

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-1069

Filed: 20 June 2017

Henderson County, No. 15 CRS 53167

STATE OF NORTH CAROLINA

v.

RICARDO EDWIN LANIER

Appeal by defendant from judgment entered 19 May 2016 by Judge Mark E. Powell in Henderson County Superior Court. Heard in the Court of Appeals 16 May 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Ashish K. Sharda, for the State.*

*Drew Nelson for defendant-appellant.*

BRYANT, Judge.

Where all of the elements of the offense of habitual misdemeanor assault were established through defendant's stipulations and the jury's verdict finding him guilty of the offense of assault on a female causing physical injury, the trial court did not err in sentencing defendant for the offense of habitual misdemeanor assault, and we find no error.

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On 21 September 2015, defendant Ricardo Edwin Lanier was indicted for habitual misdemeanor assault. The indictment alleged that on 1 August 2015, defendant assaulted a female victim and caused physical injury to her by slamming her head into a steering wheel and pulling out her hair. The indictment further alleged that defendant had previously been convicted of assault on a female twice within fifteen years of the 1 August 2015 offense.

At the 18 May 2016 trial, defendant stipulated to the two prior assault convictions alleged in the indictment. Following the close of all evidence, the trial court instructed the jury on the offense of assault on a female causing physical injury. On 19 May 2016, the jury found defendant guilty of assault on a female causing physical injury. The trial court sentenced defendant to nineteen to thirty-two months imprisonment for the offense of habitual misdemeanor assault. Defendant gave oral notice of appeal in open court.

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Defendant's sole contention on appeal is that the trial court erred by sentencing defendant for habitual misdemeanor assault in the absence of a verdict finding him guilty of that offense.

As an initial matter, we note that while defendant did not object to the trial court's alleged sentencing error, " [o]ur Supreme Court has held that an error at sentencing is not considered an error at trial for the purpose of N.C. Rule 10(b)(1) of

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the North Carolina Rules of Appellate Procedure and therefore no objection is required to preserve the issue for appellate review.” *State v. Jeffery*, 167 N.C. App. 575, 579, 605 S.E.2d 672, 674 (2004) (alteration in original) (citation omitted) (quoting *State v. Hargett*, 157 N.C. App. 90, 92, 577 S.E.2d 703, 705 (2003)). While defendant’s lack of objection does not prevent this Court from reviewing his argument on appeal, defendant’s contention is without merit.

To prove defendant was guilty of habitual misdemeanor assault pursuant to N.C. Gen. Stat. § 14-33.2, the State was required to prove the following elements: (1) defendant was convicted of two previous misdemeanor assaults within fifteen years prior to the date of the current violation, specifically the assaults listed in the indictment; (2) defendant assaulted the victim on 1 August 2015; and (3) the 1 August 2015 assault caused physical injury. *See* N.C. Gen. Stat. § 14-33.2 (2015); *see also State v. Garrison*, 225 N.C. App. 170, 174, 736 S.E.2d 610, 613 (2013). Given that defendant stipulated to the two prior assault convictions alleged in the indictment, the only elements of habitual misdemeanor assault left for the jury to determine were whether defendant assaulted the victim on 1 August 2015 and whether that assault caused physical injury.

“The elements of assault on a female are (1) an assault, (2) upon a female person, (3) by a male person (4) who is at least eighteen years old.” *State v. Herring*, 322 N.C. 733, 743, 370 S.E.2d 363, 370 (1988) (citation omitted). While a physical

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injury to the victim is not an element of assault on a female, in this case, the trial court specifically instructed the jury that it must find “that the defendant caused physical injury to the alleged victim” in order to find defendant guilty of the offense. Thus, when the jury returned a verdict of guilty for the offense of assault on a female causing physical injury, it had found the remaining elements necessary to find defendant guilty of habitual misdemeanor assault.

Defendant’s contention that the jury was required to specifically find defendant guilty of the offense of habitual misdemeanor assault in order for the trial court to sentence him for that offense has previously been rejected by this Court. *See Garrison*, 225 N.C. App. at 174–75, 736 S.E.2d at 613–14 (finding no plain error in the judgments sentencing the defendant for two counts of habitual misdemeanor assault where the defendant stipulated to prior assault convictions, the jury convicted the defendant of two counts of assault on a female, and plenary evidence was presented at trial that both of the underlying assaults on the victim resulted in physical injuries).

Furthermore, pursuant to N.C. Gen. Stat. § 15A-928(c)(1) (2015), defendant’s admission to the prior convictions underlying the habitual misdemeanor assault charge precluded the trial court from making any reference to the jury regarding the previous convictions. *See State v. Burch*, 160 N.C. App. 394, 397, 585 S.E.2d 461, 463 (2003). Thus, defendant attempts to fault the trial court for failing to do something

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it was prohibited by statute from doing once defendant stipulated to his prior convictions. The trial court did not err in sentencing defendant for the offense of habitual misdemeanor assault after all of the elements of the offense were established through defendant's stipulations and the jury's verdict finding him guilty of the offense of assault on a female causing physical injury. As a result, we find no error in the trial court's judgment.

NO ERROR.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).