

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-543
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Caswell County
Nos. 10 CRS 421-22

REGINALD ALBERT RAY

Appeal by defendant from judgments entered 19 January 2011 by Judge G. Wayne Abernathy in Caswell County Superior Court. Heard in the Court of Appeals 17 October 2011.

Attorney General Roy Cooper by Assistant Attorney General Anne Goco Kirby, for the State.

Michael J. Reece for defendant appellant.

McCULLOUGH, Judge.

Defendant appeals from judgments entered after a jury found him guilty of two counts of felonious stalking. We find no error.

The State's evidence tends to show that Colleen Walker dated defendant for eight years before breaking up with him after he pulled a knife on her. Thereafter, Ms. Walker told defendant to stay away from her; however, defendant did not

abide by Ms. Walker's wishes. After about three months of telling defendant to stay away from her, Ms. Walker sought and obtained a domestic violence protective order ("DVPO"). Despite being served with the DVPO, defendant continued to go to Ms. Walker's home. On 25 October 2009, Ms. Walker took out a warrant alleging defendant violated the DVPO. Defendant went to Ms. Walker's home again on 29 October 2009. Once again, Ms. Walker took out a warrant alleging defendant violated the DVPO. Subsequently, defendant was convicted for violating the DVPO and went to jail.

Defendant was released from jail in February 2010. After his release, defendant went back to Ms. Walker's home. Ms. Walker took out another warrant, this time for stalking. On 1 April 2010, defendant pled guilty to misdemeanor stalking. Defendant was sentenced to a term of 150 days in the custody of the North Carolina Department of Correction. While in prison, defendant sent Ms. Walker a letter and a box of his clothing. Ms. Walker threw away the clothing, but gave the letter to the district attorney's office without opening it. Less than a month later, Ms. Walker received three additional letters from defendant. Again, Ms. Walker gave the letters to the district attorney's office without opening them.

On 15 June 2010, defendant was indicted on two counts of felonious stalking. The matter came on for trial at the 17 January 2011 Criminal Session of Caswell County Superior Court. A jury found defendant guilty as charged. Defendant gave notice of appeal in open court.

Defendant's sole argument on appeal is that the trial court erred in denying his motion to dismiss the charges. "When a defendant moves for dismissal, the trial court must determine whether the State has presented substantial evidence of each essential element of the offense charged and substantial evidence that the defendant is the perpetrator." *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997) (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Franklin*, 327 N.C. 162, 171, 393 S.E.2d 781, 787 (1990) (citation omitted). "The State is entitled to every reasonable inference to be drawn from the evidence. Contradictions and discrepancies do not warrant dismissal of the case; rather, they are for the jury to resolve." *Id.* at 172, 393 S.E.2d at 787.

A defendant is guilty of stalking if the defendant willfully on more than one occasion harasses another person without legal purpose or willfully engages in a

course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

- (1) Fear for the person's safety or the safety of the person's immediate family or close personal associates.
- (2) Suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment.

N.C. Gen. Stat. § 14-277.3A(c) (2009). "Harasses" or "harassment" is defined as "[k]nowing conduct, including written or printed communication . . . directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose." N.C. Gen. Stat. § 14-277.3A(b) (2). "Reasonable person" is defined as "[a] reasonable person in the victim's circumstances." N.C. Gen. Stat. § 14-277.3A(b) (3). "Substantial emotional distress" is "[s]ignificant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling." N.C. Gen. Stat. § 14-277.3A(b) (4). If the defendant has previously been convicted of a stalking offense, then he is guilty of a Class F felony. N.C. Gen. Stat. § 14-277.3A(d).

In this case, defendant argues the State did not meet its burden of proving either that his conduct would cause a reasonable person to fear for her personal safety or cause a reasonable person to fear death, bodily injury, or continued harassment. Defendant further contends the evidence did not support a finding that Ms. Walker was tormented, terrified, or terrorized. We disagree.

The evidence shows that defendant continued to go to Ms. Walker's home after being served with a DVPO and after being released from jail for violating the DVPO. Even while serving an active sentence for stalking Ms. Walker, defendant continued to contact Ms. Walker by sending her a box of his clothing and four letters. Moreover, the evidence shows that Ms. Walker was indeed tormented, terrified, or terrorized by defendant's conduct. Ms. Walker testified that she was afraid when she received the letters and clothing from defendant. She was afraid because she did not know what the letters said and because defendant had been told "over and over again not to contact [her]." Ms. Walker testified that she was "stressed out by [defendant] because he just continued." We conclude the State met its burden of proof. The State presented substantial evidence that a reasonable person in Ms. Walker's circumstances

would suffer substantial emotional distress by being placed in fear of continued harassment. Thus, we hold the trial court did not err in denying defendant's motion to dismiss the charges.

No error.

Judges MCGEE and ELMORE concur.

Report per Rule 30(e).