An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-937

Filed: 5 June 2018

Henderson County, Nos. 14CRS52174-75

STATE OF NORTH CAROLINA

v.

JAMES CHARLES, Defendant.

Appeal by Defendant from judgment entered 9 November 2016 by Judge Mark E. Powell in Henderson County Superior Court. Heard in the Court of Appeals 18 April 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Alvin W. Keller, Jr., for the State.

Rudolf Widenhouse, by M. Gordon Widenhouse, Jr., for the Defendant.

DILLON, Judge.

James Charles ("Defendant") appeals from the trial court's judgment entered upon jury verdicts finding him guilty of first-degree murder and larceny of a motor vehicle. After thorough review, we find no error.

I. Background

The evidence at trial tended to show that on 14 May 2014, Michael Brown (the "victim") was stabbed while in a car occupied by Defendant and Wendy Barnhill. Mr. Brown died from his wounds sustained in this stabbing.

Defendant and Ms. Barnhill were drug users who had been romantically involved. Shortly before the victim's death, Defendant and Ms. Barnhill purchased drugs from the victim. On the day of his death, the victim was riding in a car with Defendant and Ms. Barnhill. When the vehicle arrived at a mobile home park, the victim was mortally stabbed. Defendant testified that Ms. Barnhill stabbed the victim. Ms. Barnhill, however, testified that Defendant stabbed the victim. In either case, the victim escaped and sought help by banging on the door of a nearby mobile home. The occupant of the mobile home testified that when he came to the door with a towel to help the victim, he saw Defendant and Ms. Barnhill, both covered in blood, dragging the victim away.

Defendant was found guilty of first-degree murder and was sentenced accordingly. Defendant timely appealed.

II. Analysis

At trial, the jury was instructed that it could convict Defendant of murder on two distinct theories: (1) if Defendant stabbed the victim, or (2) if Defendant acted in concert with Ms. Barnhill when she stabbed the victim.

On appeal, Defendant argues that the trial court committed prejudicial error when it instructed the jury on the "acting in concert" theory, contending that there was no evidence to support this instruction. Specifically, he argues that (1) the evidence *only* tended to show that *either* he *or* Ms. Barnhill was responsible for the victim's death, (2) the evidence did *not* show that they acted in concert in causing the victim's death, and (3) allowing the State to argue that Defendant and Ms. Barnhill acted in concert relieved the State from the burden of proving beyond a reasonable doubt that Defendant was the one who stabbed the victim. We conclude that there was sufficient evidence, when taken in the light most favorable to the State, to warrant the "acting in concert" instruction. Therefore, we find no error.

We review challenges to jury instructions *de novo*. *State v. Osorio*, 196 N.C. App. 458, 466, 675 S.E.2d 144, 149 (2009).

Our Supreme Court defines "acting in concert" as follows:

> If two persons join in a purpose to commit a crime, each of them, if actually or constructively present, is not only guilty as a principal [of the crime] if the other commits that particular crime, but he is also guilty of any other crime committed by the other in pursuance of the common purpose or as a natural or probable consequence thereof.

State v. Barnes, 345 N.C. 184, 233, 481 S.E.2d 44, 71 (1997). The Supreme Court has further instructed, regarding "acting in concert," that:

> It is not . . . necessary for a defendant to do any particular act constituting at least part of a crime in order to be convicted of that crime under the concerted action principle

> so long as he is present at the scene of the crime and the evidence is sufficient to show he is acting together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose to commit the crime.

State v. Joyner, 297 N.C. 349, 357, 255 S.E.2d 390, 395 (1979).

Here, Defendant correctly points out that there was evidence which tended to show that Defendant did not join in a common purpose with Ms. Barnhill to kill the victim. However, there was also evidence which suggested the opposite. It is the jury's duty to resolve these types of contradictions or discrepancies arising from the evidence. *State v. King*, 343 N.C. 29, 36, 468 S.E.2d 232, 237 (1996).

Specifically, there was evidence that Defendant was at the scene of the crime; which he admitted. There was evidence that Ms. Barnhill struck the fatal blow. Defendant testified that Ms. Barnhill stabbed the victim, she was covered in blood, and she had a knife in her possession. But there was also evidence from which the jury could conclude that Defendant acted together with Ms. Barnhill. Specifically, there was evidence which tended to show that Defendant and Ms. Barnhill had an intimate relationship which they hid from others; they jointly purchased drugs from the victim shortly before the killing; they were both present in the car when the victim flashed a wad of money; they followed the victim as the victim fled from the car after being stabbed; they both worked together to drag the victim away from a trailer from which the victim was seeking help; Defendant and Ms. Barnhill were seen wearing bloody clothes as they dragged the victim away from the trailer; and that after the

stabbing, Ms. Barnhill told Defendant that "this is the story, get it together and stick to the story." *See State v. Allen*, 127 N.C. App. 182, 185, 488 S.E.2d 294, 296 (1997) ("Communication of intent to [aid] the perpetrator may be inferred from the defendant's actions and from his relation to the perpetrator.").

Therefore, we conclude that the evidence, when viewed in the light most favorable to the State, was sufficient for the jury to find that Defendant acted in concert with Ms. Barnhill in bringing about the victim's demise. Accordingly, the trial court did not err in giving an instruction to the jury on acting in concert.

NO ERROR.

Judges DIETZ and ARROWOOD concur.

Report per Rule 30(e).