

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA23-689

Filed 5 December 2023

Mecklenburg County, Nos. 20CRS213051–52, 21CRS12027

STATE OF NORTH CAROLINA

v.

LENELL GALES, Defendant.

Appeal by defendant from judgment entered 2 February 2023 by Judge Reggie E. McKnight in Mecklenburg County Superior Court. Heard in the Court of Appeals 20 November 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Mary W. Scruggs, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Katy Dickinson-Schultz, for defendant-appellant.*

PER CURIAM.

Defendant was charged with common law robbery, conspiracy to commit a common law robbery, and attaining habitual felon status. The jury returned a verdict of guilty of common law robbery and conspiracy to commit a common law robbery. Defendant pled guilty to attaining habitual felon status. The trial court entered a judgment of guilty and imposed a prison sentence of 117 to 153 months. Defendant

filed notice of appeal from the conspiracy conviction.

On appeal, Defendant argues the trial court erred by denying Defendant's motion to dismiss the conspiracy conviction because the State did not offer substantial evidence of an advance agreement to commit robbery. This argument has no merit.

A trial court's denial of a defendant's motion to dismiss will be upheld if "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." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *State v. Stroud*, 259 N.C. App. 411, 417, 815 S.E.2d 705, 711 (2018) (citation omitted). Upon our review, we must view the evidence "in the light most favorable to the State with every reasonable inference drawn in the State's favor." *Id.* at 417, 815 S.E.2d at 711.

A criminal conspiracy is an agreement between two or more people to do an unlawful act or to do a lawful act in an unlawful manner. In order to prove conspiracy, the State need not prove an express agreement; evidence tending to show a mutual, implied understanding will suffice. This evidence may be circumstantial or inferred from the defendant's behavior.

*State v. Shelly*, 176 N.C. App. 575, 586, 627 S.E.2d 287, 296 (2006) (citation and internal quotation marks omitted).

Here, video surveillance tends to show the following: Defendant approached a

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Circle K convenience store in Charlotte, North Carolina, with an unidentified man around 5:25 a.m. on 4 April 2020. As Defendant and the other man approached the store, Defendant pointed to the window of the store, the man observed this gesture, both men peered into the store through the window, and then both men entered the store. Once inside, Defendant walked around the area of the store where two employees were stocking the self-serve coffee and soda area, while the man went behind the check-out counter and began grabbing cartons of cigarettes. After the man started grabbing cigarette cartons, Defendant started pacing back and forth in front of the check-out counter. When the employees noticed the man behind the counter and went to stop him from grabbing more cigarette cartons, Defendant restrained and pushed one of the female employees. Defendant and the man then left the Circle K and drove off in the same car. This video surveillance and employee testimony provides sufficient evidence such that the jury could infer Defendant and the other man went into the Circle K with the intent of stealing cigarettes. *See Shelly*, 176 N.C. App. at 586, 627 S.E.2d at 296.

Reviewing the evidence in the light most favorable to the State, substantial evidence was presented to allow the jury to infer that Defendant conspired with the other man to commit robbery. *See Stroud*, 259 N.C. App. at 417, 815 S.E.2d at 711. The trial court did not err in denying Defendant's Motion to Dismiss.

NO ERROR.

Panel consisting of:

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Judges TYSON, ZACHARY and FLOOD.

Report per Rule 30(e).