NO. COA02-118

NORTH CAROLINA COURT OF APPEALS

Filed: 19 November 2002

STATE OF NORTH CAROLINA

v. Randolph County
No. 99 CRS 14677-79

JERRY BAXTER HUGHES

Appeal by defendant from judgment entered 6 September 2001 by Judge Howard R. Greeson, Jr. in Randolph County Superior Court. Heard in the Court of Appeals 28 October 2002.

Attorney General Roy Cooper, by Assistant Attorney General Donna D. Smith, for the State.

Nancy R. Gaines for defendant.

TYSON, Judge.

On 5 September 2001, a jury convicted Jerry Baxter Hughes ("defendant") of two counts of injury to personal property and one count of discharge of a firearm into occupied property. Defendant was sentenced to 29 to 44 months. We find no error.

I. Facts

Kenneth Schatz and defendant lived within a half-mile of each other. Defendant owned multiple German Shepard dogs which sometimes ran free through the neighborhood. Schatz had suffered problems with the dogs coming onto his property and around his daughter. He had attempted to tie the dogs up, had called the

pound, and had taken the dogs to defendant's step-son who lived nearby. A few days before 30 October 1999, the dogs returned to Schatz's property. He could not get them to leave his property. "Because of the aggression" of the dogs, Schatz was concerned for the safety of his child. He placed his daughter inside his home and threw sticks at the dogs in attempts to get them to leave. "And I couldn't get them to go, so I went back in and got the gun. And I shot one of the dogs" in the leg.

Schatz testified that at 4:00 a.m. on 31 October 1999, "I was woke up by gun shots." His wife and one of his children were with him inside the home. He went outside but was unable to see who had fired the gun. Schatz saw a car backing out of the neighbor's driveway who was not at home. Schatz believed that defendant shot at his home in retaliation for Schatz shooting defendant's dog.

The Schatz family could not go back to sleep and decided to go eat breakfast. Upon reaching the vehicle, they realized the van had been shot. Schatz checked the other vehicle and realized that it had also been shot. A bullet had penetrated the Schatz's residence and was stopped by his son's dresser, a few feet away from his bed.

Schatz's neighbor testified that at 8:00 a.m. that morning a man returned to the Schatz's home and fired a Tech-9 gun toward the vehicles from the window of a small burgundy vehicle. Ronald Burch testified that he traded a Tech-9 gun to defendant in exchange for defendant painting his car.

Thomas L. McIver, an investigator for the Randolph County

Sheriff's Office, arrived on the scene and interviewed the Schatz family and their neighbor. Detective McIver went to defendant's residence and business where he found multiple shell casings similar to those found at the Schatz residence. Defendant was initially not at home, but drove up in a burgundy colored 1989 Cutlass Oldsmobile later that morning. While talking with Detective McIver, defendant confessed that he fired the shots at the Schatz's vehicles in retaliation for Schatz shooting his dog. Defendant also stated that he did not intend to shoot into the home but "I just shot at the cars." Detective McIver found shell casings in the floor of defendant's car. Defendant was intoxicated at the time.

At the end of State's evidence, defendant moved to dismiss the charges for insufficient evidence, specifically the charge of discharging a firearm into occupied property. The trial court denied defendant's motion.

Defendant called John Conner who refused to testify on Fifth Amendment grounds and was declared unavailable as a result. Defendant then called Detective McIver back to the stand. Detective McIver testified that, during the summer of 2000, Conner confessed to being the perpetrator of the shooting on the Schatz property. Conner worked for defendant and believed that defendant had confessed to protect Conner. On cross-examination, Detective McIver testified that there was no evidence that Conner was involved and that his confession contained few details about what actually happened.

At the end of all evidence, the trial court denied defendant's renewed motion to dismiss. The jury found defendant guilty of discharge of a firearm into occupied property, and both counts of injury to personal property. Defendant appeals.

II. Issue

Defendant contends the trial court erred in denying his motions to dismiss the charge of discharging a firearm into an occupied dwelling for insufficient evidence.

III. Motion to Dismiss

A motion to dismiss should be denied when there is substantial evidence of (1) each element of the offense charged and (2) that the defendant is the perpetrator of the crime. *State v. Davis*, 130 N.C. App. 675, 678, 505 S.E.2d 138, 141 (1998). "Substantial evidence is evidence from which a rational finder of fact could find the fact to be proved beyond a reasonable doubt." *Id.* (citing *State v. Vause*, 328 N.C. 231, 236, 400 S.E.2d 57, 61 (1991)). "When ruling on a motion to dismiss, all of the evidence should be considered in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence." *Id.* at 679, 505 S.E.2d at 141 (citing *State v. Mitchell*, 109 N.C. App. 222, 224, 426 S.E.2d 443, 444 (1993)).

N.C. Gen. Stat. § 14-34.1 states "Any person who willfully or wantonly discharges or attempts to discharge: ... (2) A firearm into any building, structure, vehicle, aircraft, watercraft, or other conveyance, device, equipment, erection, or enclosure while it is occupied is guilty of a Class E felony." Our Supreme Court

has held that "a person is guilty of the felony created by G.S. 14-34.1 if he intentionally, without legal justification or excuse, discharges a firearm into an occupied building with knowledge that the building is then occupied by one or more persons or when he has reasonable grounds to believe that the building might be occupied by one or more persons." *State v. James*, 342 N.C. 589, 596, 466 S.E.2d 710, 715 (1996) (quoting *State v. Williams*, 284 N.C. 67, 73, 199 S.E.2d 409, 412 (1973)).

Defendant contends that there was insufficient evidence that (1) "defendant intentionally discharged a firearm in to the Schatz's home" and (2) "the shot was fired when the defendant knew or reasonably should have know that the home was occupied." We disagree.

1. Intentionally Discharging a Firearm into Schatz's Home

Defendant relies on *State v. Watson*, 66 N.C. App. 306, 311 S.E.2d 381 (1984) for the proposition that a specific intent was a necessary element of discharging a firearm into an occupied property. Since *Watson* was decided, our Courts have repeatedly held that discharging a firearm into an occupied property "is a general intent crime." *State v. Jones*, 339 N.C. 114, 148, 451 S.E.2d 826, 844 (1994). *See also*, *State v. Byrd*, 132 N.C. App. 220, 510 S.E.2d 410 (1999), *State v. Fletcher*, 125 N.C. App. 505, 481 S.E.2d 418, *disc. rev. denied*, 346 N.C. 285, 487 S.E.2d 560, *cert. denied*, 522 U.S. 957, 139 L. Ed. 2d 299 (1997).

In *State v. Wheeler*, 321 N.C. 725, 365 S.E.2d 609 (1988), our Supreme Court held that "any rational trier of fact could find the

defendant intended to fire into the vehicle from the evidence that the defendant pointed the pistol toward the vehicle and fired the pistol so that a bullet went into the vehicle." *Wheeler*, 321 N.C. at 727, 365 S.E.2d at 610. The Court also stated that a defendant's exculpatory statement that he did not intend to shoot into a vehicle was not sufficient to have a case dismissed where that statement was contradicted by evidence that the defendant fired a pistol at the vehicle. *Id.* at 728, 365 S.E.2d at 728.

Evidence of intent to fire at the home can be inferred from the fact that defendant intentionally discharged his weapon into an area where the home was located. In *James*, our Supreme Court held that intent to fire at a vehicle could be inferred from defendant's intentionally firing at a club and the parking lot surrounding the club where the vehicle was parked. *James*, 342 N.C. at 597, 466 S.E.2d at 715.

Here, defendant confessed to Detective McIver that he intentionally fired his weapon at vehicles located in front of the Schatz residence and in very close proximity to the son's bedroom in retaliation for Schatz shooting defendant's dogs. Although defendant stated he did not intend to fire at the house, this statement is contradicted by evidence that defendant fired "probably eighteen to twenty, maybe more than that" rounds at 4:00 a.m. in the immediate area of the Schatz's residence. Shell casings from the gun were strewn about the yard. A rational trier of fact could find that defendant intended to fire into the home when he pointed and fired his weapon at vehicles parked in front of

the home.

2. Occupation of the Home

Defendant contends that there was no evidence to show that he knew or reasonably should have known that the home was occupied. He further contends there was no evidence to show whether the bullet entered the residence when it was occupied at 4:00 a.m. or when it was unoccupied at 8:00 a.m. We disagree.

Schatz's son testified that one of the shots he heard was louder than the other shots. Mrs. Schatz also testified that it "sounded like something was coming through the trailer." Viewed in the light most favorable to the State, this testimony is sufficient evidence for the jury to find that the bullet entered the residence when it was occupied at 4:00 a.m. A reasonable jury could also conclude that defendant knew or should have known that the Schatz's home was occupied at 4:00 a.m. when both vehicles were parked in front.

IV. Conclusion

We hold that the trial court did not err in denying defendant's motion to dismiss the charge of discharge of a firearm into occupied property.

No Error.

Chief Judge EAGLES and Judge THOMAS concur.

Report per Rule 30(e).