

NORTH CAROLINA REPORTS

VOLUME 309

SUPREME COURT OF NORTH CAROLINA



9 AUGUST 1983

6 DECEMBER 1983

RALEIGH

1984

**AMENDMENT TO THE NORTH CAROLINA
RULES OF APPELLATE PROCEDURE**

Rule 10(b) of the North Carolina Rules of Appellate Procedure, 287 N.C. 671, 699, is hereby amended by the addition of a new subdivision to be designated "(3)" and to read as follows:

(3) Sufficiency of the Evidence. A defendant in a criminal case may not assign as error the insufficiency of the evidence to prove the crime charged unless he moves to dismiss the action, or for judgment as in case of nonsuit, at trial. If a defendant makes such a motion after the State has presented all its evidence and has rested its case and that motion is denied and the defendant then introduces evidence, his motion for dismissal or judgment in case of nonsuit made at the close of State's evidence is waived. Such a waiver precludes the defendant from urging the denial of such motion as a ground for appeal.

A defendant may make a motion to dismiss the action or judgment as in case of nonsuit at the conclusion of all the evidence, irrespective of whether he made an earlier such motion. If the motion at the close of all the evidence is denied, the defendant may urge as ground for appeal the denial of his motion made at the conclusion of all the evidence. However, if a defendant fails to move to dismiss the action or for judgment as in case of nonsuit at the close of all the evidence, he may not challenge on appeal the sufficiency of the evidence to prove the crime charged.

If a defendant's motion to dismiss the action or for judgment as in case of nonsuit is allowed, or shall be sustained on appeal, it shall have the force and effect of a verdict of "not guilty" as to such defendant.

Adopted by the Court in Conference this 7th day of July, 1983. This amendment shall be promulgated by publication in the Advance Sheets of the Supreme Court and the Court of Appeals.

FRYE, J.
For the Court