

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1254

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

STATE OF NORTH CAROLINA

v.

Haywood County
No. 03 CRS 53115

JUAN MANUEL CASTANEDA

Appeal by defendant from judgment entered 12 April 2005 by Judge Ronald K. Payne in Superior Court, Haywood County. Heard in the Court of Appeals 24 April 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Robert T. Hargett, for the State.

David Childers for defendant-appellant.

McGEE, Judge.

Juan Manuel Castaneda (defendant) was arrested on methamphetamine related charges and motor vehicle offenses on 14 September 2003. Defendant was indicted on 13 October 2003. Defendant filed a motion to suppress on 8 February 2005. Following a hearing, the motion was denied. Defendant then pled guilty pursuant to a plea agreement to one count of trafficking in methamphetamine. Defendant appeals.

The sole issue on appeal is whether the trial court erred in denying defendant's motion to suppress. However, because defendant failed to preserve this assignment of error for our review, we do

not review his argument.

Although N.C. Gen. Stat. § 15A-979(b) (2005) states that "[a]n order finally denying a motion to suppress evidence may be reviewed upon an appeal from a judgment of conviction, including a judgment entered upon a plea of guilty[,]" our Court has held that "[t]his statutory right to appeal is conditional, not absolute." *State v. McBride*, 120 N.C. App. 623, 625, 463 S.E.2d 403, 404 (1995), *aff'd*, 344 N.C. 623, 476 S.E.2d 106 (1996). Pursuant to N.C.G.S. § 15A-979(b), "a defendant bears the burden of notifying the state and the trial court during plea negotiations of the intention to appeal the denial of a motion to suppress, or the right to do so is waived after a plea of guilty." *Id.*; see also *State v. Pimental*, 153 N.C. App. 69, 74, 568 S.E.2d 867, 870, *disc. review denied*, 356 N.C. 442, 573 S.E.2d 163 (2002).

In the case before us, the record does not show that defendant gave the State or the trial court notice of his intent to appeal the denial of his motion to suppress. Therefore, defendant waived his right to appellate review. Accordingly, defendant's appeal is dismissed.

Dismissed.

Judges WYNN and HUNTER concur.

Report per Rule 30(e).