

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1254

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

Gaston County  
No. 97 CRS 20344

DAVID FITZGERALD DAMERON

Appeal by defendant from judgment entered 30 June 1999 by Judge Marvin K. Gray in Gaston County Superior Court. Heard in the Court of Appeals 1 July 2002.

*Attorney General Roy Cooper, by Assistant Attorney General David L. Elliott, for the State.*

*David Childers for defendant-appellant.*

BRYANT, Judge.

On 6 October 1997, defendant was indicted on charges of harboring and aiding a fugitive. The case was tried at the 2 July 1999 Criminal Session of Gaston County Superior Court.

The State presented evidence at trial which tended to show the following: On 1 July 1997, Austin Partlow was being held in Gaston County Jail for assault with a deadly weapon inflicting serious injury. While coming back from an appearance in court, Partlow managed to unlock his handcuffs with a key and run out of the jail. Partlow got a ride and went to the home of the defendant, a friend of his. Partlow told defendant he had gotten into some "trouble"

and needed to use the phone. Defendant asked him what happened, but all Partlow told him was "[i]t wasn't nothing, just a little trouble." Partlow testified that he was dressed in regular clothes, having changed out of his prison clothes in the car on the way over. Partlow never told defendant that he had escaped from jail. Partlow used defendant's phone, and then went to another person's home, Phillip Bean, whom he talked to for a short time before returning to defendant's home.

Sometime after four in the morning on 2 July 1997, Sergeant Nick Flemming and Captain Gale Bess of the Gaston County Sheriff's Department went to defendant's home to look for Partlow. They knocked on defendant's door, and after a five minute delay, defendant answered the door. Defendant was advised that Partlow had escaped, that they had information that Partlow was in defendant's home, and they wished to search his home. Initially, defendant refused the officers entry into his home and denied knowing of Partlow's whereabouts. Eventually, however, defendant relented and Partlow was found hiding in a kitchen cabinet in defendant's home. Defendant was convicted of harboring a fugitive and sentenced to ~~a term of eight to ten~~ months imprisonment. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by denying his motion to dismiss. Specifically, defendant contends that the State failed to prove that he knew that Partlow had escaped from jail and was a fugitive from justice. Defendant

cites evidence that Partlow arrived unannounced at defendant's home and did not tell him he was in trouble with the police. Defendant further notes that Partlow was dressed in street clothes, not prison garb. Accordingly, defendant asserts that the evidence raised no more than mere suspicion, and relied upon surmise and conjecture that defendant knew or should have known about Partlow's legal status.

After careful review of the record, briefs and contentions of the parties, we 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 was charged with harboring a fugitive.

Defendant contends that the State failed to prove its case because there was no evidence that he knew Partlow had escaped. However, Captain Bess testified that she told defendant that Partlow had escaped from jail and that she had information that Partlow was in defendant's home. Sergeant Flemming also testified that defendant was advised that Partlow had escaped from jail. Despite being told that Partlow was an escapee, defendant still refused police admission into his home to search for Partlow. Defendant denied having seen Partlow, and said "he didn't want us to come in because [Partlow] was not there and he knew [Partlow]

and he had not seen [Partlow] for . . . a couple of weeks." Eventually, defendant did allow police to search his home, and Partlow was found hiding in a kitchen cabinet.

Based on the testimony of Captain Bess and Sergeant Flemming that they told defendant that Partlow was an escapee, and defendant's denials of having seen Partlow, in the light most favorable to the State, a reasonable mind could conclude from the evidence that defendant knew that Partlow had escaped and harbored him. See *Cross*, 345 N.C. at 717, 483 S.E.2d at 434. Accordingly, we conclude the trial court did not err in denying defendant's motion to dismiss.

No error.

Judges MARTIN and HUNTER concur.

Report per Rule 30(e).