

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-261  
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

STATE OF NORTH CAROLINA

v.

Wake County

Nos. 11 CRS 221128, 221129

JOSHUA VANPATRICK HALEY

Appeal by Defendant from judgments entered 11 July 2012 by Judge Howard E. Manning in Superior Court, Wake County. Heard in the Court of Appeals 24 September 2013.

*Attorney General Roy Cooper, by Special Deputy Attorney General Susan K. Nichols on brief and Special Deputy Attorney General Robert C. Montgomery, for the State.*

*Heather L. Rattelade for Defendant.*

McGEE, Judge.

Joshua Vanpatrick Haley ("Defendant") was indicted for and convicted of possession of a firearm by a felon, assault on a female, and habitual misdemeanor assault. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred in denying his motion to dismiss the charge of possession of a firearm by a felon. We disagree.

I. Standard of Review

We review the trial court's denial of a motion to dismiss *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). The "trial court 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. Bradshaw*, 366 N.C. 90, 93, 728 S.E.2d 345, 347 (2012) (citation and internal quotation marks omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* (citation omitted).

The "trial court must consider the evidence in the light most favorable to the State, drawing all reasonable inferences in the State's favor." *Bradshaw*, 366 N.C. at 92, 728 S.E.2d at 347 (citation omitted). "All evidence, competent or incompetent, must be considered. Any contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered." *Id.* at 93, 728 S.E.2d at 347 (internal citations and quotation marks omitted).

II. Analysis

"It shall be unlawful for any person who has been convicted of a felony to . . . possess . . . any firearm[.]" N.C. Gen.

Stat. § 14-415.1(a) (2011). Defendant does not challenge that he was a felon. Instead, Defendant challenges the sufficiency of the evidence of possession. Defendant contends "the State had to prove that [he] possessed the seized gun."

The indictment originally referenced a specific firearm, a "Black Hi-Point .45-caliber Semi-Automatic handgun[.]" After the jury was excused from the courtroom to begin deliberations, the State moved to amend the indictment to strike the quoted language referencing a specific firearm, and the trial court granted the motion. Defendant did not object to the State's motion or the trial court's amendment.

At this point in our analysis, we must note what Defendant does not argue on appeal. Defendant does not argue that the trial court erred in allowing the amendment to the indictment. Furthermore, Defendant does not assert that his right to receive effective assistance of counsel was violated when his attorney apparently consented to the amendment to the indictment after the jury had been excused to begin deliberations. Because Defendant does not argue these issues to this Court, we express no opinion as to the merits of those arguments.

Defendant argues only that the evidence was insufficient to prove that Defendant possessed the seized gun. Defendant cites no authority to support his proposition that the State must

prove that Defendant possessed the seized firearm. We thus review the record for sufficient evidence that Defendant possessed a firearm.

The record shows Defendant was in actual possession of a firearm. The State presented testimony from three witnesses who saw Defendant with a firearm. Takika Harris ("Ms. Harris") lived with roommates, including Defendant. She testified that, on a night in which she had guests, Defendant became aggressive. She and Defendant began to argue. While they were on the stairs, Defendant punched Ms. Harris. She fell down the stairs and then went to the kitchen and got a knife.

[The State]. When you got to the kitchen and grabbed the knife, what did you do first?

[Ms. Harris]. I went towards [Defendant], and Erica [Moore] stopped me. And she was, like, "You can't bring a knife to a gunfight." And at the time, I realized [Defendant] had cocked the gun out on me, and it was pointed towards my face.

The State presented testimony of a second witness, Erica Moore ("Ms. Moore"). Ms. Moore testified that Defendant "was standing in the doorway of the front door, with the door wide open, with the gun pointing towards [her] and [her] daughter and [Ms. Harris]."

[The State]. Did [Defendant] say anything to you while he had the gun pointed at you?

[Ms. Moore]. He said if we come near him or put our hands on him, he was going to shoot us.

The State presented testimony from a third witness, Sean Mason ("Mr. Mason").

[Mr. Mason]. He -- well, [Defendant] comes down the steps, you know, pulls a gun out, cocks it back, you know, and then after --

[The State]. Where is everybody else when that happened?

[Mr. Mason]. I'm at the kitchen table with Derek and the baby. Misha, [Defendant], [Ms. Moore], and [Ms. Harris] are in the doorway, like, in the start of the living room.

Viewing the evidence from the three witnesses in the light most favorable to the State, the evidence constitutes sufficient evidence that Defendant possessed a firearm. The trial court did not err in denying Defendant's motion to dismiss.

No error.

Judges McCULLOUGH and DILLON concur.

Report per Rule 30(e).