

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA24-98

Filed 3 December 2024

Wake County, No. 21CR205714-910

STATE OF NORTH CAROLINA

v.

HOLLY WEN CHIANN YEH, Defendant.

Appeal by defendant from conviction entered 13 June 2023 by Judge G. Bryan Collins in Wake County Superior Court. Heard in the Court of Appeals 27 August 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kendell Rashawn Williams, for the State-appellee.*

*Piedmont Defenders, Inc., by Reid H. Cater, for defendant-appellant.*

PER CURIAM.

Defendant Holly Wen Chiann Yeh appeals her simple assault conviction. Defendant argues the trial court erred by denying her motion to dismiss for insufficient evidence. Upon review of the briefs and the record, we discern no error.

Defendant and her neighbor were involved in a property dispute over the boundary line between their homes. The neighbor claimed defendant moved the

property stakes that had been set by a land surveyor and she attempted to move them back to defendant's property. The neighbor confronted defendant about the property stakes and recorded the interaction. Defendant and the neighbor began fighting over the wooden stake that the neighbor had removed from the ground. Defendant grabbed at the stake to take it back from the neighbor. The neighbor held onto the stake and defendant struck the neighbor's arm with her other hand. The neighbor called the police, but the police did not initiate any arrest or charges against defendant. The neighbor took the recording and her surveillance camera recording to the magistrate and sought charges against defendant for assault.

On 13 June 2023, a jury trial commenced for defendant's simple assault charge. Defendant was convicted of simple assault after the jury found defendant guilty. The trial court suspended defendant's 30-day sentence and placed her on 12 months of unsupervised probation. Defendant timely appealed the judgment.

Defendant appeals of right pursuant to N.C.G.S. § 15A-1444(a). Defendant argues the trial court erred by denying her motion to dismiss for insufficient evidence. We review "the denial of a motion to dismiss for insufficient evidence *de novo*." *State v. Taylor*, 203 N.C. App. 448, 458 (2010) (citation omitted). The trial court will deny the motion to dismiss if there is substantial evidence for each element of the crime charged and evidence that the defendant is the perpetrator. *State v. Fritsch*, 351 N.C. 373, 378 (2000) (citation omitted). The evidence must be reviewed "in the light most favorable to the State, giving the State the benefit of all reasonable inferences." *Id.*

at 378–79. If the evidence only “raise[s] a suspicion or conjecture” the trial court should grant the motion. *Id.* at 378.

An assault is “an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do some immediate physical injury to the person of another . . . sufficient to put a person of reasonable firmness in fear of immediate bodily harm.” *State v. Roberts*, 270 N.C. 655, 658 (1967) (cleaned up). The State must demonstrate defendant intended “to cause apprehension of an imminent offensive or harmful contact,” and this is typically proven through circumstantial evidence. *State v. Bediz*, 269 N.C. App. 39, 42 (2019) (citation omitted).

In the present case, the State provided sufficient evidence of each element of simple assault. The State provided video and audio recordings of the altercation between defendant and the neighbor. The neighbor testified at trial that when she confronted defendant and attempted to move the stake back to defendant’s yard, defendant “lunged” at her. The neighbor also testified that defendant was angry, aggressive, and attempting to grab the stake back from her. The neighbor testified, and the State presented video footage, that defendant raised her other arm (that was not holding the wooden stake) and swung and hit the neighbor’s arm.

Viewing this evidence in the light most favorable to the State and giving them the benefit of all reasonable inferences, there was sufficient evidence for each element of the charge for simple assault. Therefore, the trial court did not err when it denied defendant’s motion to dismiss for insufficient evidence. For the foregoing reasons, we

STATE V. YEH

*Opinion of the Court*

discern no error.

NO ERROR.

Before a panel consisting of:

Judges ZACHARY, MURPHY, and GORE.

Report per Rule 30(e).