
30.1 Legal Standard

A. Question Presented by Motion

State's burdens of proof. In all criminal cases, the State has two burdens of proof—a burden of persuasion and a burden of production. *See* 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE § 30, at 132 (8th ed. 2018) (defining the terms "burden of producing evidence" and "burden of persuasion"). To meet its burden of persuasion, the State must prove to the finder of fact, beyond a reasonable doubt, all facts necessary to establish the defendant's guilt of the charged offense. *See Mullaney v. Wilbur*, 421 U.S. 684 (1975); *In re Winship*, 397 U.S. 358 (1970). The State must meet a parallel burden of production to have the offense submitted to the finder of fact. Thus, the trial court must find that a rational finder of fact could accept the evidence as proof of the defendant's guilt beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307 (1979) (stating constitutional requirement, discussed further *infra* in § 30.2); 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE § 32, at 134 (8th ed. 2018) (burden of production is virtually always on State). A motion to dismiss for insufficiency of the evidence tests whether the State has met this burden of production.

Standard for determining whether to grant motion to dismiss. In ruling on a defendant's motion to dismiss, the question before the trial judge is whether the State has produced substantial evidence of (1) each essential element of the offense charged or of a lesser included offense and (2) defendant's being the perpetrator of the offense. *State v. Powell*, 299 N.C. 95, 98 (1980). This is a question of law for the trial judge to determine. *See State v. Cockerham*, 155 N.C. App. 729 (2003). The definition of "substantial evidence" is discussed further in subsection B., below.

The State is aided in meeting its burden by the principle that the evidence must be considered in the light most favorable to the State, with the State being entitled to every reasonable inference of fact arising from the evidence. *See State v. Brown*, 310 N.C. 563 (1984); *State v. Easterling*, 300 N.C. 594 (1980). This is true even if that same evidence also would support reasonable inferences of the defendant's innocence. *State v. Scott*, 356 N.C. 591 (2002). Discrepancies and contradictions, even in the State's evidence, are for the jury to resolve and do not warrant a dismissal. *State v. Henderson*, 276 N.C. 430, 438

(1970). The ultimate question for the trial judge is "whether a reasonable inference of defendant's guilt may be drawn from the circumstances." *State v. Lee*, 348 N.C. 474, 488 (1998); *see also infra* § 30.2, Due Process Requirements (noting that North Carolina courts have held that this standard is the same in substance as the federal due process standard).

Practice note: The courts have often said that in ruling on a motion to dismiss, the trial judge may consider all admitted evidence, whether competent or incompetent. The courts have reasoned that, if the trial judge had not allowed the incompetent evidence, the State might have offered other, admissible evidence. *See State v. Spencer*, 192 N.C. App. 143, 148 n.3 (2008). In light of this rationale, if you believe that the trial judge erroneously admitted certain evidence and that without that evidence the State's evidence is insufficient, ask the trial judge to reconsider his or her earlier ruling in addressing your motion to dismiss. At that stage of the proceedings, the trial judge can allow the State to reopen its case pursuant to G.S. 15A-1226(b), putting the State to the test of whether it actually has admissible evidence to offer in lieu of the incompetent evidence. *Cf. State v. Fleming*, 350 N.C. 109, 143 (1999) (appellate court did not address constitutionality of trial judge considering incompetent evidence on motion to dismiss for insufficient evidence; constitutional argument was not presented to trial judge).

B. Definition of Substantial Evidence

Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78 (1980). "The substantial evidence test requires that the evidence must be existing and real, not just seeming and imaginary." *State v. Irwin*, 304 N.C. 93, 97–98 (1981). Evidence is not substantial if it arouses only a suspicion about the fact to be proved, even if the suspicion is strong. *State v. Malloy*, 309 N.C. 176 (1983).

C. Effect of the Defendant's Evidence

The courts have often stated that only evidence favorable to the State will be considered on a motion to dismiss for insufficient evidence. Accordingly, evidence offered by the defendant will generally not be considered if it relates to his or her defense or is in conflict with the State's evidence. *See State v. Earnhardt*, 307 N.C. 62 (1982); *State v. Henderson*, 276 N.C. 430 (1970). Nevertheless, if the defendant's evidence explains or clarifies the evidence offered by the State, the trial judge must consider it. The judge "must also consider the defendant's evidence which rebuts the inference of guilt when it is not inconsistent with the State's evidence." *State v. Bates*, 309 N.C. 528, 535 (1983).

D. Circumstantial Evidence

In ruling on a motion to dismiss, the trial judge may consider circumstantial as well as direct evidence. *State v. Salters*, 137 N.C. App. 553 (2000); *see also State v. Stone*, 323 N.C. 447, 452 (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."). The test for sufficiency is the same whether the evidence is circumstantial, direct, or a combination of the two. *State v. Jones*, 303 N.C. 500 (1981); 1 KENNETH S. BROUN, BRANDIS & BROUN ON NORTH CAROLINA EVIDENCE § 39, at 151 (8th ed. 2018).

Whether the evidence presented is direct or circumstantial, the trial judge must determine whether a reasonable inference of the defendant's guilt may be drawn from the evidence. *State v. Scott*, 356 N.C. 591 (2002). "[W]hile the State may base its case on circumstantial evidence requiring the jury to infer elements of the crime, that evidence must be real and substantial and not merely speculative." *State v. Reese*, 319 N.C. 110, 139 (1987). Once the judge decides that the circumstances give rise to a reasonable inference of the defendant's guilt, it is for the jury to decide whether the facts shown, taken singly or in combination, satisfy it beyond a reasonable doubt that the defendant is guilty. *See Scott*, 356 N.C. at 596; *see also State v. Irwin*, 304 N.C. 93 (1981).

E. Stacking of Inferences

Until the N.C. Supreme Court's ruling in *State v. Childress*, 321 N.C. 226 (1987), trial judges were not permitted to stack an inference on an inference in determining the sufficiency of the evidence in circumstantial evidence cases. *See, e.g.*, *State v. Holland*, 318 N.C. 602 (1986); *State v. Byrd*, 309 N.C. 132 (1983); *State v. LeDuc*, 306 N.C. 62 (1982). In *Childress*, the court found no reason to prohibit consideration of an inference that naturally arises from a fact proven by circumstantial evidence and overruled its prior decisions.

F. Weight of the Evidence

When the trial judge considers a motion to dismiss, he or she is "concerned only with the legal sufficiency of the evidence to support a verdict, not its weight, which is a matter for the jury." *State v. Blake*, 319 N.C. 599, 604 (1987); *see also State v. Garcia*, 358 N.C. 382, 412 (2004) ("A 'substantial evidence' inquiry examines the sufficiency of the evidence presented but not its weight."). Evidentiary contradictions and discrepancies are for the jury to resolve and do not warrant dismissal. *State v. Holton*, 284 N.C. 391 (1973).

G. Credibility of the Witnesses

Ordinarily, the credibility of witnesses and the proper weight to be given their testimony is to be determined by the jury, not by the judge on a motion to dismiss. *State v. Miller*, 270 N.C. 726, 730 (1967). In rare instances, where the testimony presented is inherently incredible, the evidence may be found to be insufficient to withstand a defendant's motion to dismiss. *Id.* at 732 (evidence was insufficient to support conviction where sole identification of defendant came from a State's witness who was at least 286 feet from the perpetrator where "it is apparent that the distance was too great for an observer to note and store in memory features which would enable him, six hours later, to identify a complete stranger with the degree of certainty which would justify the submission of the guilt of such person to the jury"); *see also Jones v. Schaffer*, 252 N.C. 368, 378 (1960) ("'As a general rule, evidence which is inherently impossible or in conflict with

indisputable physical facts or laws of nature is not sufficient to take the case to the jury, and in case of such inherently impossible evidence, the trial court has the duty of taking the case from the jury.'" (citations omitted)).