

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA04-242

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2004

STATE OF NORTH CAROLINA

v.

ANTHONY DEWAYNE CHAPMAN

Guilford County
No. 02 CRS 23712-13
02 CRS 91696-99
02 CRS 93444

Appeal by defendant from judgments entered 14 May 2003 by Judge James M. Webb in Guilford County Superior Court. Heard in the Court of Appeals 29 November 2004.

Attorney General Roy Cooper, by Assistant Attorney General Daniel S. Johnson, for the State.

Rudolph Widenhouse & Fialko, by Andrew G. Schopler, for defendant-appellant.

STEELMAN, Judge.

Defendant was found guilty of first degree burglary, attempted robbery with a firearm, two counts of assault with a deadly weapon, possession of a handgun by a felon, habitual felon status, and violent habitual felon status. He was sentenced to two terms of life imprisonment plus additional terms of (1) seventy-five days for the two counts of assault with a deadly weapon; and (2) 100 to 129 months for the crimes of possession of a firearm by a felon and being a habitual felon.

The State presented evidence tending to show that at approximately 2:30 a.m. on 17 July 2002, three masked intruders

broke into a residence in Greensboro occupied by Mr. and Mrs. Rudolph Young. Mr. Young reached for a pistol next to his bed and pulled the trigger. One of the intruders returned fire and a shootout ensued in the residence. One of the gunshots struck one of the intruders. The three intruders fled from the apartment.

Approximately one hour later a man identifying himself as "Marcus Wall" went to the emergency room of Baptist Hospital in Winston-Salem seeking treatment for a gunshot wound to his nose. He stated that he had been shot in the crossfire of a "drive by" shooting on Martin Luther King Drive in Winston-Salem. Winston-Salem Police Department officers went to the scene of the alleged shooting and could find no evidence of a shooting at this location. The Winston-Salem Police Department learned about the incident in Greensboro and notified the Greensboro Police Department about the person at Baptist Hospital. Detective Solomon of the Greensboro Police Department drove to Baptist Hospital and was present during an interview of defendant by Detective Flynn of the Winston-Salem Police Department regarding whether defendant had been at the scene of the Greensboro incident. Defendant denied any involvement. Detective Solomon told defendant he was going to obtain a search warrant to take a blood sample from him to determine whether he had been present at the Greensboro crime scene. As the detectives were leaving the hospital, they learned defendant had left the hospital wearing only his hospital gown. Defendant was subsequently apprehended. Pursuant to a search warrant, the police obtained fingerprint, saliva, and blood samples from defendant.

The fingerprints revealed Mr. Wall's true identity as defendant Anthony Dewayne Chapman. The blood samples taken from defendant matched blood found inside the Greensboro residence. Bullet casings found in the Greensboro residence were determined to have been fired by four different handguns.

In defendant's first assignment of error he contends the court erred by failing to dismiss the charge of possession of a firearm by a convicted felon because the State failed to prove that defendant had been convicted of a felony prior to 17 July 2002.

The record shows that at the call of the case for trial, defendant offered to stipulate that he was a convicted felon. The court sought to clarify that if it accepted the stipulation, then "the State would not then be required to introduce evidence as to the prior felony conviction alleged in the indictment charging the defendant with possession of a firearm by a felon in 02 CrS 93444?" Defendant's counsel responded, "Correct." The court questioned defendant personally, asking him whether he understood and accepted that by the stipulation, the State would not be required to introduce evidence that he was previously convicted of possession of a firearm by a convicted felon on 6 February 1997. Defendant answered in the affirmative. At the end of the colloquy with defendant, the trial court announced it would accept defendant's stipulation that "he is a convicted felon, having been convicted in the Guilford County Superior Court. And with respect to the element of evidence, the State is not required . . . to introduce evidence of the defendant's conviction -- prior conviction of

possession of a firearm by a convicted felon on February 6, 1997, in Guilford County Superior Court." Defendant did not object to the court's statement of the stipulation.

"A stipulation of fact is an adequate substitute for proof in both criminal and civil cases." *State v. McWilliams*, 277 N.C. 680, 686, 178 S.E.2d 476, 480 (1971). It "has the effect of removing a question of fact from the jury's consideration. Neither party need present evidence or show proof of the existence of such facts that are contained within the stipulation." *State v. Flippen*, 344 N.C. 689, 701, 477 S.E.2d 158, 165 (1996). See also N.C. Gen. Stat. § 15A-928(c)(1) (2004) (noting that where the defendant admits to the previous conviction, "that element of the offense charged in the indictment or information" is deemed to be proven and consequently the State need not provide evidence in support thereof). Here, defendant's stipulation that he had a prior conviction of possession of a firearm by a felon on 6 February 1997 established this element of the offense without the necessity of any further proof. This assignment of error is without merit.

In defendant's second assignment of error he contends the court erred by denying his motion to dismiss the charges of attempted robbery with a dangerous weapon, assault with a deadly weapon, and possession of a firearm by a felon. He argues the State failed to present evidence he possessed a firearm, an element common to all three offenses.

A motion to dismiss requires the trial court to determine whether there is substantial evidence to establish each element of

the offense charged and to identify the defendant as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651 (1982). In ruling upon the motion the court must consider the evidence in the light most favorable to the state, giving it the benefit of every reasonable inference that may be drawn from the evidence. *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991). Contradictions and discrepancies in the evidence are to be disregarded and left for resolution by a jury. *Id.* "The trial court's function is to determine whether the evidence will permit a *reasonable inference* that the defendant is guilty of the crimes charged." *Id.* (emphasis in original).

"Where there is no direct evidence as to the essential fact involved in the issue to be passed upon by the jury, such fact may nevertheless be inferred by the jury from facts and circumstances which they may find from the evidence." *State v. Weston*, 197 N.C. 25, 28-29, 147 S.E. 618, 620 (1929). Here, Mr. Young testified that each intruder fired a gun and that he believed a bullet struck one of the intruders. The physical evidence at the scene corroborated Mr. Young's testimony. Four different calibers of bullet casings found at the scene of the crime established that at least four different guns, including the gun fired by Mr. Young, fired the bullets. The presence of blood inside the residence, combined with the absence of any injury sustained by the Youngs, established that one of the intruders sustained a wound. Approximately one hour after the shootout in the Young residence, defendant sought treatment at a hospital for a gunshot wound to his

face. The blood sample taken from defendant at the hospital matched the blood found in the Young's residence. Based upon the foregoing evidence, a jury could reasonably infer that defendant possessed a firearm inside the Young residence. This assignment of error is without merit.

In defendant's third and final assignment of error he contends the habitual felon and violent habitual felon statutes are unconstitutional in that they violate the prohibition against double jeopardy, constitute cruel and unusual punishment, and violate the principle of separation of powers. Defendant acknowledges the constitutionality of these statutes has been upheld in prior decisions and he raises these issues for preservation purposes only. See *State v. Todd*, 313 N.C. 110, 117-18, 326 S.E.2d 249, 253 (1985) (holding the habitual felon statute does not violate defendant's due process rights, nor the prohibition against double jeopardy and cruel and unusual punishment); *State v. Glasco*, 160 N.C. App. 150, 160, 585 S.E.2d 257, 264, *disc. review denied*, 357 N.C. 580, 589, S.E.2d 356 (2003) (simultaneous use of prior felony in prosecution as habitual felon and for possession of a firearm by a felon does not violate double jeopardy); *State v. Williams*, 149 N.C. App. 795, 802, 561 S.E.2d 925, 929 (rejecting separation of powers argument), *cert. denied*, 537 U.S. 1035, 154 L. Ed. 2d 455 (2002); *State v. Mason*, 126 N.C. App. 318, 321, 484 S.E.2d 818, 820 (1997) (finding violent habitual felon statute does not violate due process, nor prohibitions on double jeopardy and cruel and unusual punishment),

cert. denied, 354 N.C. 72, 553 S.E.2d 208 (2001). We are bound by the decisions of our Supreme Court, *Eaves v. Universal Underwriters Group*, 107 N.C. App. 595, 600, 421 S.E.2d 191, 194 (1992), *disc. review denied*, 333 N.C. 167, 424 S.E.2d 908 (1992); as well as decisions from other panels of the Court of Appeals, *In the Matter of Appeal from Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). In light of controlling precedent, this assignment of error is without merit.

NO ERROR.

Judges HUNTER and ELMORE concur.

Report per Rule 30(e).