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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-61

Filed 17 September 2024

Mecklenburg County, No. 20CRS16583

STATE OF NORTH CAROLINA

v.

XAVIER JEHLIL MOODY, Defendant.

Appeal by defendant from judgment entered 30 March 2023 by Judge Matt Osman in Mecklenburg County Superior Court. Heard in the Court of Appeals 14 August 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Brenée W. Orozco, for the State.*

*Center for Death Penalty Litigation, by Kailey Morgan, for defendant-appellant.*

FLOOD, Judge.

Defendant Xavier Jehlil Moody appeals from the trial court's judgment finding him guilty of robbery with a dangerous weapon. Defendant argues on appeal, (A) the trial court erred in denying Defendant's motion to dismiss where the State produced insufficient evidence that he committed the crime of robbery with a dangerous weapon. Defendant alternatively argues, (B) if his counsel failed to preserve the first

argument for appellate review, Defendant received ineffective assistance of counsel (“IAC”) where counsel did not properly move to dismiss, at the close of all evidence, the charge of robbery with a dangerous weapon. After careful review, we conclude the State met its evidentiary burden, and we therefore affirm the trial court’s denial of Defendant’s motion to dismiss. We further conclude Defendant’s IAC argument is moot and therefore dismiss this argument.

### **I. Factual and Procedural Background**

On the morning 25 October 2019, at approximately 5:55 a.m., Pedro Santos—who is originally from Mexico—exited his apartment located at 5915 Farm Pawn Lane, Charlotte, North Carolina, to walk to his four-door Pontiac Prix and drive to work. Santos opened the “left side back door” of his vehicle to put down his lunch box, and at this time, he saw two masked men, who were armed with handguns, running towards him from the parking lot across the street. Santos observed the two men to be young, “dark skinned,” and estimated they were between twenty and twenty-two years of age.

The two men approached Santos with their firearms pointed at him, and one of them (the “first gunman”) placed the muzzle of his handgun at the base of Santos’ neck, demanded Santos’ wallet, and pushed Santos towards the back seat of his car, causing Santos to strike his forehead on the “tall part” of the car door as he fell face-down on the seat. As Santos lay on the seat, the first gunman struck Santos in the ribs, put his hands inside of Santos’ pockets, and pulled out his wallet. Santos told

the first gunman to take the money from his wallet— “a little bit over \$40”—and gave the man his license. The first gunman removed the cash and threw Santos his wallet.

As the first gunman searched Santos’ pockets, the other man (the “second gunman”) went to the front passenger-side door of the vehicle, put his left hand inside the car’s glove box, and rummaged through the “papers” therein. Santos later testified that he keeps his receipts, check stubs, bills, and “a photocopy of [his] Mexican passport” (“the photocopy”) inside the glove box. When the second gunman finished rummaging through the glove box, both gunmen fled with the cash taken from Santos’ wallet, as well as Santos’ Samsung Galaxy phone. After the gunmen left, Santos went inside his home and called the police.

Officer Vaugh Ross first arrived on the scene, and after attempting to speak with Santos, requested a Spanish speaking officer be dispatched. Officer Guillermo Alvear arrived on the scene at 6:15 a.m. to translate the conversation between Officer Ross and Santos. Officer Ross took a written statement from Santos, and went over the statement a second time to ensure its accuracy.

Officer Kristine Woodhouse arrived on the scene at approximately 6:53 a.m. to collect evidence, and as part of this collection, searched the interior of Santos’ vehicle, during which she wore nitro latex gloves to protect evidence and prevent leaving any DNA or fingerprints. Officer Woodhouse’s search revealed, among other paper evidence, “a folded-up piece of paper that [Defendant] advised was” the photocopy. She also “lifted three different fingerprint cards” from her search, and swabbed for

DNA the vehicle's exterior front right door handle, center console push button, and "string on the glovebox." Officer Woodhouse thereafter collected the photocopy, other paper evidence, and the three fingerprint cards. She left the scene at approximately 8:05 a.m. and sent the photocopy and other collected items to the Charlotte Mecklenburg Crime Lab (the "Crime Lab") for chemical fingerprint processing. From the moment she arrived on the scene until she delivered the evidence to the Crime Lab, Officer Woodhouse was the only person to handle the items she documented and collected.

Following delivery of the paper items to the Crime Lab, latent fingerprint examiner William Trantham processed the evidence for fingerprints, which revealed nineteen latent fingerprints, including a sole fingerprint found on the photocopy. Of these nineteen fingerprints, nine were of "AFIS value[.]" meaning they had the "quality and quantity of . . . ridge characteristics" such that they could be entered into the Automated Fingerprint Identification System ("AFIS") to search for fingerprint "donors[.]" Among the nine fingerprints was the one found on the photocopy. Trantham entered these fingerprints into the AFIS, which revealed the fingerprints of five potential donors, one of whom was Defendant. Defendant's fingerprints were "close enough to require further comparison in order to come to a determination." Trantham printed a copy of Defendant's fingerprints and conducted a "side-by-side comparison" of the copy to the fingerprint found on the photocopy. From this comparison, Trantham concluded there was an "indicat[ion] that the [photocopy]

fingerprint impression originated from” Defendant’s left-hand, middle finger. Trantham did not compare the photocopy fingerprint to the fingerprints of the four remaining potential donors.

On 30 November 2020, a Mecklenburg County Grand Jury indicted Defendant for one count of robbery with a dangerous weapon. This matter came on for hearing before the trial court on 28 March 2023. During the hearing, the State presented testimony from Santos, who testified as to the events of 25 October 2019 and stated that he would “routinely carry” with him the photocopy to use it for “identification purposes[.]” When asked on cross-examination whether Santos can positively identify Defendant as one of the two men who robbed him, Santos responded: “No, unless they cover themselves the way they were[.]” and “[l]ike I said, I didn’t see his face but they did find his fingerprints because he was there.”

The State also introduced Trantham as an expert witness, who testified, in relevant part, that based on his training, education, and nearly twenty-five years of experience in latent fingerprint examination, he has never seen two people with identical prints; paper is “very good at holding fingerprint residue[.]” and absent scarring or burns, fingerprints are “[p]ersistent” and “do[] not change over time.” Further, as to why he did not compare the photocopy fingerprint to the remaining four potential donors, Trantham testified that “[b]ecause fingerprints [are] permanent and unique[,] once they are identified to one [donor] . . . they[ are] excluded to the others.”

Defendant produced no evidence, and at the close of the State's evidence, Defendant's counsel moved to dismiss the case due to insufficiency of evidence, arguing that "the jury[,] with what's been presented[,] cannot reasonably come to a verdict as there has been no testimony about a firearm other than Mr. Santos[']" The trial court denied this motion. On 30 March 2023, the jury convicted Defendant of robbery with a dangerous weapon, and that same day, the trial court imposed a sentence of 75 to 102 months' imprisonment. Defendant timely appealed.

## **II. Jurisdiction**

Defendant's appeal is properly before this Court as an appeal from a final judgment of a superior court pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2023).

## **III. Analysis**

Defendant argues on appeal, (A) the trial court erred by denying his motion to dismiss because the State's case "rested on a single fingerprint" which, standing alone, is insufficient to support a conviction. Defendant alternatively argues, (B) if his first argument is not preserved for our appellate review, then Defendant received IAC for his counsel's failure to make a general motion to dismiss or argue that there was insufficient evidence to convict Defendant based on a single fingerprint. We address each argument, in turn.

### **A. Motion to Dismiss**

Defendant argues that Trantham's expert testimony on Defendant's

fingerprint was insufficient to support the robbery with a dangerous weapon conviction, as the State failed to present substantial, circumstantial evidence that “the fingerprint could *only* have been impressed at the time of the crime and no other forensic evidence tied [Defendant] to the crime scene.” As such, according to Defendant, it was error for the trial court to deny Defendant’s motion to dismiss. We disagree.

Under the North Carolina Rules of Appellate Procedure, where defense counsel makes a motion to dismiss based on general or specific grounds, he “preserves all insufficiency of the evidence issues for appellate review simply by making a motion to dismiss the action at the proper time.” *State v. Golder*, 374 N.C. 238, 246, 839 S.E.2d 782, 788 (2020); *see also* N.C.R. App. P. 10(a)(3) (“A defendant may make a motion to dismiss the action [for insufficiency of the evidence] . . . at the conclusion of all the evidence[.]”). Here, Defendant’s counsel timely moved to dismiss for insufficiency of the evidence at the close of the State’s evidence, and as such, Defendant’s argument is properly before this Court for our appellate review. *See Golder*, 374 N.C. at 246, 839 S.E.2d at 788; *see also* N.C.R. App. P. 10(a)(3).

“The denial of a motion to dismiss for insufficient evidence is a question of law, which this Court reviews *de novo*.” *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007) (citations omitted). “Under a *de novo* review, th[is C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Clapp*, 235 N.C. App. 351, 359–60, 761 S.E.2d 710, 717

(2014) (citation and internal quotation marks omitted). Upon appeal from the trial court's denial of a defendant's motion to dismiss, "the question for th[is] Court is whether there is substantial evidence (1) of each essential element of the offense charged . . . and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Schmieder*, 265 N.C. App. 95, 101, 827 S.E.2d 322, 327 (2019) (citation omitted).

"Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]" *id.* at 101, 827 S.E.2d at 327–28 (citations omitted), and "[t]he evidence can be circumstantial or direct, or both." *State v. English*, 241 N.C. App. 98, 104, 772 S.E.2d 740, 745 (2015) (citation omitted); *see also State v. Parker*, 354 N.C. 268, 279, 553 S.E.2d 885, 894 (2001) ("Circumstantial evidence and direct evidence are subject to the same test for sufficiency, and the law does not distinguish between the weight given to direct and circumstantial evidence." (citations omitted)); *State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988) ("Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence."). In determining whether the State met its evidentiary burden, we must consider the evidence "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).

Regarding whether the State's introduction of fingerprint evidence is sufficient



to support a criminal conviction, our Supreme Court has provided that such evidence, “standing alone, is sufficient . . . only if there is substantial evidence of circumstances from which the jury can find that the fingerprints could only have been impressed at the time the crime was committed.” *State v. Irick*, 291 N.C. 480, 491–92, 231 S.E.2d 833, 841 (1977) (citation and internal quotation marks omitted); *see also State v. Futrell*, 112 N.C. App. 651, 668, 436 S.E.2d 884, 893 (1993) (“Where the State seeks to prove [a] defendant’s guilt *primarily* through the use of fingerprint evidence, . . . a motion to dismiss is properly denied if, in addition to testimony by a qualified expert[,] . . . there is substantial evidence of circumstances from which a jury could find that the fingerprints were impressed at the time the crime was committed.” (citation and internal quotation marks omitted)). Such circumstantial evidence “comes in several different forms[,] . . . [but t]he form of the evidence is immaterial so long as it substantially demonstrates that the fingerprint could have been placed at the scene only at the time the crime was committed.” *State v. Scott*, 296 N.C. 519, 523, 251 S.E.2d 414, 417 (1979). Further, as our Supreme Court has provided, “[t]his kind of evidence is particularly convincing when the scene of the crime is a private residence not accessible to the general public[.]” *id.* at 523, 251 S.E.2d at 417, and the prosecuting witnesses testify “that they had never seen the defendant before or given him permission to enter the premises[.]” *Irick*, 291 N.C. at 492, 231 S.E.2d at 841.

Illustrating this standard is our Supreme Court’s opinion in *Scott*. In that case, the victim was slain in his home, the defendant was charged with and convicted of

first-degree murder, and the “[o]nly evidence tending to show that [he] was ever in the home of [the victim was] a thumbprint found on a metal box” inside the victim’s home. 296 N.C. at 522, 251 S.E.2d at 416–17. The victim lived in the home with his niece at the time of the murder, and his niece testified that, “to her knowledge, the defendant had never visited the house, and . . . she had never seen anyone but family members handle the metal box on which the defendant’s fingerprint was discovered.” *Id.* at 524, 251 S.E.2d at 417–18. This matter was eventually appealed to our Supreme Court, whereupon they found the niece’s testimony—“the only evidence in this case to prove when the fingerprint could have been impressed”—was insufficient circumstantial evidence because she was often away from the home, and therefore “unable to testify from personal knowledge as to who visited her uncle during her absence.” *Id.* at 526, 251 S.E.2d at 418. The Court reasoned that “[i]n the absence of additional evidence, it is not unreasonable to infer that the defendant’s fingerprint might have been impressed on the box at some time prior to the homicide[.]” and held the State’s fingerprint evidence was insufficient to survive a motion to dismiss. *Id.* at 526, 251 S.E.2d at 418–19. In making this holding, the Court further provided “that the evidence introduced in . . . [Scott] is sufficient to raise a strong suspicion of the defendant’s guilt but not sufficient to remove that issue from the realm of suspicion and conjecture.” *Id.* at 526, 251 S.E.2d at 419 (citation and internal quotation marks omitted).

Here, Defendant contends that “Santos testified that he routinely gave his

passport to other people,” and as the Supreme Court in *Scott* “did not consider a defendant’s fingerprint found on a box in the den of a private home that only family members touched as sufficient to support a conviction, then neither is a fingerprint on a piece of paper routinely given to strangers.” Defendant’s contention is unpersuasive, and upon our de novo review, we conclude the State has met its evidentiary burden. *See Clapp*, 235 N.C. App. at 359–60, 761 S.E.2d at 717.

First, Defendant’s argument that Santos’ testimony means he “routinely gave his passport to other people” is a speculative assertion. Santos testified that he “routinely carr[ied]” the photocopy, he “sometimes” used it for identification purposes, and he kept it in the glovebox of his vehicle. Viewing this evidence in the light most favorable to the State, contrary to Defendant’s contention, Santos’ testimony demonstrates that he—unlike the niece in *Scott*—had personal knowledge of who possessed the photocopy prior to the incident, and as the photocopy was kept in the glovebox of his vehicle, it was in a place not readily accessible to the general public. 296 N.C. at 523, 526, 251 S.E.2d at 417–19; *see also Rose*, 339 N.C. at 192, 451 S.E.2d at 223. In addition to his personal knowledge of the photocopy’s location and its inaccessibility to the general public, Santos testified that he had never seen Defendant before, and the uncontroverted facts demonstrate that Santos never gave Defendant permission to enter the premises of his vehicle or the glovebox therein. *Irick*, 291 N.C. at 492, 231 S.E.2d at 841. As such, per the standard for such evidence as articulated by our Supreme Court in *Scott*, this was circumstantial evidence in

support of a finding that the fingerprints were left on the photocopy at the time of the criminal offense. 296 N.C. at 523, 251 S.E.2d at 417; *see also Irick*, 291 N.C. at 492, 231 S.E.2d at 841; *Futrell*, 112 N.C. App. at 668, 436 S.E.2d at 893.

Further, Trantham provided in his expert testimony that, from his comparison of the photocopy fingerprints to those of the AFIS “donors,” the comparison indicated “that the [photocopy] fingerprint impression originated from” Defendant’s left-hand, middle finger. The State presented Santos’ testimonial evidence that one of the two perpetrators of the crime used his left hand to rummage through the papers contained in the vehicle’s glove compartment, which included the photocopy. Viewed in the light most favorable to the State, this is circumstantial evidence that supports Trantham’s expert testimony from which a rational juror could conclude not only that that the fingerprints were left on the photocopy at the time of the criminal offense, but also that Defendant was the perpetrator of such offense. *See Scott*, 296 N.C. at 523, 251 S.E.2d at 417; *see also Irick*, 291 N.C. at 491–92, 231 S.E.2d at 841; *Rose*, 339 N.C. at 192, 451 S.E.2d at 223.

Finally, in his description of the perpetrators to the police, Santos described the male perpetrators as “dark skinned” and estimated them to be between twenty and twenty-two years of age. Defendant is a black male who, at the time of his arrest, was twenty-two years old. “While our Courts have not specifically said the defendant matching the perpetrator’s description is an additional factor in a fingerprint case, our Supreme Court has used it as a factor in a sufficiency case.” *State v. Todd*, 290

N.C. App. 448, 458, 829 S.E.2d 240, 249 (2023) (citing *State v. Mercer*, 317 N.C. 87, 97–98, 343 S.E.2d 885, 890–91 (1986)). “This is not to suggest that describing the race of an assailant is sufficient, standing alone, to identify an assailant; it is only noted here to show that the race of the assailant was not inconsistent with the victim’s description of Defendant.” *Id.* at 458–59, 829 S.E.2d at 249.

Here, as explained above, in addition to the photocopy fingerprint linking Defendant to the crime and Santos’ accurate description of Defendant, there was substantial circumstantial evidence from which a reasonable juror could find that Defendant was the perpetrator of the criminal offense, and in committing such offense, left his fingerprint on the photocopy. *See Schmieder*, 265 N.C. App. at 101, 827 S.E.2d at 327; *see also Irick*, 291 N.C. at 491–92, 231 S.E.2d at 841; *English*, 241 N.C. App. at 104, 772 S.E.2d at 745; *Futrell*, 112 N.C. App. at 668, 436 S.E.2d at 893; *Scott*, 296 N.C. at 523, 251 S.E.2d at 417. The State therefore met its evidentiary burden, and the trial court did not err in denying Defendant’s motion to dismiss. *See Schmieder*, 265 N.C. App. at 101, 827 S.E.2d at 327.

### **B. Ineffective Assistance of Counsel**

Defendant contends that, if this Court finds his first argument on appeal is not preserved for our appellate review, he received IAC where his trial counsel failed “to make a general motion to dismiss or argue that there was insufficient evidence to convict [Defendant] based on a single fingerprint.” As set forth above, however, counsel’s timely motion to dismiss for insufficiency of the evidence preserved for our

review Defendant's first argument. *See Golder*, 374 N.C. at 246, 839 S.E.2d at 788; *see also* N.C.R. App. P. 10(a)(3). As such, Defendant's IAC argument is moot, and we dismiss this argument. *See In re K.C.*, 226 N.C. App. 452, 463, 742 S.E.2d 239, 246–47 (2013) (finding the defendant's IAC claim premised on his counsel's failure to properly preserve an argument for appellate review to be moot, where the unpreserved argument was addressed and found to be meritorious); *see also State v. Dye*, 254 N.C. App. 161, 172, 802 S.E.2d 737, 744 (2017) ("We also dismiss [the d]efendant's argument that he received [IAC,] . . . as our allowance of *certiorari* and vacatur of the . . . order renders that argument moot.").

#### **IV. Conclusion**

Upon review, we conclude the State presented substantial circumstantial evidence in support of a finding that Defendant, in commission of robbery with a dangerous weapon against Santos, left his fingerprint on the photocopy. We therefore affirm the trial court's denial of Defendant's motion to dismiss. We further conclude Defendant's IAC argument is moot, and accordingly dismiss it.

AFFIRMED In Part, and DISMISSED In Part.

Judges MURPHY and COLLINS concur.

Report per Rule 30(e).