

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-1442

NORTH CAROLINA COURT OF APPEALS

Filed: 18 September 2007

STATE OF NORTH CAROLINA

v.

Alamance County
No. 05CRS54818

RICHARD ANTWAUN GRAVES

Appeal by defendant from judgment entered 11 May 2006 by Judge J.B. Allen, Jr., in Alamance County Superior Court. Heard in the Court of Appeals 20 August 2007.

Attorney General Roy Cooper, by Special Deputy Attorney General Ronald M. Marquette, for the State.

Leslie C. Rawls for defendant appellant.

McCULLOUGH, Judge.

Defendant appeals judgments entered after a jury verdict of guilty of first-degree murder. We determine there was no error.

FACTS

Richard Antwaun Graves ("defendant") was indicted for first-degree murder and possession of a weapon of mass destruction. The State presented evidence at trial which tended to show the following:

Defendant and Lora Ann Dawkins ("Lora") lived together. On the night of 14 June 2005, Lora's brother, Larry Laborn ("Larry"), and several other family members pulled up in front of the couple's

house in a van. Larry told Lora that defendant may be involved with another woman.

Defendant arrived on a bicycle and went inside his and Lora's residence. Lora was inside talking with defendant when Larry came to tell Lora he was getting ready to leave. At this point, Larry told defendant not to hurt his sister. Then Larry and Lora went outside on the porch to talk. Larry was shot from inside the house and died from the gunshot wound. Defendant ran out the back door of the house after the shooting. Defendant turned himself into police the next morning.

The trial judge dismissed the weapon charge at the close of the State's evidence. The jury convicted defendant of first-degree murder and the trial judge imposed a sentence of life imprisonment without parole. Defendant appeals.

I.

Defendant contends he received ineffective assistance of counsel because his trial counsel violated his constitutional right not to be a witness against himself by making certain remarks during his opening statement. We disagree.

When counsel admits his client's guilt without first obtaining the client's consent, the client's rights to a fair trial and to put the State to the burden of proof are completely swept away. The practical effect is the same as if counsel had entered a plea of guilty without the client's consent.

State v. Harbison, 315 N.C. 175, 180, 337 S.E.2d 504, 507 (1985), cert. denied, 476 U.S. 1123, 90 L. Ed. 2d 672 (1986). Under such circumstances, "[an] admission of the defendant's guilt during the

closing arguments to the jury is per se prejudicial error." *Id.* at 177, 337 S.E.2d at 505. Specifically, in *Harbison*, our Supreme Court ruled that the defendant received ineffective assistance of counsel where he presented evidence that he had killed in self-defense, and to defendant's surprise, his attorney expressed an opinion during his closing argument that the jury should return a verdict of guilty of voluntary manslaughter as opposed to first-degree murder. *Id.* at 177-78, 337 S.E.2d at 506. The holding in *Harbison* has also been applied to cases involving comments made by attorneys during opening statements. See *State v. Roache*, 358 N.C. 243, 283, 595 S.E.2d 381, 407-08 (2004).

We determine the instant case is distinguishable from *Harbison*. The relevant remarks made by defendant's counsel were:

It appeared to [defendant] that the man was going to come and assault him so he fired one time with the shotgun and ran out the back door.

[H]e acted in what he considered to be some defense of himself.

[Defendant] pleaded not guilty to the events of June 14th. Now, what happened that night and why it happened is very much in dispute. . . . After you've heard the evidence and the law you'll find him not guilty.

Defendant argues that by these remarks his trial counsel admitted to his culpability and his admission constitutes ineffective counsel *per se*. However, we believe that trial counsel's statements did not constitute an admission of guilt. In addition, the trial judge was aware of the possibility of the issue because the judge specifically questioned defendant's attorney whether there was

going to be a *Harbison* issue. Defendant's counsel responded that he "will not admit to guilt of anything without [defendant's] open statement in court" giving him permission to do so.

No error.

Chief Judge MARTIN and Judge TYSON concur.

Report per Rule 30(e).