NO. COA11-137
NORTH CAROLINA COURT OF APPEALS

Filed: 4 October 2011

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 09CRS250212-13,
LARRINGTON ALANDO WILSON, 10CRS000058
Defendant.

Appeal by defendant from judgment entered 2 September 2010 by Judge Robert C. Ervin in Superior Court, Mecklenburg County. Heard in the Court of Appeals 1 September 2011.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Iain Stauffer, for the State.

Winifred H. Dillon, for defendant-appellant.

STROUD, Judge.

Defendant appeals his convictions for felonious breaking or entering and larceny after breaking or entering. For the following reasons, we affirm.

I. Background

The State's evidence tended to show that in July 2009, Mr. Slater went out of town. When Mr. Slater returned home "the whole house was turned over. There was windows broken, the

whole house was just flipped." Mr. Slater noticed that cds, speakers, keyboards, recordings, and a flat screen television were missing from his home. Mr. Slater called the police. Ms. Michelle Scheuerman, a crime scene investigator of the Charlotte-Mecklenburg Police Department, collected defendant's fingerprints from the exterior of a broken window in the kitchen and the exterior of a window in the master bedroom of Mr. Slater's house.

On or about 2 November 2009, defendant was indicted for felonious breaking or entering and larceny after breaking or entering. Defendant was tried by a jury and found guilty of both charges. The trial court entered judgment, and defendant appeals.

II. Motion to Dismiss

Defendant contends that "the trial court erred in denying defendant's motion to dismiss the charges of felony breaking and entering and felony larceny because the State failed to present sufficient evidence that defendant was the perpetrator of the crimes charged." (Original in all caps.)

> The standard of review for a motion to dismiss is well known. A defendant's motion to dismiss should be denied if there is substantial evidence of: (1) each essential element of the offense charged, and (2) of defendant's being the perpetrator of the

> charged offense. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The Court must consider the evidence in the light most favorable to the State and the State is entitled to every reasonable inference to be drawn from that evidence.

State v. Johnson, ___ N.C. App. ___, ___, 693 S.E.2d 145, 148 (2010) (citations and quotation marks omitted). Here, defendant does not challenge the sufficiency of the evidence regarding the elements of the offenses, but instead contends that the State's fingerprint evidence is not enough to establish that he was "the perpetrator of the charged offense[s]." *Id.* Defendant directs our attention to *State v. Irick*, 291 N.C. 480, 231 S.E.2d 833 (1977) and *State v. Gilmore*, 142 N.C. App. 465, 542 S.E.2d 694 (2001).[1]

In *Irick*, the defendant's fingerprint was found in the area "around the window sill." *Irick*, 291 N.C. at 486, 231 S.E.2d at 838. Our Supreme Court stated,

> If the fingerprint evidence were the only evidence tending to show that the defendant perpetrated the burglary at the Hipp house, we would be hard pressed to hold that there was sufficient evidence to take

[1] Defendant also directs this Court's attention to an unpublished opinion which we do not consider. *See* N.C.R. App. P. 30(e)(3) ("An unpublished decision of the North Carolina Court of Appeals does not constitute controlling legal authority.")

> the case to the jury. Fingerprint evidence, standing alone, is sufficient to withstand a motion for nonsuit only if there is substantial evidence of circumstances from which the jury can find that the fingerprints could only have been impressed at the time the crime was committed. What constitutes substantial evidence is a question of law for the court.
>
> Circumstances tending to show that a fingerprint lifted at the crime scene could only have been impressed at the time the crime was committed include statements by the defendant that he had never been on the premises; statements by prosecuting witnesses that they had never seen the defendant before or given him permission to enter the premises.
>
> In the instant case none of the above circumstances were demonstrated. Mrs. Hipp testified only that no one had permission to enter her home on the night in question. Admittedly, defendant's print was found on the inside frame of the window from which the tissue box and pasteboard had been removed on the night of the burglary, but other unidentified prints were found on and around the same window. These facts do not constitute substantial evidence that the print could have only been impressed at the time of the alleged burglary.

Irick at 491-92, 231 S.E.2d at 841 (citations, quotation marks, and parenthetical omitted).[2]

In *Gilmore*,

> the State presented evidence Defendant's

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[2] In *Irick*, the Supreme Court ultimately determined there was substantial evidence that the defendant was the perpetrator of the crime based upon other circumstantial evidence not relevant to this case. *See Irick* at 492-93, 231 S.E.2d at 842.

> fingerprint was present on a piece of glass from the broken window, which was located on the ground outside the store. The State presented evidence the outside portion of the window was accessible to the public, and Ritter, who lifted the print, did not determine whether the print was made on the inside or outside portion of the window glass. Additionally, the State presented evidence Defendant was a customer in the store near or on the day of the break-in. This evidence shows Defendant was lawfully present in the store prior to the break-in; therefore, Defendant's print may have been impressed on the glass prior to the time the crime was committed. Moreover, there are no additional circumstances tending to show Defendant's fingerprint was impressed at the time of the break-in. The fingerprint evidence, therefore, is not substantial evidence Defendant was the perpetrator of the break-in at Carolina Custom Golf.

Gilmore, 142 N.C. App. at 470, 542 S.E.2d at 698 (footnote omitted). We find both *Irick* and *Gilmore* inapposite to this case. *See Irick*, 291 N.C. 480, 231 S.E.2d 833; *Gilmore*, 142 N.C. App. 465, 542 S.E.2d 694.

In both *Irick* and *Gilmore* only one fingerprint was found. *See Irick*, 291 N.C. at 486, 231 S.E.2d at 838; *Gilmore*, 142 N.C. App. at 470, 542 S.E.2d at 698. Here, defendant's fingerprints were found on two separate windows in Mr. Slater's house: the broken window in the kitchen which appeared to be the point of entry and the unlocked window in the master bedroom which appeared to be the point of exit.

Furthermore, in *Irick*, the Supreme Court noted that the victim "testified only that no one had permission to enter her home on the night in question" and did not testify that she "had never seen the defendant before or given him permission to enter the premises[.]" *Irick*, 291 N.C. at 492, 231 S.E.2d at 841. In *Gilmore*, our Court noted that the "Defendant was lawfully present in the store prior to the break-in; therefore, Defendant's print may have been impressed on the glass prior to the time the crime was committed." *Gilmore*, 142 N.C. App. at 470, 542 S.E.2d at 698. Here, Mr. Slater specifically testified: "I never saw [defendant] before in my life[;]" and when he went out of town he did not give anyone, including defendant, permission to be in his house. *Irick*, 291 S.E.2d at 492, 231 S.E.2d at 841 ("Circumstances tending to show that a fingerprint lifted at the crime scene could only have been impressed at the time the crime was committed include . . . statements by prosecuting witnesses that they had never seen the defendant before or given him permission to enter the premises[.]") As noted above, "[f]ingerprint evidence, standing alone, is sufficient to withstand a motion for nonsuit only if there is substantial evidence of circumstances from which the jury can find that the fingerprints could only have been

impressed at the time the crime was committed." *Id.* at 492-93, 231 S.E.2d at 841. As Mr. Slater's testimony that he had never before seen defendant nor given him permission to enter his home shows "circumstances from which the jury can find that the fingerprints could only have been impressed at the time the crime was committed[,]" defendant's fingerprints were substantial evidence that defendant was the perpetrator of the crime. *Id.* at 492, 231 S.E.2d at 841. Accordingly, the trial court properly denied defendant's motion to dismiss. This argument is overruled.

III. Conclusion

For the foregoing reasons, we find no error.

NO ERROR.

Judges GEER and THIGPEN concur.

Report per Rule 30(e).