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NO. COA01-1398

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

SAMMY DEAN BILLINGS

Iredell County
Nos. 99 CRS 17467,
99 CRS 22743

Appeal by defendant from judgment entered 18 April 2001 by Judge Richard L. Doughton in Iredell County Superior Court. Heard in the Court of Appeals 1 July 2002.

Attorney General Roy Cooper, by Assistant Attorney General Grady L. Balentine, Jr., for the State.

The Law Firm of Charles L. Alston, Jr. by Charles L. Alston, Jr. for defendant-appellant.

BRYANT, Judge.

Defendant Sammy Dean Billings was charged with felonious breaking and entering, larceny and attaining the status of habitual felon. The State's evidence tended to show that on the afternoon of 29 September 1999, Charles French (French) was asleep at home after having worked the third shift for Freightliner Corporation. A knock at his door awakened French. He looked out his window and saw a blue Ford Ranger truck. French "thought it was just a salesman," so he rolled back over in bed. He then heard the truck start up and drive through his yard. When his dogs started

barking, French went to his back door and looked outside.

French saw two men taking items out of his utility building and loading them onto the blue truck. French retrieved his shotgun, pointed it at defendant and commanded the two men to unload everything they had taken. French testified that the building had been padlocked and that the building contained a "couple thousand dollars worth of tools." He further testified that the approximate value of the property which had been removed before he confronted the men was in excess of \$1,000. Once his possessions were unloaded, French had the two men raise the truck tailgate so he could see the tag number. French then ordered defendant to accompany him to the back door of the house so he could call for help. While French called "911" on the speaker phone, defendant's accomplice started up the truck and defendant ran. French testified that he did not give consent to defendant or the accomplice to take property from his utility building.

Defendant did not present any evidence. A jury found defendant guilty of felonious breaking and/or entering and felonious larceny after breaking and/or entering. Defendant admitted to attaining the status of habitual felon. The trial court sentenced defendant to 120 to 153 months imprisonment.

Defendant contends the trial court erred by denying his motion to dismiss based on insufficiency of the evidence. The standard for ruling on a motion to dismiss "is whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v.*

Lynch, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). Substantial evidence is that relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *State v. Patterson*, 335 N.C. 437, 449-50, 439 S.E.2d 578, 585 (1994). In ruling on a motion to dismiss, the trial court must consider all of the evidence in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence. *State v. Davis*, 130 N.C. App. 675, 679, 505 S.E.2d 138, 141 (1998). "Any contradictions or discrepancies arising from the evidence are properly left for the jury to resolve and do not warrant dismissal." *State v. King*, 343 N.C. 29, 36, 468 S.E.2d 232, 237 (1996).

To prevail on the charge of breaking or entering against defendant in this case, the State must present substantial evidence of the breaking or entering of any building with the intent to commit any felony or larceny therein. *State v. White*, 84 N.C. App. 299, 301, 352 S.E.2d 261, 262, cert. denied, 321 N.C. 123, 361 S.E.2d 603 (1987). Larceny is the taking of another's property, and carrying it away without the owner's consent, and with the intent to permanently deprive the owner of the property. *State v. Boykin*, 78 N.C. App. 572, 576, 337 S.E.2d 678, 681 (1985). Defendant only argues there was insufficient evidence presented to identify defendant as the perpetrator of the crime.

Here, the victim testified that he saw two men loading his property located in a padlocked building onto a blue truck. The victim further testified that he pointed his shotgun at defendant

when he confronted the two men and that he ordered defendant to accompany him to the back door of his house. On cross-examination, the victim testified that he observed the defendant for approximately the five minutes it took defendant and his accomplice to unload the items from the truck. In the light most favorable to the State, this evidence is sufficient to submit the question of whether defendant was one of the perpetrators of the crimes to the jury. Accordingly, the trial court properly denied defendant's motion to dismiss.

No error.

Judges MARTIN and HUNTER concur.

Report per Rule 30(e).