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NO. COA01-574

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

JERRY LEE BURNS

Forsyth County
Nos. 00 CRS 35132
00 CRS 54324
00 CRS 54326

Appeal by defendant from judgment entered 16 November 2000 by Judge Catherine C. Eagles in Forsyth County Superior Court. Heard in the Court of Appeals 24 June 2002.

Attorney General Roy Cooper, by Assistant Attorney General Merrie Jo Alcoke, for the State.

Lisa S. Costner for defendant-appellant.

TIMMONS-GOODSON, Judge.

Jerry Lee Burns ("defendant") was charged with two counts of attempted larceny of a motor vehicle and having attained the status of habitual felon. The State's evidence tends to show that on the night of 12 August 2000, members of a private security company, Larry Gilbert ("Gilbert") and Ronald Holmes ("Holmes"), were conducting surveillance of North Point Chrysler Jeep in Winston-Salem, North Carolina, in response to reported vandalism at the dealership. Two unlocked decoy vehicles -- a 1999 Chrysler van and a 1998 Jeep Cherokee -- had been placed on the lot in an attempt to

catch the persons who had previously vandalized other cars. Both of the vehicles were in good condition at the time that they were placed on the lot. At about 11:00 p.m., Holmes observed three males approach the lot. The three men ducked when a car went by, and then began to rummage through the cars. Holmes identified defendant as one of the persons he observed going into the two decoy vehicles. The other two perpetrators were observed by Holmes going through other cars on the lot. Holmes notified Gilbert, who was parked nearby, and Gilbert called the Winston-Salem Police Department.

When officers arrived several minutes later, the men fled. Holmes and the officers gave chase. Holmes caught defendant trying to climb over a fence. Defendant then threw up his hands and walked towards Holmes, whereupon he was arrested by Officer P.M. Felske, of the Winston-Salem Police Department. Officer Felske found a flat head screw driver along the fence line, near two of the bicycles ridden by defendant and the two other men. A search of the car lot revealed that the Jeep's ignition cylinder had been removed. In addition, the Jeep's glove compartment appeared to have been removed. Another van on the car lot, near the other two perpetrators, had the lock assembly removed from the rear hatch. Further, the lock cylinders were removed from the vehicles and they appeared to have been searched. Officer Felske testified that once an automobile's ignition cylinder has been removed, a person can start it with a flat head screw driver. The sole latent fingerprint lifted from the vehicle could not be matched to

defendant.

Defendant did not present any evidence. A jury found defendant guilty of the larceny charges, and defendant admitted to having attained the status of habitual felon. The trial court consolidated the charges for judgment, and sentenced defendant to a presumptive term of 107-138 months imprisonment. Defendant appeals.

By his sole assignment of error on appeal, defendant argues that the trial court erred in denying his motion to dismiss. Specifically, defendant contends that there was not sufficient evidence that defendant was the perpetrator of the subject attempted larcenies. We disagree.

A trial court properly denies a motion to dismiss if "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 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Lucas*, 353 N.C. 568, 580-81, 548 S.E.2d 712, 721 (2001). In ruling on a motion to dismiss, the trial court must view the evidence -- direct, circumstantial, or both -- in the light most favorable to the State, and give the State the benefit of every reasonable inference from that evidence. *Id.*

To obtain a conviction for attempted larceny, the State must show (1) an intent to take and carry away the property of another,

(2) without the consent of the property's owner, (3) with the intent to permanently deprive the owner of the property, (4) an overt act done for the purpose of completing the larceny, going beyond mere preparation, and (5) falling short of the completed offense. *State v. Weaver*, 123 N.C. App. 276, 287, 473 S.E.2d 362, 369, cert. denied, 344 N.C. 636, 477 S.E.2d 53 (1996). While defendant argues to the contrary, the evidence in the light most favorable to the State more than adequately establishes each of the elements of attempted larceny of a motor vehicle and identifies defendant as the perpetrator of that offense.

Ronald Holmes and Larry Gilbert, employees of a private security company, were staking out the car dealership in response to previous acts of vandalism at the car lot. Holmes specifically testified that defendant was observed riding onto the lot of North Point Chrysler Jeep on the night of 12 August 2000, and then breaking and entering into two decoy vehicles. Defendant arrived at the lot well after the dealership's business hours, and ducked when a car approached. Further, when police were called and arrived on the scene, defendant attempted to flee, but was caught climbing a nearby fence. Subsequent examination of the decoy vehicles revealed that the ignition cylinders of the van and the Jeep had been removed and the glove compartments had been searched. Finally, a flat head screw driver, which can be used to start a car once the ignition cylinder is removed, was found near the fence which defendant attempted to climb on the night of 12 August 2000. We therefore conclude that the trial court did not err in denying

defendant's motion to dismiss.

Having so concluded, we hold that defendant received a fair trial, free from prejudicial error.

No error.

Chief Judge EAGLES and Judge MCCULLOUGH concur.

Report per Rule 30(e).