An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-355-2

Filed: 16 January 2018

Duplin County, No. 14 CRS 50827

STATE OF NORTH CAROLINA

v.

TERRIL COURTNEY BATTLE

On remand by order of the Supreme Court on 1 November 2017 in *State v. Battle*, __ N.C. __, __ S.E.2d __ (2017), remanding the unpublished unanimous decision of this Court filed 6 December 2016 for reconsideration in light of the Supreme Court's opinion in *State v. Brice*, __ N.C. __, __ S.E.2d __ (3 November 2017). Case originally appealed by defendant from judgments entered 30 July 2015 by Judge Jack W. Jenkins in Duplin County Superior Court.

Attorney General Joshua H. Stein, by Assistant Attorney General Anne Goco Kirby, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Nicholas C. Woomer-Deters, for defendant-appellant.

ARROWOOD, Judge.

This case comes before us on remand from the North Carolina Supreme Court to reconsider our decision in light of its holding in *State v. Brice*, __ N.C. __, __ S.E.2d __ (3 November 2017), which reversed this Court's decision in *State v. Brice,* __ N.C. App. __, 786 S.E.2d 812 (2016). In this Court's previous decision, we stated "[w]e hold that the circumstances of defendant's case are identical to those found in *Brice*." *Battle*, __ N.C. App. at __, __ S.E.2d at __. Given this determination, and in reliance on the Court's previous holding in *Brice*, we vacated defendant's conviction for habitual misdemeanor assault and remanded for entry of judgment and sentence for simple assault. *Id.* at __, __ S.E.2d at __.

In its 3 November 2017 opinion in *Brice*, the North Carolina Supreme Court reversed the Court of Appeals opinion in *Brice* and reinstated the defendant's previous judgment for felonious habitual misdemeanor larceny. Upon reconsideration in light of this holding, we reverse our 16 December 2016 holding in the instant case with respect to misdemeanor assault and find no error in the trial court's previous judgment.

NO ERROR

Judges HUNTER, JR. and DIETZ concur.

Report per Rule 30(e).