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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-1091

Filed: 15 August 2017

Mecklenburg County, No. 12 CRS 253254

STATE OF NORTH CAROLINA

v.

JAMES RUSSELL LOCKETT

Appeal by defendant from judgment entered 4 May 2015 by Judge Linwood O. Foust in Mecklenburg County Superior Court. Heard in the Court of Appeals 31 July 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General James D. Concepción, for the State.

Gilda C. Rodriguez, for defendant-appellant.

CALABRIA, Judge.

James Russell Lockett (“defendant”) appeals from a judgment entered 4 May 2015 upon a jury verdict finding him guilty of felonious breaking or entering. We hold the State presented sufficient evidence that defendant was the perpetrator of the offense of breaking or entering for which he was tried, and the trial court did not err in denying defendant’s motion to dismiss.

I. Factual and Procedural Background

At trial, the evidence established that sometime between 9 and 12 November 2012, a person broke into an apartment building through an attic access hatch and then entered a vacant apartment by smashing a hole through the ceiling. Once inside the apartment, the person could not leave through the front door, because its lock required a key to open from both outside and inside the apartment. There was no other door in the apartment, and a rear window had been broken out. Investigators obtained fingerprints from the window and matched them to defendant.

Officers arrested defendant based on the fingerprints they found on the window and questioned him about the break-in. Defendant provided a voluntary statement to the officers and stated he did not know how his fingerprints were left at the crime scene, that he did not work in the area, and that he had never been to that apartment complex. The manager of the apartment complex, however, testified that she recognized defendant and had seen him walk through the grounds of the apartment complex.

Defendant did not present any evidence at trial, but did move to dismiss the charges against him. The trial court denied defendant's motion to dismiss, and the jury returned a verdict finding defendant guilty of felonious breaking or entering. The trial court sentenced defendant to a term of 6 to 17 months' imprisonment in the custody of the North Carolina Department of Adult Correction. The trial court then

suspended defendant's sentence, and placed him on supervised probation for 18 months. Defendant gave oral notice of appeal in open court.

II. Motion to Dismiss

Defendant's sole argument on appeal is that the trial court erred in denying his motion to dismiss, because the State's evidence was insufficient to show that he was the perpetrator of the breaking or entering. We disagree.

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (citations), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). Moreover, it is well established that:

[T]estimony by a qualified expert that fingerprints found at the scene of the crime correspond with the fingerprints of the accused, when accompanied by substantial evidence of circumstances from which the jury can find that the

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fingerprints could only have been impressed at the time the crime was committed, is sufficient to withstand motion for nonsuit and carry the case to the jury.

State v. Miller, 289 N.C. 1, 4, 220 S.E.2d 572, 574 (1975). This Court has further explained:

[T]he existence of physical evidence establishing a defendant's presence at the crime scene, combined with the defendant's statement that he was never present at the crime scene and the absence of any evidence that defendant was ever lawfully present at the crime scene, permits the inference that the defendant committed the crime and left the physical evidence during the crime's commission.

State v. Carver, 221 N.C. App. 120, 122, 725 S.E.2d 902, 904 (2012) (citing *Miller*, 289 N.C. at 6, 220 S.E.2d at 575), *aff'd per curiam*, 366 N.C. 372, 736 S.E.2d 172 (2013).

The inference permitted by *Carver* constitutes 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. *See id.* at 122-23, 725 S.E.2d at 904-05; *see also State v. Wade*, 181 N.C. App. 295, 299, 639 S.E.2d 82, 86 (2007).

Here, a qualified expert testified that fingerprints found on the apartment's broken window corresponded with defendant's fingerprints. Although defendant did not testify at trial, he provided a voluntary statement to investigating officers that he had never been in the neighborhood where the apartment was located and did not know how his fingerprints were found on the window. Additionally, there was no evidence that defendant was ever lawfully present at the crime scene.

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This evidence permits an inference that defendant left his fingerprints on the window during the commission of the breaking or entering and is sufficient to overcome defendant's motion to dismiss. Accordingly, we hold the trial court did not err in denying defendant's motion to dismiss based on a lack of substantial evidence that he committed the offense of breaking or entering, and conclude defendant received a fair trial, free from error.

NO ERROR.

Judges TYSON and MURPHY concur.

Report per Rule 30(e).