An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA25-1205

Filed 4 November 2026

Union County, No. 24CR000129-890

STATE OF NORTH CAROLINA

v.

RANDY DILLON REID NESBIT, Defendant.

Appeal by Defendant from judgment entered 29 May 2025 by Judge Adam Elkins in Union County Superior Court. Heard in the Court of Appeals 25 August 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General G. Mark Teague, for the State.

Appellant Defender Glenn Gerding, by Assistant Appellate Defender Brandon Mayes, for Defendant-Appellant.

CARPENTER, Judge.

Defendant appeals from judgment entered after a jury found him guilty of one count of disclosing private images. On appeal, Defendant argues that: (1) the trial court erred by denying his motion to dismiss; and (2) section 14-190.5A is facially unconstitutional. After careful review, we find no error in part and dismiss in part.

I. Factual & Procedural Background

In April 2024, a Union County grand jury indicted Defendant on one count of violating a domestic violence protective order ("DVPO") and nine counts of felony disclosure of private images of an adult. In May 2025, Defendant's case proceeded to trial, and the evidence tended to show the following.

Defendant and "Sarah"[1] dated from 2020 to 2021 and share a child. While dating, the two documented their sexual activities in photos and videos. In December 2021, Defendant and Sarah broke up. In November 2022, Sarah obtained a one-year DVPO against Defendant. While the DVPO was in effect, an acquaintance notified Sarah that Defendant was sharing a sexually explicit photo of her in social media messages. Believing that Defendant violated the DVPO, Sarah contacted the Union County Sheriff's Office

A detective executed a search warrant through Meta's online portal to obtain Defendant's account history. Meta provided records containing messages Defendant sent using the handle "Rusty Shackleford." In his messages, Defendant occasionally referred to himself by his first name, "Randy." To solicit sex, Defendant shared pornographic pictures, pictures of his penis, and—on nine occasions—a picture of Defendant's penis on top of Sarah's face ("the Image"). In the Image, the left half of Sarah's face was visible, while the other half was covered by Defendant's penis.

[1] A pseudonym is used to protect the identity of the complainant and for ease of reading. *See* N.C. R. App. P. 42(b) (2025).

On 21 December 2023, Defendant shared the Image through Messenger, identifying Sarah as his "ex baby mama," referring to her in derogatory terms, and describing his sexual encounters with Sarah in graphic detail. In another message where Defendant shared the Image, he identified Sarah as his "ex-girlfriend." And on another occasion, Defendant shared the Image and identified Sarah as his "ex" and referred to her as "a huge bitch[.]" When Sarah learned the Image had been shared, she felt "[a]wful," tried to keep [her] dignity intact," and feared the Image "could severely alter [her] profession."

At the close of the State's evidence, Defendant moved to dismiss for insufficient evidence. The trial court granted Defendant's motion to dismiss the charge of violating the DVPO and submitted the remaining nine counts of felony disclosure of private images to the jury.

The jury found Defendant guilty of one count for illegally disclosing a private image on 21 December 2023, but it acquitted him of the remaining eight counts of disclosing private images. The trial court sentenced Defendant in the presumptive range to a minimum of eight and a maximum of nineteen months in custody of the Department of Adult Correction. Defendant gave timely notice of appeal.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. §§ 7A-27(b)(1) and 15A-1444(a) (2025).

III. Issues

The issues are whether: (1) the trial court erred by denying Defendant's motion to dismiss the charge of disclosing private images; and (2) section 14-190.5A is facially unconstitutional.

IV. Analysis

A. Motion to Dismiss

Defendant first argues that the trial court erred by denying his motion to dismiss for insufficient evidence. Specifically, he contends that Sarah was not readily identifiable in the Image, and the evidence does not establish that he intended to demean Sarah. We disagree.

"This Court reviews the trial court's denial of a motion to dismiss de novo." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). " 'Under a *de novo* review, the court 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) (quoting *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008)).

On a motion to dismiss, " the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser included offense therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied.' " *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)). "Substantial evidence is such relevant evidence as a reasonable mind might accept

as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78–79, 264 S.E.2d 164, 169 (1980)).

In making this determination, the evidence must be viewed "in the light most favorable to the State, resolving all conflicts in the evidence in favor of the State and giving it the benefit of all reasonable inferences." *State v. Tirado*, 358 N.C. 551, 582, 599 S.E.2d 515, 536 (2004).

A person is guilty of disclosing private images if all of the following apply:

> (1) The person knowingly discloses an image of another person with the intent to do either of the following:
>
> a. Coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
>
> b. Cause others to coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person.
>
> (2) The depicted person is identifiable from the disclosed image itself or information offered in connection with the image.
>
> (3) [T]he . . . depicted person is or is realistically depicted to be engaged in sexual conduct in the disclosed image.
>
> (4) The person discloses the image without the affirmative consent of the depicted person. . . .

N.C. Gen. Stat. § 14-190.5A(b) (2025).

Here, the State presented substantial evidence that Defendant knowingly disclosed private images to demean or humiliate, or cause others to demean or humiliate, Sarah in the 21 December 2023 message. *See* N.C. Gen. Stat. § 14-190.5A(b)(1); *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455. In the light most favorable

to the State, *see Tirado*, 358 N.C. at 582, 599 S.E.2d at 536, a reasonable jury could conclude that Defendant's derogatory phrasing of Sarah's sexual activity, accompanied by the Image—which depicted Defendant's penis resting on her face—was demeaning and humiliating, *see* N.C. Gen. Stat. § 14-190.5A(b). Indeed, Sarah testified that when she learned the Image had been shared, she felt "[a]wful," tried to keep [her] dignity intact," and feared the Image "could severely alter [her] profession."

The State likewise presented substantial evidence that Sarah was identifiable in the Image. *See* N.C. Gen. Stat. § 14-190.5A(b)(2). Defendant identified Sarah as his "ex baby mama." Although Defendant argues that he remained anonymous in his messages, Sarah testified that an acquaintance told her Defendant was sharing the Image online. Moreover, the left side of Sarah's face was entirely visible in the Image. Accordingly, the State presented substantial evidence of each element of disclosing private images, and the issue was proper for the jury. *See Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455.

B. Constitutional Challenge

Next, Defendant argues for the first time on appeal that section 14-190.5A violates his constitutional right to free speech under the First Amendment. Defendant also asks this Court to invoke Rule 2 and review the issue. We decline to invoke Rule 2 and dismiss the issue.

"[T]o preserve an issue for appellate review," an objection must state "the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context." N.C. R. App. P. 10(a)(1) (2025).

"A properly made motion to dismiss for insufficiency of the evidence under Appellate Rule 10(a)(3) 'preserves all insufficiency of the evidence issues for appellate review.' " *State v. Bowen*, 282 N.C. App. 631, 635, 871 S.E.2d 547, 551–52 (2022) (emphasis omitted) (quoting *State v. Golder*, 374 N.C. 238, 246, 839 S.E.2d 782, 788 (2020)). Yet, " '[i]t is well settled that an error, even one of constitutional magnitude, that [the] defendant does not bring to the trial court's attention is waived and will not be considered on appeal.' " *State v. Ricks*, 378 N.C. 737, 740, 862 S.E.2d 835, 838 (2021) (quoting *State v. Bursell*, 372 N.C. 196, 199, 827 S.E.2d 302, 305 (2019).

Nevertheless, this Court has the discretion to "suspend or vary the requirements" of the appellate rules, including the rules that govern the preservation of "issue[s] for appellate review" "[t]o prevent manifest injustice to a party, or to expedite decision in the public interest[.]" N.C. R. App. P. 2 (2025). Rule 2 relief is only appropriate in "exceptional circumstances," such as where injustice "appears manifest." *Id.* at 740, 862 S.E.2d at 838.

Here, Defendant did not raise the issue at trial, so it is waived. *See id.* at 740, 862 S.E.2d at 838. Further, Defendant has not shown exceptional circumstances warranting suspension of our appellate rules. *Id.* at 740, 862 S.E.2d at 838. Accordingly, we decline to invoke Rule 2 and dismiss the issue.

V. Conclusion

The trial court did not err by denying Defendant's motion to dismiss the charge of disclosing private images for insufficient evidence. Additionally, we decline to invoke Rule 2 and dismiss Defendant's unpreserved constitutional argument.

NO ERROR IN PART; DISMISSED IN PART.

Chief Judge DILLON and Judge GRIFFIN concur.

Report per Rule 30(e).