

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA16-962

Filed: 18 July 2017

Orange County, No. 15CRS50387

STATE OF NORTH CAROLINA,

v.

RAYMOND LAMONT BAILEY, Defendant.

Appeal by defendant from judgment entered 28 January 2016 by Judge James E. Hardin, Jr. in Orange County Superior Court. Heard in the Court of Appeals 10 July 2017.

*Attorney General Joshua H. Stein, by Assistant Attorney General Oliver G. Wheeler IV, for the State.*

*Tarlton Polk PLLC, by Raymond C. Tarlton, for defendant-appellant.*

BERGER, Judge.

Raymond Lamont Bailey (“Defendant”) appeals from a judgment entered upon jury verdicts finding him guilty of felony fleeing to elude arrest and resisting a public officer. The trial court arrested judgment on Defendant’s conviction for driving while license revoked, and dismissed a charge of attaining habitual felon status as Defendant did “not qualify as a[n] habitual felon as a matter of law.” The court

consolidated Defendant's convictions into a single judgment and sentenced him to twenty to thirty-three months in prison. Defendant timely filed notice of appeal.

The evidence at trial tended to show that on February 16, 2015, Deputies Chad Boggs and Wayne Belch of the Orange County Sheriff's Department were attempting to serve an outstanding warrant on Defendant at his home. The deputies learned that Defendant was not at home, but were aware he was driving a gray Chevrolet Tahoe. As they were leaving in separate patrol units, Deputy Boggs saw Defendant drive past him in the gray Chevrolet Tahoe. Deputy Boggs immediately activated his blue lights and siren, and then turned around to follow Defendant's vehicle. Defendant did not stop, but rather sped away from the deputy. Deputy Boggs pursued Defendant, while Deputy Belch followed behind in his own vehicle.

Deputy Boggs stated that he drove at least twenty miles per hour over the posted speed limit during the pursuit, but could not catch up to Defendant's vehicle. Deputy Boggs momentarily lost sight of Defendant's vehicle. Shortly thereafter, however, the gray Tahoe was located off the road, wrecked in the woods. There was no one in the Tahoe, and the deputies began searching for Defendant. Deputy Belch found Defendant in the woods hiding behind a tree, and then took him into custody.

Defendant moved to dismiss the charges against him at the close of the State's evidence and at the close of all evidence. The trial court denied both motions.

Defendant now argues the trial court erred in denying his motion to dismiss the charge of felony fleeing to elude arrest. 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) (citation omitted).

“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[] 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 (citation 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, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994) (citation omitted), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). Moreover, “contradictions and inconsistencies do not warrant dismissal; the trial court is not to be concerned with the weight of the evidence. Ultimately, the question for the court is whether a reasonable inference of defendant’s guilt may be drawn from the circumstances.” *State v. Lee*, 348 N.C. 474, 488, 501 S.E.2d 334, 343 (1998) (citations omitted).

Defendant does not challenge the sufficiency of the State's evidence as to the elements of the offense and only argues that there was insufficient evidence that he was the driver of the Tahoe. Defendant concedes that Deputy Boggs testified he saw Defendant driving the Tahoe as they passed each other. Nevertheless, Defendant attempts to discount Deputy Boggs' testimony identifying Defendant as the driver of the Tahoe by arguing: (1) in his written report, Deputy Boggs never stated that he saw Defendant driving the Tahoe; (2) there was no testimony that Defendant was the only person in the Tahoe; (3) Deputy Boggs' identification of Defendant was based on his viewing of a small photograph of Defendant on the warrant he was attempting to serve; (4) Deputy Boggs only saw the person driving the Tahoe briefly as it passed him; and (5) no one saw Defendant exit the Tahoe.

Defendant's arguments are misplaced because they go to the credibility of Deputy Boggs' testimony and the weight that should be given to his identification of Defendant as the driver of the Tahoe, which are questions for the jury to decide. *State v. Williams*, 235 N.C. App. 211, 211, 760 S.E.2d 382, 383 (2014). Here, the State presented substantial direct evidence that Defendant was the perpetrator of the offense of felony fleeing to elude arrest when Deputy Boggs, at trial, affirmatively identified Defendant as the driver of the Tahoe. Accordingly, we hold the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

STATE V. BAILEY

*Opinion of the Court*

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).