

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA12-1487  
NORTH CAROLINA COURT OF APPEALS

Filed: 1 October 2013

STATE OF NORTH CAROLINA

v.

Catawba County  
No. 11 CRS 8023

JEREMY WAYNE CHESTER

Appeal by defendant from judgment entered 24 August 2012 by Judge W. Robert Bell in Catawba County Superior Court. Heard in the Court of Appeals 23 September 2013.

*Attorney General Roy Cooper, by Assistant Attorney General Matthew L. Boyatt, for the State.*

*Crowe & Davis, P.A., by H. Kent Crowe for defendant-appellant.*

ERVIN, Judge.

Defendant Jeremy Wayne Chester appeals from a judgment sentencing him to a term of 22 to 27 months imprisonment based upon his conviction for failing to provide notice that he had changed his address as required of registered sex offenders by N.C. Gen. Stat. § 14-208.9. On appeal, Defendant argues that the trial court erred by refusing to dismiss the charge that had been lodged against him on the grounds that the evidence was

insufficient to support a conviction and by admitting into evidence an incident report reflecting a law enforcement officer's conversation with one of the State's witnesses. After careful consideration of Defendant's challenges to the trial court's judgment, we conclude that Defendant is not entitled to any relief on appeal.

I. Factual Background

A. Substantive Facts

1. State's Evidence

On 7 August 2002, Defendant was convicted of two counts of taking indecent liberties with a child. As a result of the fact that his conviction was for a "reportable" offense, Defendant was required to register as a sex offender. See N.C. Gen. Stat. § 14-208.6(4) (defining "reportable conviction"). On 27 June 2011, Defendant met with Deputy Tom Scarborough of the sex offender registry unit of the Catawba County Sheriff's Office and changed his address from one located in Lincoln County to 3195 Blackburn School Road in Catawba County. At that time, Deputy Scarborough reviewed the 13-page duty to register form with Defendant, which Defendant subsequently signed. The duty to register form explains the rules and regulations applicable to the registration program, including the requirement that a

registrant notify the sheriff in the event that the person in question changed his or her address.

On 16 August 2011, Deputy Scarborough went to the Blackburn School Road address. After Deputy Scarborough knocked, John Thomas Munday, Defendant's stepfather, answered the door. At that point, Deputy Scarborough inquired if Defendant was at home. According to Deputy Scarborough, Mr. Munday stated that Defendant had moved out approximately two months ago and did not live there anymore.<sup>1</sup> Although Mr. Munday provided Deputy Scarborough with Defendant's street address in Long View, he did not know the specific apartment number at which Defendant resided.

At the conclusion of his conversation with Mr. Munday, Deputy Scarborough traveled to Long View for the purpose of locating Defendant. After making certain inquiries, Deputy Scarborough was able to ascertain the location of the specific apartment in which Defendant was residing. Although Deputy Scarborough knocked on the door of the apartment in question for approximately ten minutes, no one answered. Deputy Scarborough

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<sup>1</sup>Mr. Munday testified that Defendant continued to have clothes and receive mail at the Blackburn School Road residence as of the date of Deputy Scarborough's visit. Although Mr. Munday indicated that he worked at night and slept during the day, he testified that he thought that Defendant continued to sleep at the Blackburn School Road residence "off and on" and denied having told Deputy Scarborough that Defendant had moved out two months earlier.

could, however, tell that someone was inside the apartment since he could hear the television operating and the floor creaking and since he saw the blinds moving. Upon making these observations, Deputy Scarborough left the apartment complex and returned to his patrol car, from which he could observe the apartment complex. **[T42-43]**

About five minutes later, Deputy Scarborough observed Defendant exit the apartment, walk over to a small car sitting in the parking lot, and begin attempting to open the trunk. Deputy Scarborough immediately approached Defendant and asked him why he had not answered the door. In response, Defendant stated that he had been nervous and did not want Deputy Scarborough to arrest him. At that point, Deputy Scarborough asked Defendant why he was trying to open the trunk of the car and was told that Defendant was planning to hide in that location.

## 2. Defendant's Evidence

Martha Elizabeth Munday, Defendant's mother, testified that Defendant had not moved out of the Blackburn School Road residence and that he was not living with his girlfriend at the time of Deputy Scarborough's visit. Similarly, Talesia Chester, who had been Defendant's girlfriend and who was, at the time of trial, Defendant's wife, testified that Defendant did not live

with her and stated that he had never spent more than three nights in a row at her apartment prior to the date upon which Deputy Scarborough found him there.

### B. Procedural History

On 5 December 2011, the Catawba County grand jury returned a bill of indictment charging Defendant with failing to notify the relevant sheriff of the fact that he had changed his address in a timely manner. The charge against Defendant came on for trial before the trial court and a jury at the 20 August 2012 criminal session of the Catawba County Superior Court. On 23 August 2012, the jury returned a verdict finding Defendant guilty as charged. At the conclusion of the ensuing sentencing hearing, the trial court entered a judgment sentencing Defendant to a term of 22 to 27 months imprisonment. Defendant noted an appeal to this Court from the trial court's judgment.

## II. Substantive Legal Analysis

### A. Denial of Dismissal Motion

In his initial challenge to the trial court's judgment, Defendant contends that the trial court erred by denying his motion to dismiss the charge that had been lodged against him on the grounds that the evidence did not suffice to support Defendant's conviction. More specifically, Defendant contends that the State was required to prove that Defendant had changed

his domicile in order for the evidence to establish that he had changed his address and the record evidence simply did not suffice to support a determination that Defendant had done so. We do not find Defendant's argument persuasive.

"Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied.'" *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)), cert. denied, 531 U.S. 890, 121 S. Ct. 213, 148 L. Ed. 2d 150 (2000). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, 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. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), cert. denied, 515 U.S. 1135, 115 S. Ct. 2565, 132 L. Ed. 2d 818 (1995). "The defendant's evidence, unless favorable to the State, is not to

be taken into consideration. However, when not in conflict with the State's evidence, it may be used to explain or clarify that offered by the State." *State v. Jones*, 280 N.C. 60, 66, 184 S.E.2d 862, 866 (1971).

"The three essential elements of the offense described in N.C. Gen. Stat. § 14-208.9 are: (1) the defendant is a person required to register; (2) the defendant changes his or her address; and (3) the defendant fails to notify the last registering sheriff of the change of address within three business days of the change." *State v. Barnett*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 733 S.E.2d 95, 98 (2012). "[A] sex offender's address indicates his or her residence, meaning the actual place of abode where he or she lives, whether permanent or temporary." *State v. Worley*, 198 N.C. App. 329, 335, 679 S.E.2d 857, 862 (2009) (quoting *State v. Abshire*, 363 N.C. 322, 331, 677 S.E.2d 444, 451 (2009)). As a result of the fact that Defendant's challenge to the trial court's judgment rests upon a contention that the State failed to present sufficient evidence to permit a reasonable jury to find that he had changed his address, we will limit our discussion of the correctness of the trial court's ruling to an evaluation of the merits of that contention.

Although Mr. Munday testified that Defendant continued to have clothes at the Blackburn School Road address and continued

to received mail at the address, he also testified that he had not seen Defendant in about two months. Mr. Munday could not tell Deputy Scarborough where Defendant lived because he "really wasn't sure." However, when asked where Defendant might be, Mr. Munday gave the address of Defendant's girlfriend's in Long View to Deputy Scarborough. Mr. Munday testified that, when he and his wife visited Defendant's girlfriend at her home, Defendant was there. In addition, Mr. Munday testified that Defendant and his girlfriend would occasionally come to church together. On cross-examination, Ms. Munday testified that, while she assumed that Defendant was living at her home, she did not really know where Defendant was living because she did not see him every day. As a result, we conclude that the State presented sufficient evidence to support the denial of Defendant's dismissal motion separate and apart from Deputy Scarborough's testimony concerning his conversation with Mr. Munday, so that the trial court did not err by denying Defendant's dismissal motion.

#### B. Admission of Incident Report

Secondly, Defendant contends that the trial court erred by admitting page 4 of Deputy Scarborough's incident report into evidence as State's Exhibit No. 3. The relevant portion of the Incident Report describes Deputy Scarborough's conversation with



Mr. Munday on 16 August 2011. However, Deputy Scarborough testified about his conversation with Mr. Munday in terms essentially identical to those contained in State's Exhibit No. 3 without drawing any objection from Defendant. As a result of the fact that the same or similar evidence was admitted without objection during the course of Defendant's trial, any error that the trial court may have committed in allowing the admission of the challenged portion of State's Exhibit No. 3 into evidence was harmless. *State v. Richardson*, 341 N.C. 658, 671, 462 S.E.2d 492, 501 (1995) (holding that any error stemming from the exclusion of certain evidence "was harmless because defendant elicited substantially the same evidence through other witnesses"). As a result, the trial court did not commit prejudicial error by allowing the admission of the challenged portion of State's Exhibit No. 3 into evidence.

### III. Conclusion

Thus, for the reasons set forth above, we conclude that neither of Defendant's challenges to the trial court's judgment has merit. As a result, the trial court's judgment should, and hereby does, remain undisturbed.

NO ERROR.

Judges GEER and DILLON concur.

Report per Rule 30(e).