An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA17-478

Filed: 6 February 2018

Lenoir County, Nos. 15 CRS 51413, 16 CRS 411

STATE OF NORTH CAROLINA

v.

ZEBROAN ARTIS

Appeal by defendant from judgment entered 17 August 2016 by Judge Charles W. Gilchrist in Lenoir County Superior Court. Heard in the Court of Appeals 2 January 2018.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General E. Burke Haywood, for the State.*

*The Law Office of Sterling Rozear, PLLC, by Sterling Rozear, for defendant-appellant.*

BRYANT, Judge.

Where taken in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradiction in the State's favor, the evidence presented was sufficient to establish that defendant knew or should have known that the victim was injured when defendant left the scene of a

vehicle collision in which he was involved. Accordingly, we find no error in the trial court's denial of defendant's motion to dismiss the charge of felony hit and run.

Defendant Zebroan Artis appeals from a judgment entered upon (1) a jury verdict finding him guilty of felony hit and run resulting in personal injury ("felony hit and run"), and (2) his plea of guilty to driving while license revoked ("DWLR") and attaining habitual felon status.

On 15 June 2015, defendant was driving and crashed into the rear of a vehicle driven by Linda Dutton. Dutton was stopped at a traffic light at the time. Defendant then backed up, went around Dutton's vehicle, and left the scene. Dutton pulled her vehicle into a nearby parking lot and called 911. A witness to the accident provided Dutton with the license plate number of defendant's vehicle, which she in turn provided to the 911 dispatcher.

A Kinston Police Department ("KPD") officer responded to the call and spoke with Dutton. He then called EMS to the scene to examine her. Dutton complained of pain in her back, neck, and shoulders, but declined to be transported to the hospital in an ambulance. Instead, she was driven to the hospital by her boyfriend. At the hospital, Dutton was issued a prescription for pain medication. Two days later, her pain had worsened, and she went to Lenoir Family Practice, where she was issued a prescription for a cervical collar, which she wore for approximately two weeks.

Another witness followed defendant's vehicle after it left the scene of the accident. The witness called 911 and informed the dispatcher when defendant stopped and exited his vehicle near some railroad tracks. Another KPD officer responded to this call and encountered defendant on the tracks. Using a police dog, the officer followed defendant's scent back to an automobile with damage to its front end. Defendant was arrested and subsequently indicted for felony hit and run, DWLR, and attaining habitual felon status.

Beginning 16 August 2016, defendant was tried by a jury in Lenoir County Superior Court. During the presentation of the State's evidence, defendant agreed to plead guilty to DWLR. At both the close of the State's evidence and the close of all evidence, defendant made motions to dismiss the felony hit and run charge, and the trial court denied the motions.

On 17 August 2016, the jury returned a verdict finding defendant guilty of felony hit and run. Defendant then pled guilty to attaining habitual felon status. The trial court consolidated the offenses and sentenced defendant in the mitigated range to 84 to 113 months of imprisonment. Defendant gave notice of appeal in open court.

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Defendant's sole argument is that the trial court erred by denying his motion to dismiss the felony hit and run charge. He contends that the State presented

insufficient evidence that Dutton was injured or that defendant knew or should have known she was injured. 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." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (quoting *State v. Barnes*, 334 N.C. 67, 75–76, 430 S.E.2d 914, 918–19 (1993)). "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). "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).

Defendant was convicted of felony hit and run pursuant to N.C. Gen. Stat. § 20-166(a1), which states:

> (a1) The driver of any vehicle who knows or reasonably should know:
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> (1) That the vehicle which he or she is operating is involved in a crash; and
>
> (2) That the crash has resulted in injury;
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> shall immediately stop his or her vehicle at the scene of the crash. The driver shall remain with the vehicle at the scene

> of the crash until a law enforcement officer completes the investigation of the crash or authorizes the driver to leave and the vehicle to be removed, unless remaining at the scene places the driver or others at significant risk of injury.
>
> Prior to the completion of the investigation of the crash by a law enforcement officer, or the consent of the officer to leave, the driver may not facilitate, allow, or agree to the removal of the vehicle from the scene for any purpose other than to call for a law enforcement officer, to call for medical assistance or medical treatment as set forth in subsection (b) of this section, or to remove oneself or others from significant risk of injury. If the driver does leave for a reason permitted by this subsection, then the driver must return with the vehicle to the crash scene within a reasonable period of time, unless otherwise instructed by a law enforcement officer. A willful violation of this subsection shall be punished as a Class H felony.

N.C Gen. Stat. § 20-166(a1) (2015). Defendant contends that the State failed to present evidence that Dutton was injured or that he knew or should have known she was injured. Defendant notes that Dutton was ambulatory after the accident and that the paramedic who examined Dutton at the scene found no evidence of a cervical injury. He further argues that there was no evidence that Dutton's pain was a result of the crash and that defendant had no reason to know Dutton was injured "given the minor nature of the accident and the resulting damage[.]"

At trial, Dutton testified about her physical state immediately after the collision, stating, "I was in tears. I -- my arm and stuff because I had the steering wheel -- my arm and stuff hit -- I went forward. My neck was hurt." Dutton then complained of pain repeatedly and consistently after the accident. She went to the

hospital shortly after the incident and required prescription painkillers, and when the pain did not subside after a few days, she was prescribed a cervical collar. Dutton also specifically testified that she did not experience any of the described pain prior to the accident. Moreover, the evidence showed defendant struck Dutton's vehicle with sufficient force to knock a significant portion of the rear bumper off her vehicle, and the officer who discovered defendant's own vehicle described it as having "heavy front-end damage and the hood looked like it'd been crumpled up." As explained by the paramedic at trial, "[a]s far as mechanism of injury, you typically expect that more damage done to the vehicle, the more chance for the severity of the injury to increase."

Dutton's testimony regarding her immediate pain after the accident and her subsequent need for treatment due to the accident was sufficient to allow the jury to decide whether she had been injured in the collision, and the evidence of significant damage to defendant's vehicle was sufficient to allow the jury to decide whether he knew or should have known the accident resulted in injury. Thus, we conclude the State presented substantial evidence that Dutton was injured and that defendant knew or should have known about the injury. Accordingly, the trial court properly denied defendant's motion to dismiss. Defendant received a fair trial, free from error.

NO ERROR.

Judges HUNTER, JR., and INMAN concur.

Report per Rule 30(e).