

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-395

Filed: 19 December 2017

Mecklenburg County, No. 14CRS248578

STATE OF NORTH CAROLINA

v.

JOSEPH BLAKENEY, Defendant

Appeal by Defendant from judgment entered 21 July 2016 by Judge Jeffrey P. Hunt in Mecklenburg County Superior Court. Heard in the Court of Appeals 7 December 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kenneth A. Sack, for the State.*

*Geeta N. Kapur for the Defendant.*

DILLON, Judge.

Joseph Blakeney (“Defendant”) appeals from the trial court’s judgment entered upon his conviction for communicating threats. We conclude Defendant received a fair trial free from error.

I. Background

In December 2014, Defendant's next-door neighbor (his "Neighbor") went to a magistrate to take out a misdemeanor criminal summons against Defendant for communicating threats.

During the jury trial in the superior court, Defendant moved to dismiss the charge based on the insufficiency of the evidence, which the trial court denied. The jury convicted Defendant of communicating threats. After sentencing, Defendant gave oral notice of appeal in open court.<sup>1</sup>

## II. Analysis

In his lone argument on appeal, Defendant contends that the trial court erred in denying his motion to dismiss the charge of communicating threats. We disagree.

The standard of review on a motion to dismiss in a criminal trial is "whether there is substantial evidence (1) of each essential element of the offense charged . . . and (2) of defendant's being the perpetrator of such offense." *State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002) (quotation marks and citation omitted). The evidence is to be viewed "in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *Id.* at 596, 573 S.E.2d at 869 (quotation marks and citation omitted). "Contradictions and discrepancies [in the

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<sup>1</sup> Defendant's appeal involves several non-jurisdictional violations of our Appellate Rules, including failure to include in the record "an appropriate entry or statement showing appeal taken orally[.]" N.C. R. App. P. 9(a)(3)(h), failure to paginate the printed record, N.C. R. App. P. 9(b)(4), and failure to provide citations to the record in the appellate brief, N.C. R. App. P. 28(e). In our discretion, we decline to dismiss defendant's appeal on the basis of these violations.

evidence] do not warrant dismissal of the case but are for the jury to resolve.” *State v. Fritsch*, 351 N.C. 373, 379, 526 S.E.2d 451, 455 (2000). “The issue of whether the evidence presented constitutes substantial evidence is a question of law for the court.” *State v. Earnhardt*, 307 N.C. 62, 66, 296 S.E.2d 649, 652 (1982) (citation omitted). On appeal, questions of law are reviewed *de novo*. *Stanton v. Brame*, 136 N.C. App. 170, 174, 523 S.E.2d 424, 427 (1999).

An individual is guilty of communicating threats if without lawful authority:

- (1) He willfully threatens to physically injure the person or that person’s child, sibling, spouse, or dependent or willfully threatens to damage the property of another;
- (2) The threat is communicated to the other person, orally, in writing, or by any other means;
- (3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and
- (4) The person threatened believes that the threat will be carried out.

N.C. Gen. Stat. § 14-277.1(a) (2015).

Defendant contends that the State failed to introduce substantial evidence that defendant willfully threatened to physically injure his Neighbor because Defendant never stated what he intended to do to his Neighbor or her property. We disagree. Specifically, his Neighbor testified as follows: As she was doing yardwork, she looked to Defendant’s porch and noticed him there “glaring” at her, and that he “began

screaming at [her], cursing, making threats.” Defendant screamed, “B\*\*\*\*, I warned you for the last time[,]” before turning to the other man on the porch and screaming, “Rodney, get me my gun and three shells.”

Defendant’s Neighbor also testified to two prior incidents involving Defendant: On 14 August 2013, Defendant followed his Neighbor around the yard and screamed, “b\*\*\*\*, I’ll knock the f\*\*\* out of you.” Then, on 6 July 2014, defendant screamed, “B\*\*\*\*, I’ll kill you.” When his Neighbor screamed at Defendant to stop threatening her and to leave her alone, Defendant stated, “I’m not threatening, I’m telling, and I’m not going to call the police.”

Viewed in the light most favorable to the State, the evidence introduced at trial showed that Defendant willfully threatened to physically injure his Neighbor when he screamed at her that he warned her for the last time and then immediately screamed at his compatriot to get him his gun and three shells.

While Defendant appears to argue that the statement could not constitute a threat because Defendant never said he was going to use the gun to harm his Neighbor, this Court has previously acknowledged “that indirect threats are functionally indistinguishable from direct threats,” and that “section 14-277.1 prohibits both direct and indirect threats communicated to the victim.” *State v. Thompson*, 157 N.C. App. 638, 646, 580 S.E.2d 9, 14 (2003). Defendant’s position,

that a defendant cannot be guilty of communicating threats unless he makes explicit how he intends to harm the victim, is untenable.

Defendant also appears to argue that the State failed to introduce substantial evidence of the fourth element of the offense of communicating threats, that his Neighbor believed that Defendant would carry out his threat. Without citing to the transcript, defense counsel states that Neighbor “admitted on cross-examination that she did not believe what [Defendant] said would actually be carried out.” We have read through the more than 100 pages of cross-examination of Neighbor in the transcript in an attempt to verify defense counsel’s assertion, but have been unable to do so. Not only did Neighbor not give the testimony that defense counsel claims she did, but defense counsel’s assertion is directly contradicted by Neighbor’s testimony on direct-examination that “[she] thought [Defendant] was going to get a gun and shoot [her] dead in [her] own yard” after hearing Defendant tell the other man to bring him his gun and three shells. Defendant fails to demonstrate that the trial court erred in denying his motion to dismiss. We conclude that Defendant received a fair trial free from error.

NO ERROR.

Chief Judge McGEE and Judge STROUD concur.

Report per Rule 30(e).