

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1455

NORTH CAROLINA COURT OF APPEALS

Filed: 05 July 2006

STATE OF NORTH CAROLINA

v.

Wake County
No. 04 CRS 43834

KEESHAN NATANIEL LYNCH

Appeal by defendant from judgment entered 25 May 2005 by Judge Kenneth C. Titus in Wake County Superior Court. Heard in the Court of Appeals 19 June 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Thomas J. Ziko, for the State.

Nora Henry Hargrove for defendant-appellant.

STEELMAN, Judge.

A jury found defendant guilty of first-degree murder, upon evidence that he attacked and killed Kirby Leon Eaton with a tire iron, butcher knife, and a saw on the night of or in the early morning hours of 8-9 April 2004, believing Eaton had stolen a refrigerator from defendant's girlfriend. The trial court sentenced defendant to life imprisonment without parole.

In his sole argument on appeal, defendant argues that the "short form" murder indictment filed in this case was fatally defective and insufficient to confer jurisdiction on the trial

court. He avers the indictment failed "to allege the essential elements of [first-degree murder] as required by Article I, Section 22 of the North Carolina Constitution" as well as the Fifth Amendment of the United States Constitution. While acknowledging the decisions of the North Carolina Supreme Court upholding the use of the short form murder indictment, defendant "raises the issue to preserve the same in the event of further review and in anticipation of a change in the law on this issue." Because we agree with defendant that his claim has no merit under existing law, we overrule his assignment of error and affirm the judgment of the trial court.

"In indictments for murder, . . . it is sufficient in describing murder to allege that the accused person feloniously, willfully, and of his malice aforethought, did kill and murder (naming the person killed) [.]" N.C. Gen. Stat. § 15-144 (2005). Here, the grand jury returned a true bill of indictment on 9 August 2004, alleging "that on or about the 9th day of April, 2004 in Wake County [defendant] unlawfully, willfully and feloniously and of malice aforethought did kill and murder Kirby Leon Eaton." Accordingly, the indictment contained all the necessary allegations to sustain a charge of first-degree murder under N.C. Gen. Stat. § 15-144.

As conceded by defendant in his appeal, the North Carolina Supreme Court "has consistently concluded that [the short-form murder] indictment violates neither the North Carolina nor the United States Constitution." *State v. Hunt*, 357 N.C. 257, 278, 582

S.E.2d 593, 607, cert. denied, 539 U.S. 985, 156 L. Ed. 2d 702 (2003). Moreover, both this Court and the North Carolina Supreme Court have reaffirmed the constitutionality of the short form murder indictment in light of the United States Supreme Court decisions cited by defendant, *Jones v. United States*, 526 U.S. 227, 232 (1999), and *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435 (2000). See, e.g., *State v. Squires*, 357 N.C. 529, 537, 591 S.E.2d 837, 842 (2003), cert. denied, 541 U.S. 1088, 159 L. Ed. 2d 252 (2004); *State v. Byers*, __ N.C. App. __, __, 623 S.E.2d 357, 365 (2006); *State v. Wissink*, __ N.C. App. __, __, 617 S.E.2d 319, 324 (2005). The instant indictment satisfied the requirements of the North Carolina Constitution by providing defendant with "sufficient notice of the nature and cause of the charges against him[.]" *Squires*, 357 N.C. at 537, 591 S.E.2d at 842. "Furthermore, 'to this date, the United States Supreme Court has not applied the Fifth Amendment indictment requirements to the states.'" *Byers*, __ N.C. App. at __, 623 S.E.2d at 365 (quoting *Hunt*, 357 N.C. at 273, 582 S.E.2d at 604).

The record on appeal includes additional assignments of error not addressed by defendant in his brief to this Court. By rule, we deem them abandoned. See N.C.R. App. P. 28(b)(6).

NO ERROR.

Judges McCULLOUGH and HUDSON concur.

Report per Rule 30(e).