An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-196

NORTH CAROLINA COURT OF APPEALS

Filed: 18 July 2006

STATE OF NORTH CAROLINA

v.

REGGIE ALTON WOMACK,
Defendant.

Lee County
No. 04 CRS 54061

Appeal by defendant from judgment entered 21 September 2005 by Judge B. Craig Ellis in the Superior Court in Lee County. Heard in the Court of Appeals 10 July 2006.

Attorney General Roy Cooper by Special Deputy Attorney General L. Michael Dodd, for the State.

Jeffrey Evan Noecker, for defendant-appellant.

HUDSON, Judge.

Defendant was charged with robbery with a firearm and assault with a deadly weapon inflicting serious injury. A jury found defendant not guilty of robbery with a firearm, but guilty of assault with a deadly weapon inflicting serious injury. The trial court sentenced defendant to 29 to 44 months imprisonment. Defendant appeals. We conclude that there was no error.

The State's evidence tended to show that on the evening of 19 September 2004, Kenneth Paul Cotten, Jr., arrived at the apartment of Angela Shaw for her birthday party. Twenty to thirty people were in attendance, including defendant, Michael Benson, and

Winfred Murchison. Shortly after Cotten arrived, he observed defendant and Murchison sitting together outside. About two hours later, Cotten was sitting at a table between the kitchen and living room. Shaw saw Benson walking up the hallway towards the kitchen holding a handgun in each hand and she ran into the bathroom to call 911.

Benson stood in the hallway, about ten feet from Cotten, brandished his handguns and told Cotten to empty his pockets. Cotten put money from his left pocket on the table and as Cotten reached for money in his right pocket, Benson fired, grazing Cotten's head. Cotten grabbed Benson's wrists and the men struggled for the guns. Benson called Murchison "to get [Cotten] off of him." Murchison, who entered from the back door, pressed a gun into Cotten's back. A shot went off and Cotten fell to the floor. Defendant came into the kitchen through the back door and stood while Benson shot Cotten twice more in the legs. When Shaw reached the kitchen, she saw Benson standing over Cotten on the floor while Murchison was "trying to pull [Benson] to go." Shaw saw defendant walk over to Cotten, kick Cotten in the head and begin to rummage through Cotten's pockets. Shaw told defendant, "get out of the man's pockets[.]" Defendant replied that Cotten was getting what he deserved. Defendant took a cell phone and a couple of dollars from Cotten's pocket. As Benson, Murchison and defendant left through the back door, Benson turned to Shaw and told her not to call the law or he would "get" her.

After the State's evidence, defendant made a motion to

dismiss, which the trial court denied. Benson and Murchison testified on behalf of defendant. Each testified that defendant was not with them during the shooting. Benson further testified that defendant did not leave the party with him or Murchison. The trial court again denied defendant's motion to dismiss.

Defendant contends that the trial court erred by denying his motion to dismiss based on insufficiency of the evidence. On review of a ruling on a motion to dismiss we must determine "whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). Substantial evidence is that relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *State v. Patterson,* 335 N.C. 437, 449-50, 439 S.E.2d 578, 585 (1994). In ruling on a motion to dismiss, the trial court must consider all of the evidence in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence. *State v. Davis*, 130 N.C. App. 675, 679, 505 S.E.2d 138, 141 (1998). "Any contradictions or discrepancies arising from the evidence are properly left for the jury to resolve and do not warrant dismissal." *State v. King,* 343 N.C. 29, 36, 468 S.E.2d 232, 237 (1996).

Defendant asserts that the State did not present substantial evidence that he acted in concert with Benson or Murchison, and therefore, he could not be guilty of assault with a deadly weapon

inflicting serious injury. To be convicted of the underlying crime on the theory of acting in concert, the defendant must: (1) be "present at the scene of the crime," and (2) "act[] together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose to commit the crime." *State v. Moore*, 87 N.C. App. 156, 159, 360 S.E.2d 293, 295-96 (1987), *disc. review denied*, 321 N.C. 477, 364 S.E.2d 664 (1988). "[I]f two or more persons act together in pursuit of a common plan or purpose, each of them, if actually or constructively present, is guilty of any crime committed by any of the others in pursuit of the common plan. This is true even where the other person does all the acts necessary to commit the crime." *State v. Abraham*, 338 N.C. 315, 328-29, 451 S.E.2d 131, 137 (1994) (internal citations and quotation marks omitted).

Here, the State presented substantial evidence that defendant was present at the scene of the crime and that he acted together with Benson and Murchison pursuant to a common plan or purpose. The evidence showed that after Murchison entered the kitchen area through the back door and shot Cotten in the back, defendant entered the kitchen area through the same back door, at which time he stood and watched Benson shoot Cotten's legs. Defendant then kicked Cotten in the head and stated that Cotten was getting what he deserved. Afterwards, defendant took a cell phone and money from Cotten's pockets and accompanied Benson and Murchison out the back door. We conclude that a reasonable juror could find, based on this conduct, that defendant was acting in concert with Benson and Murchison. We overrule this assignment of error.

No error.

Judges MCCULLOUGH and STEELMAN concur.

Report per Rule 30(e).