioning towards him. Graham rolled down his window and defendant asked him "What you need[?]" Graham told him he just wanted to get his dog, and defendant replied that Graham was a liar. Graham told him he did not have a reason to lie, he was just picking up his dog, and proceeded to back away. Defendant responded to Graham "Why you F-ing with me, man." Graham then started to pull the car away from defendant. Defendant yelled something at Graham, and Graham stopped the car and looked at defendant. When he looked at defendant, defendant was holding a gun. Graham drove away, and defendant started shooting. Graham drove home, and his fiancée called the police. Graham then saw two vehicles leave the property where the shots were fired. Officers investigating the shooting found bullet holes in Graham's car, and bullet fragments in the trunk. The next day, Graham identified defendant as the shooter.

Defendant testified that he never saw a dog, that Graham was acting "wild," that Graham "lunged" his vehicle towards him twice, and that he fired his gun at Graham in self-defense. Defendant also testified that he had a prior conviction for maintaining a

place for the use of controlled substances, was on probation, and left the premises after the incident "in the heat of the moment" because he was "scared." Defendant testified that he "went to a motel and laid low." Defendant further testified that he took the gun with him.

Defendant was convicted of possession of a firearm by a convicted felon and sentenced to a term of twelve to fifteen months imprisonment. As to the remaining charges, the jury was deadlocked and a mistrial was declared. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by denying his motion to dismiss at the close of the State's case. Defendant contends that the case should have been dismissed because he possessed the firearm on the property where his home was located, thus placing himself within an exception to the law forbidding his possession of a firearm. *State v. Bishop*, 119 N.C. App. 695, 698, 459 S.E.2d 830, 832 (1995); N.C.G.S. § 14-415.1. Defendant concedes that his own testimony, specifically that he left his residence and took his gun with him, was sufficient to sustain the conviction. However, defendant argues that this testimony came out after the initial motion to dismiss had been made at the close of the State's case. Thus, defendant contends that if the trial court had not erred by denying his initial motion to dismiss, the evidence would not have been heard by the jury and would not have been a basis for convicting him.

After careful review of the record, briefs and contentions of

the parties, we find no error. "Appellate Rule 10(b)(3) states when defendant presents evidence at trial, he waives his right on appeal to assert the trial court's error in denying the motion to dismiss at the close of the State's evidence." *State v. Barfield*, 127 N.C. App. 399, 401, 489 S.E.2d 905, 907 (1997) (citing *State v. Davis*, 101 N.C. App. 409, 411, 399 S.E.2d 371, 372 (1991)). Thus, to the extent defendant argues that the trial court erred by denying his motion to dismiss made at the close of the State's case, the assignment of error is waived and need not be addressed.

To the extent that defendant argues that the trial court erred by denying his motion to dismiss at the close of all the evidence, we also find no error. To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense. *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* at 717, 483 S.E.2d at 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)). Here, defendant does not dispute that the State satisfied the statutory elements for the offense, but argues that the statute provides for an exception to the offense which allows possession within one's home or place of business. *Bishop*, 119 N.C. App. at 698, 459 S.E.2d at 832; N.C.G.S. § 14-415.1. However, defendant's testimony that after the confrontation with Graham he put the firearm in his car and took it with him to a motel was sufficient evidence in itself to sustain the conviction. Accordingly, we conclude the

trial court did not err in denying defendant's motion to dismiss the charges.

No error.

Judges MARTIN and HUNTER concur.

Report per Rule 30(e).