

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-475

NORTH CAROLINA COURT OF APPEALS

Filed: 8 December 2009

STATE OF NORTH CAROLINA

v.

Buncombe County
Nos. 07 CRS 54836, 08 CRS 152

ROBERT KEITH WHITE

Appeal by Defendant from judgment entered 10 April 2008 by Judge Richard L. Doughton in Superior Court, Buncombe County. Heard in the Court of Appeals 13 October 2009.

Attorney General Roy Cooper, by Assistant Attorney General Richard G. Sowerby, for the State.

Michele Goldman for Defendant.

McGEE, Judge.

Robert Keith White (Defendant) was indicted on 4 September 2007 for assault on a law enforcement officer inflicting serious bodily injury as a result of an incident that occurred on 24 April 2007 at the Buncombe County Detention Center.

Officer Patrick Penland testified at trial that at approximately 8:00 a.m. on 24 April 2007, he was working in the area where Defendant was housed when he noticed Defendant was still under the covers of Defendant's bed. Officer Penland testified that this was a violation of Buncombe County Detention Center policy, because breakfast had already been served, and inmates were

not allowed to lie covered in bed after breakfast. Officer Penland reprimanded Defendant for violating the policy and decided to take away certain of Defendant's "free time" privileges for the day. Officer Penland informed Defendant of his decision during the lunch period, and Defendant asked to speak with a supervisor.

Officer Penland called Sergeant Charles Wilhelm and asked him to speak with Defendant. Sergeant Wilhelm went to Defendant's cell on the second floor of the cell block to confer with Defendant. Officer Penland stood below on the opposite side of the "day room" from Defendant's cell. Sergeant Wilhelm spoke with Defendant for awhile, then Officer Penland noticed that their "voices began to rise." As Officer Penland began to head up the stairs to Defendant's cell, he heard Defendant and Sergeant Wilhelm "beginning to scuffle a little bit" and heard pepper spray being deployed. Officer Penland heard Sergeant Wilhelm tell Defendant to "return," meaning Defendant should move back into Defendant's cell. When Officer Penland reached the top of the stairs, he witnessed Defendant and Sergeant Wilhelm "wrestling around" and saw that Sergeant Wilhelm was bleeding from his mouth. Officer Penland tried to "get between" Defendant and Sergeant Wilhelm to protect Sergeant Wilhelm. Officer Penland testified that, as he moved between Defendant and Sergeant Wilhelm, he "received several strikes to [his] head" from Defendant. Officer Penland testified that Defendant was using a closed fist, and that he received blows to the back of his head, the side of his head, and his jaw. Officer Penland believed it took about five minutes for them to

maneuver Defendant back into his cell.

Officer Penland visited the detention center medical facility where the nurses told him he should go to the hospital. Sergeant Wilhelm drove Officer Penland to the hospital. Officer Penland spent two hours at the hospital where he was treated in the emergency room for a "large abrasion" on his elbow, and "extreme" pain in his head, which he described to the doctors as "a 10 on a scale of 1 to 10." Officer Penland stated that his head ached and "seemed like it was just humming." Officer Penland testified that the doctors informed him he had a concussion, and that he should take Tylenol to ease the pain and "take several days off from work to try to recuperate." Officer Penland testified, and photographs were admitted into evidence, concerning the injuries he sustained to his head and arm. The photographs showed an abrasion on Officer Penland's arm, marks and bruises on his head, and a lump on his head. Officer Penland testified that the effects of his concussion lasted from the day of the incident "into the next day."

The jury returned a verdict of guilty for the charge of assault on a law enforcement officer inflicting serious injury, and of being an habitual felon. Defendant received an active sentence of 133 to 169 months. Defendant appeals.

In Defendant's sole argument on appeal, he contends that the trial court erred by denying his motion to dismiss the assault charge "where the officer's injuries did not constitute 'serious injury.'" We disagree.

When considering a motion to dismiss, the trial court must determine whether the State

presented substantial evidence of each element of the crime and of the defendant's being the perpetrator. "'Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" The evidence must be viewed "in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor."

State v. Tice, 191 N.C. App. 506, 508-09, 664 S.E.2d 368, 371 (2008) (internal citations omitted).

N.C. Gen. Stat. § 14-34.7 (2007) states in relevant part: "[A] person is guilty of a Class F felony if the person assaults a law enforcement officer . . . while the officer is discharging or attempting to discharge his or her official duties and inflicts serious bodily injury on the officer." Though the statute includes the language "serious bodily injury," this Court has held that all that is needed for conviction under N.C. Gen. Stat. § 14-34.7 is a showing that an assault inflicted "serious injury" on a law enforcement officer. *State v. Crawford*, 167 N.C. App. 777, 606 S.E.2d 375 (2005).

[A]s long as the State presents evidence that the victim sustained a physical injury as a result of an assault by the defendant, it is for the jury to determine the question of whether the injury was serious. *See Joyner*, 295 N.C. at 65, 243 S.E.2d at 374 ("there being evidence of physical or bodily injury to the victim, the question of the nature of these injuries was . . . properly submitted to the jury").

State v. Alexander, 337 N.C. 182, 189, 446 S.E.2d 83, 87 (1994); see also *State v. Wallace*, ___ N.C. App. ___, ___, 676 S.E.2d 922, 928 (2009); *Tice*, 191 N.C. App. at 509, 664 S.E.2d at 371.

Because the State presented substantial evidence that Officer

Penland sustained bodily injury as a result of an assault perpetrated by Defendant, the issue of the seriousness of the injury was the jury's to decide. We hold that the trial court did not err in denying Defendant's motion to dismiss.

No error.

Judges WYNN and BRYANT concur.

Report per Rule 30(e).