

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA15-493

Filed: 15 December 2015

New Hanover County, No. 12 CRS 054320

STATE OF NORTH CAROLINA

v.

GERALD TELPHIA JACOBS, II

Appeal by Defendant from judgment entered 5 November 2014 by Judge W. Allen Cobb, Jr. in Superior Court, New Hanover County. Heard in the Court of Appeals 3 December 2015.

*Attorney General Roy Cooper, by Assistant Attorney General Ann Stone, for the State.*

*Guy J. Loranger for Defendant–Appellant.*

McGEE, Chief Judge.

Gerald Telphia Jacobs, II (“Defendant”) appeals from a judgment entered upon a jury verdict finding him guilty of possession with intent to manufacture, sell, or deliver marijuana, a Schedule VI controlled substance. The trial court placed Defendant on supervised probation for thirty months. Defendant gave notice of appeal in open court.

Defendant’s sole argument on appeal is that the trial court erred by denying

his motion to dismiss the charge of possession with intent to manufacture, sell, or deliver marijuana. Defendant asserts that the State failed to present sufficient evidence to establish that he intended to sell or deliver the marijuana. 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). “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.” *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (internal quotation marks omitted), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). “In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). In so doing, “[a]ny contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered.” *State v. Miller*, 363 N.C. 96, 98, 678 S.E.2d 592, 594 (2009) (citation omitted).

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.

*Fritsch*, 351 N.C. at 379, 526 S.E.2d at 455 (alteration in original) (citation and internal quotation marks omitted).

In the present case, at trial, the State's evidence tended to show that Defendant possessed nineteen small bags of marijuana with a total weight of less than eleven grams. We agree with Defendant that this amount was insufficient, standing alone, to support an inference that Defendant intended to sell or deliver the marijuana. *See State v. Wiggins*, 33 N.C. App. 291, 294–95, 235 S.E.2d 265, 268 (holding that less than a half pound — or 215.5 grams — of marijuana alone was not sufficient to withstand a motion to dismiss), *cert. denied*, 293 N.C. 592, 241 S.E.2d 513 (1977). Nevertheless, “[t]he method of packaging a controlled substance, as well as the amount of the substance, may constitute evidence from which a jury can infer an intent to distribute.” *State v. Williams*, 71 N.C. App. 136, 139–40, 321 S.E.2d 561, 564 (1984) (holding that a defendant's possession of 27.6 grams of marijuana packaged in seventeen separate, small brown paper envelopes was sufficient evidence to support an inference that the defendant intended to sell or deliver the marijuana).

Here, the State's evidence, beyond the mere weight of the marijuana seized, established that the marijuana had been packaged into nineteen small clear plastic

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bags, which were placed together in a single larger plastic bag. Each of the small bags was imprinted with either a spade or an eagle. Officers testified that, based on their training and experience, packaging marijuana in this manner was generally done for the sale of the drug. We conclude that this evidence was sufficient to support a reasonable inference that Defendant intended to sell or deliver the marijuana seized. Accordingly, we overrule Defendant's argument on appeal.

NO ERROR.

Judges HUNTER, JR. and DILLON concur.

Report per Rule 30(e).