An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA02-238

NORTH CAROLINA COURT OF APPEALS

Filed: 17 December 2002

STATE OF NORTH CAROLINA

v. Wilkes County
No. 01 CRS 50695

DOUGLAS COLON LOVE

Appeal by defendant from judgment entered 13 September 2001 by Judge Ronald E. Spivey in Wilkes County Superior Court. Heard in the Court of Appeals 9 December 2002.

Attorney General Roy Cooper, by Assistant Attorney General Richard G. Sowerby, for the State.

Nancy R. Gaines, for defendant-appellant.

CAMPBELL, Judge.

Defendant was convicted of assault with a deadly weapon inflicting serious injury and was sentenced to 46-65 months.

The sole issue on appeal is whether the court erred by finding defendant competent to proceed without ordering a mental health evaluation and without the presentation of significant evidence on the issue. For the following reasons, we hold the court did not err.

A person may not be tried, convicted, sentenced or punished for a crime "when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings

against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner." N.C. Gen. Stat. § 15A-1001(a)(2001). The trial court may order a mental health evaluation of a defendant when the defendant's capacity or competency to stand trial is questioned. N.C. Gen. Stat. § 15A-1002(b)(1) (2001). If it is demonstrated that there is a significant possibility that the defendant is incompetent to stand trial, then the court must appoint an expert or experts to inquire into the defendant's mental health. *State v. Grooms*, 353 N.C. 50, 78, 540 S.E.2d 713, 730 (2000), *cert. denied*, 534 U.S. 838, 151 L. Ed. 2d 54 (2001). The defendant bears the burden of proving that he is not competent to stand trial. *State v. O'Neal*, 116 N.C. App. 390, 395, 448 S.E.2d 306, 310, *disc. review denied,* 338 N.C. 522, 452 S.E.2d 821 (1994). The method of inquiry into the defendant's competency to stand trial is within the discretion of the trial judge. *State v. Gates*, 65 N.C. App. 277, 282, 309 S.E.2d 498, 501 (1983). The ultimate decision whether or not to order a mental evaluation is within the discretion of the trial judge. *State v. Rouse*, 339 N.C. 59, 88, 451 S.E.2d 543, 559 (1994), *cert. denied*, 516 U.S. 832, 133 L. Ed. 2d 60 (1995).

As grounds for seeking a mental evaluation, defendant's counsel stated that defendant had failed to contact counsel for two months despite counsel's and family members' repeated requests for defendant to contact counsel and that a relative of defendant had stated it appeared to him defendant did not understand the gravity

of the charges. Under questioning by the court at the hearing to determine whether a mental evaluation should be ordered, defendant testified that he came to court because he knew his trial was scheduled for that date. Defendant indicated that he had not contacted counsel because he had been busy. He also stated that he was not under the influence of alcohol, drugs or medicine and that he was charged with "felony fighting." The court offered counsel the opportunity to question defendant but counsel declined.

We find nothing in the foregoing to indicate that defendant was not competent to proceed. We conclude the court did not abuse its discretion by not ordering a mental evaluation.

No error.

Judges WYNN and McGEE concur.

Report per Rule 30(e).