

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-432

NORTH CAROLINA COURT OF APPEALS

Filed: 6 March 2007

STATE OF NORTH CAROLINA

v.

Carteret County
No. 05 CRS 50355

SAMUEL RICHARD SWINDELL,
Defendant.

Appeal by defendant from judgment entered 7 July 2005 by Judge Charles H. Henry in Superior Court, Carteret County. Heard in the Court of Appeals 19 February 2007.

Attorney General Roy Cooper, by Assistant Attorney General Christine Goebel, for the State.

Jarvis John Edgerton, IV, for defendant-appellant.

WYNN, Judge.

This appeal arises from Defendant's conviction of the charge of embezzlement. At the close of the State's evidence, Defendant did not move to dismiss the charge and did not present evidence. He now seeks to argue that the State failed to present sufficient evidence to prove the charge of embezzlement. However, "if a defendant fails to move to dismiss the action . . . at the close of all the evidence, he may not challenge on appeal the sufficiency of the evidence to prove the crime charged." N.C. R. App. P. 10(b)(3). Because Defendant failed to move to dismiss the action

at the close of the evidence, he failed to preserve this question for appellate review. Accordingly, this argument is dismissed.

Dismissed.

Judges ELMORE and GEER concur.

Report per Rule 30(e).