An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

2022-NCCOA-821

No. COA22-279

Filed 6 December 2022

Perquimans County, Nos. 18 CRS 50021-25

STATE OF NORTH CAROLINA

v.

KEVON LAQUELL HUNTER, Defendant.

Appeal by defendant from judgment entered 25 March 2021 by Judge William D. Wolfe in Perquimans County Superior Court. Heard in the Court of Appeals 18 October 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Rana M. Badwan, for the State.

Appellate Defender Glenn G. Gerding, by Assistant Appellate Defender Emily Holmes Davis, for Defendant-Appellant.

CARPENTER, Judge.

¶ 1 Kevon Laquell Hunter ("Defendant") appeals from judgment after a jury convicted him of, *inter alia*, assault with a deadly weapon with intent to kill inflicting serious injury. On appeal, Defendant argues the trial court erred by refusing to instruct on the offense of assault with a deadly weapon inflicting serious injury as a possible lesser included offense of assault with a deadly weapon with intent to kill

inflicting serious injury. We disagree and find no error.

I. Factual Background

A. The State's Evidence

¶ 2 The State's evidence presented at trial tends to show the following: On 27 January 2018, Travonte Madison ("Madison") was in his Hertford, North Carolina home with his fiancée and three children, A.M., K.J., and J.J., who at the time were two, nine, and twelve years old, respectively.

¶ 3 Madison testified that at around 11:00 a.m., he heard an unexpected knock on the front door, and the visitor identified himself through the closed door as "James." Madison assumed it was James Guy, his brother-in-law. Madison opened the door, and he observed a man he recognized as Defendant "crouched down . . . between the door and the screen door." Defendant immediately shot Madison in the lip, and the bullet "went through Madison's mouth . . . and out [his] right ear."

¶ 4 Defendant forced his way into Madison's home and pushed Madison into his son's bedroom where Defendant closed the door. Madison fell to the ground, and laid face down as Defendant stood over him. Defendant shot Madison a second time, and the bullet "went through [Madison's] right wrist near his thumb." Defendant fired his gun two more times—both bullets went "through [Madison's] neck and then out the [other] side . . . ." Defendant fired a fifth shot, which missed Madison. Madison "played dead until [he] knew [Defendant] was gone." Madison remained conscious

and could "hear everything that was going on," including Defendant speaking to the children.

¶ 5 Defendant pointed his firearm at Madison's eldest child, J.J. Defendant then brought Madison's daughter, K.J., from the living room into the bedroom where Madison laid, and Defendant asked her "where the money was." K.J. responded there was money in Madison's pocket. Defendant took about $400 cash, some change, and a lottery ticket from Madison's pockets. Defendant threw the change back at Madison. Defendant repeatedly screamed an expletive during his encounter with Madison, as if "[Defendant] had messed up . . . ."

¶ 6 Madison could hear a vehicle blowing its horn outside, and Defendant "took off running" after the horn sounded. Madison got up, looked out the front window, and saw a green Ford F-150 pickup truck that he knew belonged to Towe White ("White") parked outside. Madison had seen White and Defendant together multiple times that week in the vehicle, including the night before. From the window, Madison observed Defendant get into the passenger's seat of the pickup truck before the vehicle drove away. Madison then checked on his children and called 911, reporting to the operator he had been shot.

¶ 7 Trooper Christopher Anderson of the North Carolina Highway Patrol was dispatched to the scene and was the first law enforcement officer to arrive. He observed Defendant standing on the porch and making noises, unable to speak due

to his injuries. Defendant did not identify the shooter to law enforcement or first responders immediately after the incident.

¶ 8 Madison was seen by emergency medical services ("EMS") and was ultimately airlifted to the hospital for treatment of his gunshot wounds, which required surgery. Being unable to speak when he was admitted into the hospital, Madison used a whiteboard to communicate to his fiancée that Defendant was the shooter. Multiple bullets or bullet fragments remained inside Madison's body after surgery, which caused him intermittent pain as of the date of trial. Madison suffered a broken jaw, which had to be wired shut for two months, as well as scarring from the bullet wounds.

¶ 9 In an interview with law enforcement three days after the incident, Madison identified the shooter as Defendant. In a 13 March 2018 interview, Madison described Defendant on the evening of 27 January 2018 as wearing a black mask that "cover[ed] the nose down to the chin" and black pants and a black hoodie that Defendant wore the previous night. Madison had known Defendant since Madison was twelve years old, which was about fifteen years. Madison also knew Defendant had tattoos, which Madison could see around Defendant's mask and hoodie. Madison recognized Defendant's voice when Defendant spoke to the children during the robbery.

¶ 10 Madison testified he knew Defendant and White sold drugs. Madison admitted

he had previously sold drugs, including with Kevin Guy, James Guy's brother. Madison was unfamiliar with any problems between Kevin Guy, James Guy, and White.

B. Defendant's Statements to Law Enforcement

¶ 11 Defendant made three voluntary statements to law enforcement. The first statement was made on 1 February 2018 to Deputy James Fowden ("Deputy Fowden") of the Perquimans County Sheriff's Office, following Defendant's arrest. In the interview, Defendant "stated that he was a drug dealer, not a killer, but that [he would] leg shot all day . . . ." Defendant denied involvement in the shooting and robbery but stated he heard a person named "Savage" was possibly involved in the shooting of Madison.

¶ 12 On 5 March 2018, Defendant agreed to participate in an audio and video recorded interview led by Special Agent Candice Walters ("Special Agent Walters"), formerly Candice Nixon, of the North Carolina State Bureau of Investigation ("SBI"), the agency assisting the Perquimans County Sheriff's Office. Counsel for Defendant and the sheriff of Perquimans County were present for the interview. Defendant stated that he and Patron Ousley ("Ousley"), whom Defendant referred to as "Youngin" or "Young Boy," met on 27 January 2018, the day of the robbery. Defendant admitted the plan was for Ousley to rob Madison and for Defendant to be the getaway driver.

¶ 13 According to Defendant, White told Defendant that Madison had $50,000 to $60,000 in cash, and White showed Defendant where Madison lived. White also asked Defendant to drive Ousley in White's truck to Madison's home, and Defendant agreed to let Ousley use his .22 caliber handgun for the robbery. Defendant would receive $20,000 from White for his participation as the driver.

¶ 14 Defendant described what happened when he and Ousley arrived at Madison's house. Ousley knocked on the front door, and the front door opened. Defendant stayed inside the truck until he saw a little boy run out and Ousley walk in the front door. Defendant went in the home to check on the children and smelled gun smoke, indicating to him that someone may have been shot. When Defendant noticed the children were safe, he returned to the truck, and Ousley came back to the truck shortly thereafter.

¶ 15 In the truck, Defendant asked Ousley what happened, and Ousley responded, "I killed him." Ousley reported to Defendant that he took about $500 and some heroin from Madison. Defendant left the truck and his gun with Ousley. On 27 March 2018, Defendant agreed to a third interview to answer law enforcement's follow-up questions. The State admitted both the 5 March 2018 and 27 March 2018 interviews into evidence and played them to the jury.

C. Defendant's Testimony

¶ 16 At trial, Defendant took the stand and testified as to his version of events.

According to Defendant, he and his friend, White, planned to go to Madison's home to rob him. White came up with the idea because White "had a problem with [Madison]" and Kevin Guy, who dealt drugs in White's territory, and because Madison "ha[d] some money." Defendant admitted he and White were also drug dealers. Defendant and White initially planned to commit the robbery on the evening of 26 January 2018, but did not go through with it because Madison's children were present. Defendant explained that they decided to rob Madison during the daytime because Defendant did not plan to hurt, shoot, or kill anyone.

¶ 17 Defendant testified that he was introduced to Ousley about thirty minutes before the commission of the robbery at 11:00 a.m. on 27 January 2018. Ousley, who stands about five feet, four to six inches tall, took White's place in the commission of the robbery. Defendant drove White's truck, and Defendant gave Ousley his .22 caliber firearm. When Defendant and Ousley arrived at Madison's residence, Ousley got out of the vehicle, knocked on the door, and shot Madison as soon as Madison opened the door. Defendant began blowing the horn on the truck after he saw Ousley shoot Madison and saw a little boy run out of the house to a next-door neighbor's home. Defendant then went inside the home to stop Ousley from firing more shots. Defendant got back into the truck and blew the horn again. Ousley returned to the truck, and they drove off. Defendant did not take any money from Madison's home, nor did he receive any money obtained by Ousley. Ousley kept Defendant's gun.

II. Procedural Background

¶ 18 Pursuant to a search warrant, law enforcement searched the inside of Madison's home on 27 January 2018 following the shooting and found three .22 caliber shell casings in a bedroom of the home. Law enforcement also observed brownish red stains in the home, "consistent with blood droplets." Madison's fiancée later found two other .22 caliber shell casings in the room where Madison was shot, which she turned over to law enforcement. Video surveillance recorded near Madison's home captured White's truck coming into and leaving the area. After the robbery, White's mother reported White's truck stolen, and an individual named Richard Armstead sold the truck a few days after the incident to a metal scrap yard for destruction.

¶ 19 On 30 April 2018, a Perquimans County grand jury indicted Defendant on: one count of attempted first degree murder, in violation of N.C. Gen. Stat. § 14-17; one count of breaking and entering a building with intent to injure an occupant, in violation of N.C. Gen. Stat. § 14-54(a1); one count of assault with a deadly weapon with intent to kill and inflicting serious injury, in violation of N.C. Gen. Stat. § 14-32(a); two counts of second degree kidnapping, in violation of N.C. Gen. Stat. § 14-39; one count of possession of a firearm by a felon, in violation of N.C. Gen. Stat. § 14-415.1; one count of robbery with a dangerous weapon, in violation of N.C. Gen. Stat. § 14-87; one count of assault by pointing a gun, in violation of N.C. Gen. Stat. § 14-

34; and one count of assault on a child under the age of twelve years old, in violation of N.C. Gen. Stat. § 14-33(c)(3). On 22 March 2021, the State dismissed the charges of assault by pointing a gun and assault on a child under the age of twelve years old.

¶ 20 On 22 March 2021, a jury trial commenced before the Honorable William D. Wolfe, judge presiding. On 24 March 2021, the trial court granted Defendant's motion to dismiss the second degree kidnapping charge as to the youngest child, A.M. On 25 March 2021, the jury found Defendant guilty of attempted first degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, breaking or entering a building with the intent to injure an occupant, second degree kidnapping, possession of a firearm by a felon, and robbery with a firearm.

¶ 21 Defendant was sentenced to four consecutive terms of imprisonment: 317 months to 393 months for attempted first degree murder; 96 to 128 months for assault with a deadly weapon with intent to kill inflicting serious injury, breaking or entering, and second degree kidnapping; 17 to 30 months for possession of a firearm by a felon; and 84 to 113 months for robbery with a firearm.

¶ 22 Defendant gave oral notice of appeal in open court. On 22 April 2021, the trial court entered an amended judgment for the attempted first degree murder conviction, changing the felony class from B1 to B2, and resentencing Defendant for a minimum term of 207 months and a maximum term of 261 months.

III. Jurisdiction

¶ 23 This Court has jurisdiction to address Defendant's appeal pursuant to N.C. Gen. Stat. § 7A-27(b) (2021) and N.C. Gen. Stat. § 15A-1444(a) (2021).

IV. Issue

¶ 24 The sole issue before this Court is whether the trial court erred in refusing to instruct the jury on the lesser included offense of assault with a deadly weapon inflicting serious injury for the charge of assault with a deadly weapon with intent to kill inflicting serious injury.

V. Standard of Review & Issue Preservation

¶ 25 When a defendant has requested a jury instruction at trial, this Court "review[s] the trial court's denial of the request for [the] instruction on the lesser included offense *de novo*." *State v. Laurean*, 220 N.C. App. 342, 345, 724, S.E.2d 657, 660 (emphasis added), *disc. rev. denied*, 366 N.C. 241, 731 S.E.2d 416 (2012). "Under a *de novo* review, [this C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Biber*, 365 N.C. 162, 168, 712 S.E.2d 874, 878 (2011) (citations and quotation marks omitted).

¶ 26 During the charge conference, Defendant requested an instruction on assault with a deadly weapon inflicting serious injury as a lesser included offense of assault with a deadly weapon with intent to kill inflicting serious injury:

> [**Trial court]:** Any objection to the form of the verdict sheets as I read them?

[**Defense counsel**]: No, sir, Judge. I would ask if the Court would consider an instruction on or verdict form on the assault with a deadly weapon inflicting serious injury where the judge may find no intent to kill. I was going to ask you that, Judge, because there's no medical testimony -- we know he went to the hospital, but there's been no medical testimony from a doctor that his injuries were life threatening. There's been no -- I mean, you can infer the use of a deadly weapon or intent to kill, Judge, but the – my – the jury may find that he had serious injury but there was no intent to kill, so I'm asking if the Court would consider as a lesser included of the intent to kill inflicting serious injury the Class E assault with a deadly weapon [inflicting] serious injury.

[**Trial court**]: [The State]?

[**Prosecutor]**: If they don't find the intent to kill, then he is not guilty, so I would ask you to deny that instruction.

[**Defense counsel**]: They have that option, Judge. That's a jury question. They can find that there was serious injury but no intent to kill. They can find that just as well as they could intent to kill inflicting serious injury.

[**Trial court**]: I will say this. As I find the evidence, the State's version of the evidence tends to show that the defendant personally or together with an accomplice shot the victim at least four times in the hand, once in the face and three times as he lay on the ground.

[**Prosecutor**]: Yes, sir.

[**Trial court**]: That he was hospitalized and that he did have injuries from that. I would say the injury part of it is, by definition, a separate element of the crime. The intent to kill can certainly be inferred from the manner in which the assault was conducted. The defendant's version of the evidence by contrast is that he did not intend for that crime

> to happen, did not personally participate, and is not guilty of it at all. Is that a fair summation of the two parties' positions?
>
> [**Defense counsel**]: Well, Judge, the State's version, they put the video on. They put the videotape on of his confession so that would be their version as well.
>
> [**Trial court**]: Yeah, that showed the defendant's essential contention.
>
> [**Defense counsel**]: Yes, sir.
>
> [**Trial court**]: So I, therefore, don't see an appropriate lesser included offense. I will note your exception for the record.

Defendant's request for an instruction on a lesser included offense was denied and noted for the record. Hence, Defendant properly preserved his right to appeal the trial court's jury instruction, and we review the trial court's decision to not provide the requested instruction *de novo*. *See Laurean*, 220 N.C. App. at 345, 724 S.E.2d at 660; *see also* N.C. R. App. P. 10(a).

VI. Analysis

¶ 27 On appeal, Defendant argues "there was evidence, viewed in [his] favor, from which a jury could find an assault that did not include the specific intent to kill," and therefore, Defendant contends he was entitled to an instruction on the lesser offense. The State contends "there is insufficient evidence for a rational jury to convict of the lesser offense and acquit of the greater," and thus, the trial court did not err in

refusing to instruct the jury on a lesser included offense. After careful review, we agree with the State.

¶ 28 "The law is well settled that the trial court must submit and instruct the jury on a lesser included offense when, and only when, there is evidence from which the jury could find that [the] defendant committed the lesser included offense." *State v. Boykin*, 310 N.C. 118, 121, 310 S.E.2d 315, 317 (1984) (citation omitted). "In determining whether the evidence is sufficient to support the submission of the issue of a defendant's guilt of a lesser included offense to the jury, courts must consider the evidence in the light most favorable to [the] defendant." *State v. Debiase*, 211 N.C. App. 497, 504, 711 S.E.2d 436, 441 (2011) (citation and quotation marks omitted). Thus, "[t]he mere contention that the jury might accept the State's evidence in part and might reject in part is not sufficient to require submission to the jury of a lesser offense." *State v. Friend*, 164 N.C. App. 430, 443, 596 S.E.2d 275, 284 (2004) (citation omitted). Moreover, "when the State's evidence is clear and positive with respect to each element of the offense charged and there is no evidence showing the commission of a lesser included offense, it is not error for the trial judge to refuse to instruct on the lesser offense." *State v. Hardy*, 299 N.C. 445, 456, 263 S.E.2d 711, 718–19 (1980). "The determining factor is the presence of evidence to support a conviction of the lesser included offense." *Boykin*, 310 N.C. at 121, 310 S.E.2d at 317 (citation omitted).

¶ 29 In this case, Defendant was indicted and convicted of assault with a deadly

weapon with intent to kill inflicting serious injury pursuant to N.C. Gen. Stat. § 14-32(a). "The essential elements of the crime are (1) an assault, (2) with a deadly weapon, (3) with intent to kill, (4) inflicting serious injury, and (5) not resulting in death." *State v. Reid*, 335 N.C. 647, 654, 440 S.E.2d 776, 780 (1994).

> The only difference in what the State must prove for the offense of misdemeanor assault with a deadly weapon and felony assault with a deadly weapon with intent to kill is the element of intent to kill. Where all the evidence tends to show a shooting with a deadly weapon with the intent to kill, the trial court does not err in refusing to submit the lesser included offense of assault with a deadly weapon.

State v. Riley, 159 N.C. App. 546, 553–54, 583 S.E2d 379, 385 (2003) (citations omitted). "The defendant's intent to kill may be inferred from the nature of the assault, the manner in which it was made, the conduct of the parties, and other relevant circumstances." *State v. Cromartie*, 177 N.C. App. 73, 76, 627 S.E.2d 677, 680, *disc. rev. denied*, 360 N.C. 539, 634 S.E.2d 538 (2006) (citation and quotation marks omitted). Additionally, "an assailant must be held to intend the natural consequences of his deliberate act." *State v. Grigsby*, 351 N.C. 454, 457, 526 S.E2d 460, 462 (2000) (citations and quotation marks omitted).

¶ 30 In arguing the State failed to establish Defendant's specific intent to kill because Defendant's "[robbery] plan did not include hurting, shooting, or killing anyone," Defendant relies on *State v. Debiase*. Specifically, Defendant claims his case is distinguishable from *Debiase* because his "testimony was more 'than a mere claim

of lack of intent' to kill" and was "evidence from which a jury could find an assault that did not include the specific intent to kill." *See id.* at 509, 711 S.E.2d at 444. We find this argument unconvincing and conclude Defendant does not offer any contradictory evidence as to the element of intent to kill—other than his own denial—to support a conviction of the lesser included offense. *See Boykin*, 310 N.C. at 121, 310 S.E.2d at 317; *see also State v. Little*, 163 N.C. App. 235, 240, 593 S.E.2d 113, 116 (2004) (explaining a defendant's testimony, standing alone, is insufficient evidence to compel the trial court to instruct on a lesser included offense).

¶ 31 In *Debiase*, the defendant was convicted by a jury of second degree murder after the trial court instructed on the charges of second degree murder and voluntary manslaughter. *Id.* at 503, 711 S.E.2d at 440. On appeal, the defendant argued the trial court committed reversible error by failing to instruct the jury on the lesser included offense of involuntary manslaughter. *Id.* at 498, 711 S.E.2d at 437. In agreeing with the defendant, our Court reasoned that there was evidence in the record, other than the defendant's assertion that he did not intend to kill the victim, to support the defendant's argument. *Id.* at 509, 711 S.E.2d at 444. Specifically, the evidence, taken in the light most favorable to the defendant, tended to show that the defendant struck the victim with a bottle one time after the victim rushed at him; thus, the evidence tended to show that the defendant did not intend to kill or seriously injure the victim. *Id.* at 509, 711 S.E.2d at 444. Therefore, a jury could reasonably

conclude that the victim's "fatal wound was unintentionally inflicted" by the defendant, allowing the jury to find the defendant guilty of involuntary manslaughter. *Id.* at 504–05, 711 S.E.2d at 441. Accordingly, we held the trial court erred in refusing to instruct on the lesser included offense and ordered a new trial. *Id.* at 510, 711 S.E.2d at 445.

¶ 32 Unlike *Debiase*, the evidence in this case, viewed in the light most favorable to Defendant, would not allow a rational juror to find Defendant guilty of the lesser offense, assault with a deadly weapon inflicting serious injury, and to acquit him of the greater offense, assault with a deadly weapon with intent to kill inflicting serious injury. *See Boykin*, 310 N.C. at 121, 310 S.E.2d at 317. Further, there is no evidence in the instant case that Madison's gunshot wounds were "unintentionally inflicted" like the victim's wounds in *Debiase*. Conversely, testimony offered by the State, considered in the light most favorable to Defendant, tends to show Defendant knocked on Madison's door, falsely represented his identity, and intentionally shot Madison in the face immediately upon Madison opening the door. Defendant then pushed his way into the home, knocked Madison to the ground, put his gun to Madison's head, and fired at least four more shots—two of which hit Madison's neck—as Defendant stood over Madison's face-down body. Defendant searched and took money from Madison's pockets while Madison played dead. In light of this evidence, a jury could reasonably infer Defendant's intent to kill Madison based on the nature

and manner in which Defendant carried out the assault. *See Cromartie*, 177 N.C. at 77, 627 S.E.2d at 680. Therefore, the State's evidence clearly and positively supports the element of intent to kill, and Defendant has not offered evidence to negate the State's evidence as to this element. *See Hardy*, 299 N.C. at 456, 263 S.E.2d at 718–19.

¶ 33 Additionally, the trial court instructed the jury on the theory of acting in concert as to each charge, except the charge for possession of a firearm by a felon. Thus, the jury instruction for assault with a deadly weapon with intent to kill inflicting serious injury also included an instruction under the acting in concert theory:

> For a defendant to be guilty of a crime, it is not necessary that the defendant do all the acts necessary to constitute the crime. If two or more persons join in a common purpose to commit robbery with a firearm, each of them, if actually or constructively present, is guilty of the crime and also guilty of any other crime committed by the other in pursuance of the common purpose to commit robbery with a firearm or as a natural or probable consequence thereof. A defendant is not guilty of a crime merely because the defendant is present at the scene even though the defendant may silently approve of the crime or secretly intend to assist in its commission. To be guilty, the defendant must aid or actively encourage the person committing the crime or in some way communicate to another person the defendant's intention to assist in its commission.

¶ 34 Defendant did not challenge the instructions on the concerted action theory.

The State's evidence of Defendant's out of court statements to law enforcement support the theory Defendant acted in concert with Ousley to commit the assault. Even considering these statements made by Defendant and Defendant's own testimony in the light most favorable to Defendant, these alternative facts assert: (1) Defendant agreed to rob Madison's house with Ousley; (2) Defendant drove Ousley to Madison's home to commit the robbery where Defendant thereafter acted as the getaway driver; (3) Defendant provided a firearm to Ousley for the robbery; (4) Ousley fired multiple shots at Madison in close proximity to Madison's body using Defendant's gun; and (5) Defendant's robbery plan did not include hurting or killing anyone. Therefore, even under these alternative facts, the evidence demonstrates Defendant and Ousley's common purpose was to commit robbery, Defendant aided Ousley in connection with the crime, Defendant was present at the scene, and Ousley's intention to kill Madison can be inferred from the circumstances. *See State v. Barnes*, 345 N.C. 184, 233, 481 S.E.2d 44, 74 (1997) (clarifying the correct jury instruction for the doctrine of acting in concert); *see also Cromartie*, 177 N.C. at 77, 627 S.E.2d at 680 (2006) ("Where the defendant points a gun at the victim and pulls the trigger, this constitutes evidence from which intent to kill may be inferred.").

¶ 35 Based on the evidence presented by Defendant, Defendant is guilty of any crimes committed by Ousley—including assault with a deadly weapon with intent to kill inflicting serious injury—in pursuance of the common purpose to commit robbery.

See Barnes, 345 N.C. at 233, 481 S.E.2d at 74; *Grigsby*, 351 N.C. at 457, 526 S.E.2d at 462. As discussed above, Defendant's contention that he did not plan to hurt or kill anyone in the robbery does not refute the element of intent to kill—this is also true under the concerted action theory. *See Little*, 163 N.C. App. at 240, 593 S.E.2d at 116.

¶ 36 Accordingly, we conclude "all the evidence tends to show a shooting with a deadly weapon with the intent to kill," *see Riley*, 159 N.C. App. at 554, 583 S.E.2d at 385, and the trial court did not err in refusing to instruct the jury on this lesser included offense. *See Hardy*, 299 N.C. at 456, 263 S.E.2d at 718.

VII. Conclusion

¶ 37 Our review of the record reveals Defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges DIETZ and GORE concur.

Report per Rule 30(e).