

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA13-410
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

STATE OF NORTH CAROLINA

v.

Moore County

Nos. 11 CRS 51961, 12 CRS 236

TERRENCE JEREL COLLINS

Appeal by Defendant from judgment entered 1 November 2012
by Judge Eric L. Levinson in Superior Court, Moore County.
Heard in the Court of Appeals 24 September 2013.

*Attorney General Roy Cooper, by Assistant Attorney General
Kimberley A. D'Arruda, for the State.*

*Appellate Defender Staples Hughes, by Assistant Appellate
Defender Emily H. Davis, for Defendant.*

McGEE, Judge.

Terrence Jerel Collins ("Defendant") was found guilty on 1
November 2012 of felony breaking or entering; felony larceny
based on the breaking or entering and based on the value of the
property having been in excess of \$1,000.00; and guilty of
felony possession of stolen goods. These convictions were based
upon a breaking and entering of the home of Jeffrey Tucker ("Mr.

Tucker") and Catherine Tucker ("Ms. Tucker"), which occurred on 16 June 2011, and resulted in the removal of various items of personal property from the Tuckers' home.

The evidence presented at trial, when viewed in the light most favorable to the State and giving the State the benefit of all reasonable inferences as this Court is required to do when reviewing denial of a motion to dismiss was as follows: the Tuckers' house sits on a peninsula on a small lake, surrounded by woods in a rural part of Moore County, along with other houses scattered on large tracts of land. The tracts of land are either wooded or cultivated farmland. Ms. Tucker returned to her house at approximately 8:00 p.m. on 16 June 2011, and discovered that multiple items of personal property were missing from her house. The missing items included two flat-screen televisions, a video camera, a video gaming system, and \$350.00 in cash. Other items had also been moved around within the house. Mr. Tucker arrived home, called 911, and waited for law enforcement.

At approximately 7:40 p.m. on that same evening, Sullivan Williams left the home of her mother, Charlotte Williams ("Ms. Williams"), to go for a run. Ms. Williams' house was in a remote wooded area, across a small lake from the Tuckers' house. While running along a dirt road in the direction of the Tuckers'

house, Sullivan Williams came across personal property laying in the dirt road. Not knowing what it was at the time, she continued her run. Ms. Williams called her daughter a short time later, and told her she "had seen two black men walking" near her "Poppy's barn[.]" Ms. Williams testified she had seen two men, unknown to her, walking across her property. She described them as two black men, one about six feet tall and approximately 235 pounds. The other man was shorter and much thinner. One of the men was not wearing a shirt. Both men were "in a hurry[.]" Ms. Williams was suspicious of the two men because her property was secluded and fenced-in, and the men were coming from an area of her property protected by the fence. The two men were coming from the direction of the Tuckers' house. When she asked, the men told Ms. Williams they were trying to find Samarcand Road; however, when Ms. Williams told them they were on private property, and how to get to Samarcand Road, the men ignored her and continued walking across her property in the direction of Clement Road. Ms. Williams got in her car and followed the men to see where they were going. As the men reached Clement Road, Ms. Williams saw a sheriff's vehicle driving toward them. Ms. Williams identified the larger man, who was not wearing a shirt, as Defendant.

Sullivan Williams, after receiving the call from her mother while running, turned around and ran in the opposite direction from where she thought the two men would be, and again passed the personal property she had seen earlier. She then came across Mr. Tucker in his truck "in the driveway towards his house[.]" Sullivan Williams stopped, and Mr. Tucker told her about the theft. She told him about the two men, and about the personal property she had seen in the road. She then got in the truck with Mr. Tucker and directed him to the location of the personal property. Mr. Tucker identified the personal property as belonging to him. They continued to drive along the dirt road until they reached Clement Road, where they spotted two men walking towards the woods. When Mr. Tucker stopped his truck, the two men took off running.

Sullivan Williams testified that the two men were African-American, one being skinnier than the other, and she believed one of the men was not wearing a shirt. Mr. Tucker described the two men as African-American, one being a large man, the other thinner, and that the larger man was not wearing a shirt. Mr. Tucker identified Defendant as the larger man who was not wearing a shirt. A sheriff's deputy arrived at about the same time, and Mr. Tucker and the deputy attempted to pursue the two men. Mr. Tucker followed Defendant to a mobile home. Believing

Defendant had entered the home, Mr. Tucker called 911 and a sheriff's deputy arrived. The deputy knocked on the door to the mobile home, spoke with a man, and entered the mobile home. The deputy exited with Defendant in custody.

There were footprints around the site on the dirt road where the Tuckers' personal property was recovered. Sheriff's deputies photographed some of those footprints. A plaster cast was made of one of the footprints, and Defendant's shoes were seized. Special Agent Karen Morrow ("Agent Morrow"), of the State Bureau of Investigation, testified as an expert in "forensic footwear analysis[.]" Agent Morrow testified that she compared Defendant's left shoe with the cast made from the scene, stating:

For this shoe, and for this impression, I was able to determine that this shoe [print] could have been made by this left shoe due to the fact that it had the same outsole design, physical size, and wear of the shoe, meaning that the cast represented the area of wear, the physical size and the outsole design.

However, due to those limited characteristics, the one I mentioned about cuts, and creases, and things missing, I was not able to say that it was this shoe alone. It could be this shoe, or any other shoe of the same outsole design, same physical size, and wear.

Agent Morrow testified she had never before seen that particular outsole design (meaning design pattern on the sole of the shoe).

The jury returned verdicts of guilty on all counts, and Defendant entered a plea of guilty of having attained habitual felon status. Defendant was sentenced to an active term of 81 to 107 months. Defendant appeals.

Defendant's sole argument on appeal is that the trial court erred by denying Defendant's motion to dismiss for insufficiency of the evidence. We disagree.

Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied.

If the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it, the motion should be allowed.

In reviewing challenges to the sufficiency of evidence, we must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences. Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve. The test for sufficiency of the evidence is the same whether the evidence is direct or circumstantial or both. "Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence." If the evidence presented is circumstantial, the court must consider

whether a reasonable inference of defendant's guilt may be drawn from the circumstances. Once the court decides that a reasonable inference of defendant's guilt may be drawn from the circumstances, then "it is for the jury to decide whether the facts, taken singly or in combination, satisfy [it] beyond a reasonable doubt that the defendant is actually guilty."

State v. Fritsch, 351 N.C. 373, 378-79, 526 S.E.2d 451, 455

(2000) (citations omitted).

In the light most favorable to the State, the evidence tended to show that Defendant was trespassing on Ms. Williams' land at approximately the same time Ms. Tucker discovered her house had been broken into, and personal property had been taken. Defendant was coming from the direction of the Tuckers' house, and from a direction that suggested he had to scale Ms. Williams' fence in order to gain entry to Ms. Williams' property. When confronted by Ms. Williams about trespassing on her property, Defendant claimed he was lost and was trying to get to Samarcand Road. He ignored Ms. Williams' directions, however, and continued across her property in a direction parallel to Samarcand Road. Defendant was followed to Clement Road and, when confronted by Mr. Tucker, Defendant ran. Shortly thereafter, Defendant was located in a mobile home near Clement Road. Defendant was wearing shoes that matched the size, wear pattern, and sole pattern of shoeprints left next to the

Tuckers' personal property that had been abandoned on a dirt road near the Tuckers' house.

We hold that this evidence was sufficient to survive Defendant's motion to dismiss. Defendant's argument is without merit.

No error.

Judges McCULLOUGH and DILLON concur.

Report per Rule 30(e).