

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1127

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STATE OF NORTH CAROLINA

v.

Cumberland County
No. 99 CRS 66126

SHAREEF RIQE SHAHEED

Appeal by defendant from judgment entered 29 August 2000 by Judge Gregory A. Weeks in Cumberland County Superior Court. Heard in the Court of Appeals 8 April 2002.

Attorney General Roy Cooper, by Assistant Attorney General Bart Njoku-Obi, for the State.

John T. Hall for defendant-appellant.

TYSON, Judge.

Shareef Riqe Shaheed ("defendant") was charged with robbery with a dangerous weapon and conspiracy to commit robbery with a dangerous weapon. The jury returned a verdict of not guilty of conspiracy, and guilty of robbery with a dangerous weapon on the theories of acting in concert and aiding and abetting. The State's evidence tended to show that on the night of 8 September 1999, two men, later identified as Christopher Mitchell ("Mitchell") and Montez McDougal ("McDougal"), entered the Knight Brothers Food Mart, where Erin Rebecca Reiner ("Reiner") worked as a cashier.

Mitchell jumped over the sales counter, looked through cupboards and demanded money. McDougal showed Reiner a gun tucked in his pant waistband and ordered her to lie on the floor. Reiner testified that she was scared when she saw the gun. After Mitchell again demanded money, Reiner gave the two men money from the cash register and a bag of money the store used for change. The two men took approximately \$600 in cash.

Mitchell and McDougal left the store and ran to Mitchell's car, which was parked outside the store. Defendant, who was in the driver's seat, drove Mitchell and McDougal to the home of Mitchell's girlfriend. After defendant parked the car, all three men walked to the backyard of the residence to split the money. Police subsequently apprehended defendant, Mitchell and McDougal outside the residence.

Defendant admitted during the trial that he dropped Mitchell and McDougal off outside the store and picked them up. He denied planning and/or receiving any money from the robbery. The trial court sentenced defendant to fifty to sixty-nine months imprisonment. Defendant appeals.

In his first assignment of error, defendant contends the trial court erred by denying his motion to dismiss the charge of robbery with a dangerous weapon. Defendant argues there was insufficient evidence to show the "use or threatened use" of a firearm to accomplish the robbery.

Under the North Carolina Rules of Appellate Procedure a motion to dismiss made at the close of the State's evidence is waived if

the defendant presents evidence, and a defendant must renew his motion to dismiss at the close of all the evidence in order to challenge the sufficiency of the evidence on appeal. N.C.R. App. P. 10(b)(3). Defendant admits that although he moved to dismiss the charge against him at the close of the State's evidence, he presented evidence and failed to renew his motion at the close of all the evidence. Defendant is precluded from challenging the sufficiency of the evidence presented at trial. See *State v. Elliott*, 69 N.C. App. 89, 316 S.E.2d 632, appeal dismissed and disc. review denied, 311 N.C. 765, 321 S.E.2d 148 (1984).

By his third assignment of error, defendant requests that this Court review this issue under plain error. Our Supreme Court, however, has stated that "plain error analysis applies only to instructions to the jury and evidentiary matters." *State v. Greene*, 351 N.C. 562, 566, 528 S.E.2d 575, 578 (2000); see also *State v. Atkins*, 349 N.C. 62, 81, 505 S.E.2d 97, 109 (1998), cert. denied, 526 U.S. 1147, 143 L. Ed. 2d 1036 (1999). The application of plain error does not extend to situations where a party has failed to renew his motion at the close of all the evidence after presenting evidence. *State v. Goodman*, ___ N.C. App. ___, ___, 560 S.E.2d 196, 199 (2002) (citations omitted). Defendant has waived this issue pursuant to Rule 10(b)(3) of the Rules of Appellate Procedure.

Defendant also contends the trial court erred by accepting the jury's guilty verdict on the grounds that there was insufficient evidence of the use or threatened use of a firearm to accomplish

the robbery. The denial of a motion to set aside the verdict as being against the greater weight of the evidence is within the discretion of the trial court and is reviewable on appeal under an abuse of discretion standard. *State v. Wilson*, 313 N.C. 516, 538, 330 S.E.2d 450, 465 (1985). Defendant failed to object to the entry of the judgment following the jury's guilty verdict, and failed to preserve this question for appellate review. See N.C.R. App. P. 10(b)(1) ("to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.").

No error.

Judges GREENE and HUDSON concur.

Report per Rule 30(e).