

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA04-28

NORTH CAROLINA COURT OF APPEALS

Filed: 19 October 2004

STATE OF NORTH CAROLINA

v.

DWAYNE ANTONIO NIXON

New Hanover County  
No. 02 CRS 15408-09  
02 CRS 15411

Appeal by Defendant from judgment entered 5 September 2003 by Judge Russell J. Lanier, Jr. in Superior Court, New Hanover County. Heard in the Court of Appeals 11 October 2004.

*Attorney General Roy Cooper, by Special Deputy Attorney General Jill B. Hickey, for the State.*

*Beaver, Holt, Sternlicht, Glazier, Carlin, Britton, & Courie, P.A., by Richard B. Glazier, for defendant-appellant.*

WYNN, Judge.

Defendant Dwayne Antonio Nixon appeals from judgments of the trial court entered upon jury verdicts finding him guilty of attempted statutory sex offense of a thirteen, fourteen, or fifteen-year-old, taking indecent liberties with a child, breaking and entering, and assault on a female. Defendant argues the trial court erred by admitting evidence of flight occurring seven months after the crimes were committed. We find no error by the trial court.

At trial, the State presented evidence tending to show the

incidents giving rise to the charges occurred on 25 July 2002. The victims identified Defendant as the perpetrator. Detective David Short of the Wilmington Police Department testified that on 25 July 2002 and in the days and weeks thereafter he and other officers unsuccessfully searched for Defendant in the Wilmington area at the residences of Defendant's girlfriend and mother. Detective Short also had information that Defendant had moved to Charlotte. Officer Jimmy Snead of the Wilmington Police Department testified that on 27 February 2003 he was on patrol and serving warrants. He observed Defendant walking in the Creekwood Apartments area of Wilmington. After verifying that warrants for Defendant's arrest were still outstanding, he approached Defendant and announced that he had warrants for Defendant's arrest. Defendant "pulled his pants up fairly high and took off running." Defendant objected to this testimony and the trial court overruled the objection. Officer Snead subsequently testified that officers apprehended Defendant in the bathroom of a residence and served him with the warrants.

The jury found Defendant guilty of attempted statutory sex offense of a thirteen, fourteen, or fifteen-year-old, taking indecent liberties with a child, breaking and entering, and assault on a female. Defendant was sentenced to 201-251 months for attempted statutory sex offense and twenty to twenty-four months for the remaining offenses. Defendant appealed.

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Defendant argues the temporal gap between the time of the

criminal incidents and his flight from Officer Snead rendered the evidence irrelevant and inadmissible. He contends it cannot be deducted that Defendant's flight from the arrest by Officer Snead was motivated by his consciousness of guilt for the crimes he allegedly committed seven months prior. We disagree.

"An accused's flight is 'universally conceded' to be admissible as evidence of consciousness of guilt and thus of guilt itself." *State v. Jones*, 292 N.C. 513, 525, 234 S.E.2d 555, 562 (1977) (citation omitted).

The rule in North Carolina is that flight of an accused may be admitted as some evidence of guilt. However, such evidence does not create a presumption of guilt, but may be considered with other facts and circumstances in determining whether all the circumstances amount to an admission of guilt or reflect a consciousness of guilt. Proof of flight, standing alone, is not sufficient to amount to an admission of guilt. An accused may explain admitted evidence of flight by showing other reasons for his departure or that there, in fact, had been no departure.

*State v. Lampkins*, 283 N.C. 520, 523, 196 S.E.2d 697, 698 (1973) (citations omitted). Remoteness in time between a crime and a defendant's flight goes to the weight of the evidence and not its admissibility. *State v. DeBerry*, 38 N.C. App. 538, 540, 248 S.E.2d 356, 357 (1978). We conclude the trial court properly admitted the testimony.

No error.

Judges TYSON and GEER concur.

Report per Rule 30(e).