

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-367

Filed 19 November 2024

Iredell County, Nos. 20 CRS 50541-2, 20 CRS 50629, 23 CRS 218

STATE OF NORTH CAROLINA

v.

GARCIA DONTAE FINGER

Appeal by defendant from judgment entered 14 September 2023 by Judge William A. Wood, II in Iredell County Criminal Superior Court. Heard in the Court of Appeals 7 November 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Lexus Sanders-Njie, for the State.*

*The Sweet Law Firm, PLLC, by Kaelyn N. Sweet, for defendant-appellant.*

PER CURIAM.

Defendant Garcia Dontae Finger was convicted by a jury of three crimes, including felony assault by strangulation. The trial court entered a consolidated judgment on the three convictions and sentenced Defendant accordingly. On appeal, Defendant contends that the trial court erred by concluding that the State offered sufficient evidence to prove he had committed the crime of felony assault by

strangulation. For the reasoning below, we conclude that Defendant received a fair trial, free of reversible error.

The evidence in the light most favorable to the State tended to show as follows: Defendant's girlfriend testified that Defendant arrived drunk at her residence on 31 January 2020. He grabbed her and threw her down by her neck. He attempted to strangle her with both hands around her neck, then beat her, and then strangled her until she briefly fell unconscious. She testified that, in all, Defendant strangled her at least five times. A responding officer testified regarding the injuries of Defendant's girlfriend that he witnessed upon arrival. An examination of her neck revealed no visible swelling or bruising, but some mild soft tissue tenderness on either side of her neck was present.

At trial, Defendant did not testify or present evidence. However, he argued that there was "no real substantial evidence that she was, in fact, actually strangled by [him]." The court denied his motion to dismiss.

On appeal,<sup>1</sup> Defendant argues that the trial court erred by denying Defendant's motion to dismiss the charge of assault by strangulation because there was insufficient evidence both that his girlfriend had physical injury to her neck and that it was caused directly by strangulation.

The standard of review for the denial of a motion to dismiss for insufficiency of

---

<sup>1</sup> Defendant filed a petition for writ of certiorari on 28 May 2024. In our discretion, we grant Defendant's petition.

STATE V. FINGER

*Opinion of the Court*

the evidence is *de novo*. *State v. Smith*, 186 N.C. App. 57, 62 (2007). “[T]he trial court must view the evidence in the light most favorable to the State, drawing all reasonable inferences in the State’s favor.” *State v. Bradshaw*, 366 N.C. 90, 92 (2012). “[It] must determine ‘whether there is substantial evidence [ ] of each essential element of the offense charged[.]’ ” *Id.* at 93. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78 (1980).

We conclude that the trial court properly denied Defendant’s motion to dismiss because there was substantial evidence to support a finding for each element of felony assault by strangulation. Furthermore, as to Defendant’s argument, “[c]ontradictions and discrepancies [in the evidence] do not warrant dismissal of the case but are for the jury to resolve.” *State v. Fritsh*, 351 N.C. 373, 379 (2000). “The trial court is *not* required to determine that the evidence excludes every reasonable hypothesis of innocence prior to denying a defendant’s motion to dismiss.” *State v. Powell*, 299 N.C. 95, 101 (1980).

We conclude that Defendant received a fair trial, free of reversible error.

NO ERROR.

Panel consisting of Chief Judge DILLON and Judges HAMPSON and CARPENTER.

Report per Rule 30(e).