

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-376

Filed: 4 October 2016

Catawba County, No. 13 CRS 3021

STATE OF NORTH CAROLINA

v.

WENDY SUE BLODGETT, Defendant.

Appeal by defendant from judgment entered 17 December 2015 by Judge Richard D. Boner in Superior Court, Catawba County. Heard in the Court of Appeals 19 September 2016.

Attorney General Roy A. Cooper III, by Assistant Attorney General Teresa M. Postell, for the State.

Center for Death Penalty Litigation, Inc., by Vernetta R. Alston, for defendant-appellant.

STROUD, Judge.

Defendant Wendy Sue Blodgett was found guilty of possession with intent to sell or deliver a schedule II controlled substance and possession of drug paraphernalia. The trial court consolidated the offenses for judgment, suspended a

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prison sentence of five to 15 months, and placed defendant on supervised probation for 30 months. Defendant filed a timely *pro se* notice of appeal from the judgment.¹

The State's evidence tended to show that on 1 April 2013, the Narcotics Division of the Catawba County Sheriff's Office received an anonymous tip regarding "a white male . . . then known as Brian White, and a female named Wendy Blodgett. It was told that they were operating a [b]urgundy Buick LeSabre bearing a North Carolina tag of ZVR5504." Investigator Michael Hicks was patrolling the Springs Road area of Catawba County on the afternoon of 1 April 2013 and received a radio dispatch about the anonymous tip. At 2:44 p.m., he observed a burgundy Buick with two occupants "traveling away from County Home Road towards Highway 16 North." Running the license tag ZVR5504 through his computer, Investigator Hicks learned that the tag was registered to defendant but "did not belong on the Buick LeSabre and belonged on a Dodge vehicle."

Investigator Hicks executed a traffic stop of the Buick near Turtle Dove Road. Approaching the car's driver's side window, he "saw a white male driver and a white female passenger." The driver produced a Texas driver's license with the name Brian Twilla. Defendant, the passenger, presented a North Carolina identification card and told Investigator Hicks "she was aware that the tag didn't belong [on the car] but that

¹ Defendant has since filed a petition for writ of certiorari as an alternative basis for appellate review. Because we find the notice of appeal minimally sufficient to confer jurisdiction upon this Court, *see State v. Ragland*, 226 N.C. App. 547, 552, 739 S.E.2d 616, 620 (2013), we dismiss the petition as moot.

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was the only transportation she had to get back and forth.” Investigator Hicks asked defendant to step out of the vehicle in order to discuss the improper tag. During their conversation, he asked defendant “if there were any narcotics or illegal substances in the vehicle.” Defendant assured Investigator Hicks “that there was nothing in the vehicle” and consented to a search, whereupon Investigator Hicks asked the driver to exit the car. A deputy arrived at the scene and stood with the two subjects while Investigator Hicks searched the Buick’s interior. On the floorboard of the front passenger seat, he found two glass smoking pipes and a plastic container holding what was later determined to be methamphetamine.

In her sole argument on appeal, defendant claims the trial court erred by allowing the jury’s verdicts to be rendered outside of her presence in violation of her rights under North Carolina common law and our state and federal constitutions. We find no merit to this claim.

“It is well settled that a defendant in a criminal prosecution has the right to be present throughout his trial It is also settled that in cases where a defendant is on trial for less than a capital crime, his voluntary absence from court after his trial begins constitutes a waiver of his right to be present.” *State v. Mulwee*, 27 N.C. App. 366, 367, 219 S.E.2d 304, 305 (1975) (citations omitted). “Once trial begins, the burden is on the defendant to explain his absence.” *State v. Richardson*, 330 N.C. 174, 179, 410 S.E.2d 61, 63 (1991).

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The transcript of defendant's trial shows that she was present throughout the proceedings, up to the point that the jury left the courtroom to begin its deliberations at 3:50 p.m. The court stood at ease from 3:52 p.m. until 4:40 p.m., when the jury reentered the courtroom to be re-instructed on the doctrine of constructive possession.

Jurors resumed their deliberations at 4:43 p.m. After confirming that the attorneys had no objection to the re-instruction, the court "handled other matters" until the jury returned to the courtroom with its verdicts at 4:54 p.m. The following exchange ensued:

THE COURT: . . . Mr. Foreman, . . . [h]as the jury reached a unanimous verdict as to each of the two charges?

[PROSECUTOR]: Your Honor, I believe the defendant stepped out.

THE COURT: . . . Do you know where your client is?

[DEFENSE COUNSEL]: She went to take a break.

THE COURT: Do you have her cell phone?

[DEFENSE COUNSEL]: May I call her on my cell phone?

THE COURT: Right now.

(Counsel departs the courtroom to call her client.)

THE COURT: No answer?

[DEFENSE COUNSEL]: It's a busy signal.

THE COURT: All right. Let the record show that

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defense counsel is present; the defendant is not present and cannot be found.

All right, Mr. Foreman, has the jury reached a unanimous verdict in each of the two cases?

JUROR NUMBER 9: Yes, sir.

Defense counsel did not object to the jury rendering its verdicts in defendant's absence. *See generally* N.C.R. App. P. 10(a)(1) ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion . . ."); *see also State v. May*, 368 N.C. 112, 118, 772 S.E.2d 458, 462 (2015) (noting "the general rule that failure to raise a constitutional issue at trial generally waives that issue for appeal" (quotation marks omitted)). Nor did counsel request a continuance in order to secure defendant's presence. *See generally Richardson*, 330 N.C. at 178, 410 S.E.2d at 63 (finding no abuse of discretion where "the trial judge refused to grant defense counsel's motions to continue due to defendant's absence from his trial").

After reading the jury's guilty verdicts into the record and asking jurors to affirm them, the trial court asked if there was "[a]nything further for this jury from . . . the State or the defendant?" Defense counsel replied, "Nothing, Your Honor." The court excused the jurors from the courtroom at 5:00 p.m. and proceeded with the trial:

THE COURT: All right. Let the record show the return of the unanimous verdicts as to each of the two charges. Let the clerk record the verdicts.

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Let the record show the defendant has entered the courtroom.

All right. I'll hear from the State on sentencing.

Neither defendant nor counsel made further mention of her absence.

Assuming *arguendo* that her argument is properly preserved for our review, we conclude that defendant waived her right to be present for the jury's verdicts by voluntarily absenting herself from the courtroom. *See State v. Harris*, 27 N.C. App. 15, 19-20, 217 S.E.2d 729, 732 (1975); *State v. Billings*, 22 N.C. App. 73, 74, 205 S.E.2d 577, 578 (1974) ("If defendant was not in the courtroom when the jury returned, there is nothing in the record to indicate that his absence was other than voluntary. He therefore waived his right to be present at the rendition of the verdict. He was present when sentence was imposed."). Counsel's averment that defendant was "tak[ing] a break" does not amount to a justification for defendant's departure from the courtroom that would require the court to delay the proceedings pending her decision to return. The court acted well within its discretion by allowing counsel an opportunity to contact defendant by cell phone and then proceeding with the verdicts when defendant could not be reached.

We note that at the time the verdicts were rendered in open court, "defendant's counsel was present and representing defendant's interests. Additionally, a record was made of everything that occurred outside defendant's presence. The record shows that defendant's presence would have made no difference in the outcome"

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State v. Buckner, 342 N.C. 198, 230, 464 S.E.2d 414, 432 (1995). Accordingly, we find no error by the trial court.

NO ERROR.

Judges TYSON and INMAN concur.

Report per Rule 30(e).