

## MOTIONS TO DISMISS FOR INSUFFICIENCY OF THE EVIDENCE

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### I. **When Made.** A motion to dismiss for insufficiency of the evidence may be made:

- upon close of the State's evidence;
- upon close of all the evidence;
- after return of a verdict of guilty and before entry of judgment; or
- after discharge of the jury without a verdict and before the end of the session.

G.S. 15A-1227(a). Failure to make the motion at the close of the State's evidence or after all the evidence is not a bar to making the motion at a later time. G.S. 15A-1227(b).

### II. **Judge Must Rule.** Whenever a motion to dismiss for insufficiency is made, the judge must rule on the motion before the trial can proceed. G.S. 15A-1227(c).

### III. **Standard.** When a motion to dismiss on grounds of insufficiency is made, the question for the trial judge is whether there is substantial evidence:

- of each essential element of the offense charged (or of a lesser-included offense) and
- that the defendant is the perpetrator.

State v. Scott, 356 N.C. 591, 595 (2002); State v. Hill, \_\_\_ N.C. \_\_\_, 715 S.E.2d 841, 842 (2011). Substantial evidence means the amount of relevant evidence necessary to persuade a rational juror to accept a conclusion. *Scott*, 356 N.C. at 597; *Hill*, 715 S.E.2d at 842.

If there is substantial evidence establishing both of these issues, the motion should be denied. *Scott*, 356 N.C. at 595; State v. Fleming, 350 N.C. 109, 142 (1999). On the other hand, if the evidence only raises a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator, the motion should be granted. *Scott*, 356 N.C. at 595; *Fleming*, 350 N.C. at 142.

**A. Uniform Standard.** This same standard applies regardless of when the motion to dismiss is made, *Scott*, 356 N.C. at 595 (motion made after verdict but before entry of judgment), and regardless of the type of evidence (direct, circumstantial, or both) presented by the State. *Id.* at 596; State v. Mercer, 317 N.C. 87, 97 (1986).

- B. Evidence Is Viewed in the Light Most Favorable to the State.** When considering a motion to dismiss, the judge must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences. *Scott*, 356 N.C. at 596; *Fleming*, 350 N.C. at 142; *Hill*, 715 S.E.2d at 843. Any contradictions or discrepancies arising from the evidence should be left for the jury to decide and do not warrant dismissal. *Scott*, 356 N.C. at 596; *Hill*, 715 S.E.2d at 843. The trial court should consider all evidence actually admitted, whether competent or not, that is favorable to the State. *Scott*, 350 N.C. at 596; *Fleming*, 350 N.C. at 142; *Hill*, 715 S.E.2d at 843. The defendant's evidence should be disregarded unless it is favorable to the State or does not conflict with the State's evidence. *Scott*, 356 N.C. at 596. Any of the defendant's evidence that does not conflict "may be used to explain or clarify the evidence offered by the State." *Id.*
- C. Weight of Evidence Irrelevant.** When ruling on a motion to dismiss, the trial court should assess only whether the evidence is sufficient for the jury to consider the charge, not the weight of the evidence. *Scott*, 356 N.C. at 596-97; *State v. Mercer*, 317 N.C. 87, 96-97 (1986).
- IV. Issues Raised in Motions to Dismiss.** Because of the nature of the motion to dismiss standard, the types of issues that can be raised are as varied as the types of criminal charges that can be brought. Thus, in a murder case a defendant may assert that the evidence is insufficient on the issue of intent to kill and in a sexual assault case the defendant may assert that the evidence is insufficient as to penetration. Typical claims include that the evidence is insufficient to establish that the defendant was the perpetrator, see, e.g., *Fleming*, 350 N.C. at 141; *Mercer*, 317 N.C. at 97, or that under the corpus delicti rule, there is insufficient independent evidence to corroborate the defendant's extrajudicial confession. For a discussion of the latter issue, see the section entitled "[Corpus Delicti](#)," in this benchbook.