NO. COA05-959

NORTH CAROLINA COURT OF APPEALS

Filed: 16 May 2006

STATE OF NORTH CAROLINA

v. Wake County
No. 04CRS013661

ANTHONY WILLIAMS JONES

Appeal by defendant from judgment entered 2 September 2004 by Judge A. Leon Stanback in Wake County Superior Court. Heard in the Court of Appeals 8 May 2006.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Douglas W. Corkhill, for the State.

Massengale & Ozer, by Marilyn G. Ozer, for defendant-appellant.

HUNTER, Judge.

A jury found Anthony Williams Jones ("defendant") guilty of attempted first degree arson, whereupon he admitted his habitual felon status. The trial court sentenced defendant as an habitual felon to an active prison term of 115 to 147 months. Defendant gave timely notice of appeal. For the reasons stated herein, we find no error.

At trial, Jonathan Beamon ("Beamon") testified that defendant came to his residence at Jeffrey's Mobile Home Park on Poole Road in Wake County, North Carolina, on 28 February 2004, demanding the

repayment of $275.00 which his friend, Stacy Hendrix ("Hendrix"), had given Beamon for the purpose of purchasing marijuana. Inside the trailer with Beamon were his two children, who were two and four years old. Beamon's mother, Minnie Flinchum ("Flinchum"), also lived in the residence, but was not at home. Defendant "pushed his way in the house [and] started ranting and raving about how he was going to beat [Beamon] up[.]" He told Beamon that the $275.00 belonged to him, "and he was going to kick [Beamon's] ass if [he] didn't have this money[.]" Beamon sat down on the couch with his children, who "were screaming and crying[,]" and told defendant that he was not going to fight in front of them. He picked up the telephone and told defendant that "he was calling the police [and defendant] needed to leave." Defendant drove away from the trailer. The police arrived, took a description of the intruder from Beamon, and told him that he "would have to go down and file papers on [defendant]." Beamon then called Hendrix and asked for defendant's name to give to the police. She identified defendant as Anthony William[1] Jones.

After speaking to Hendrix, Beamon tried "to calm [his] kids down" and phoned Flinchum, who said that she was coming home from

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[1] We note that on some documents, defendant's middle is William and other documents have defendant's middle name as Williams. However, the **judgment** of conviction in this case refers to defendant as Anthony Williams Jones. As we use the **name** on the **judgment** in the captions of appellate opinions, defendant's name appears as Anthony Williams Jones on the caption. Neither party has raised any issues related to the discrepancy in the names. We do encourage all parties, however, to ensure a defendant's correct name is placed on all court documents to help facilitate appellate review.

work. Beamon then heard someone knocking on his front door. Peering through a window, he saw defendant. After "beating on the door" and threatening Beamon, defendant walked to his car, obtained a jack from the trunk, and began beating on Beamon's door with the jack. Beamon called the police and reported "that this guy is trying to beat my door in" and that Beamon had two small children in the trailer. After hearing defendant throw down the jack onto his deck, Beamon "start[ed] smelling kerosene." He looked out of his window and saw defendant "standing at the door pouring kerosene on [the] front door and all down the side, down the deck" with a can of kerosene that Beamon had been using with a heater. With his children "screaming and crying to the top of their lungs," Beamon called the police a second time and said, "[t]his guy is going to burn my house down with my two kids in this house." He then noticed that kerosene was coming into the house underneath the front door. Beamon could hear defendant yelling, "I'm going to burn your f-ing house down if you don't open this f-ing door." Beamon looked out of the window again and saw that defendant had spread kerosene "from about 5[feet] up on the front door down . . . [and] all the way that's down the side of the trailer as far as he could reach." Holding a cigarette lighter in his hand, defendant then "squatted down like he's going to burn my house down with a lighter" and again screamed, "I'm going to burn your f-ing house down if you don't open the door." Defendant held the lighter six to twelve inches from the deck for approximately one minute until Beamon's mother arrived and "jumped straight out of the car

yelling and screaming." Defendant was yelling at Flinchum when the deputy sheriff arrived.

Flinchum testified that when she arrived at the house, she observed a red car parked in the driveway and then "saw someone bent down on my porch at my front door" as though he was "looking under [the] door." She "jumped out of the car and started hollering" at defendant, who came down from the porch and "was yelling and cursing" at her. She heard her two grandchildren "screaming and hollering" and told defendant that he knew the children were in the house and "he needed to leave." Flinchum walked onto the front porch and "saw the kerosene all over the place[.]" When she entered the trailer, she saw "kerosene all over [her] floor."

Wake County Sheriff's Deputy Barry Jones ("Deputy Jones") responded to the scene and saw defendant come off of the trailer's deck and begin arguing heatedly with Flinchum in the yard. Deputy Jones conducted a pat-down frisk of defendant and found two cigarette lighters in his front pocket. Defendant told Deputy Jones that Beamon owed him money and explained that "he kicked the kerosene can because it was blocking the door." Deputy R. K. Whitlow ("Deputy Whitlow") observed a

> blue kerosene can laying on the ground off to the side . . . [and] the pink liquid that had been poured down the side of the trailer . . . [which] appeared to extend from the window on one side down the side of the trailer to the window on the other with a good bit of pooling in the snow.

Deputy Whitlow also saw "a good bit [of kerosene] dripping down the front of the door inside -- on the inside of the door . . . into the house running down the face of it."

Captain Michael Arnold of Eastern Wake Fire and Rescue ("Captain Arnold") testified that kerosene burned only after it was heated to its "flash point" and produced enough vapor to ignite. The ignition source could be placed in the air above the kerosene or on the kerosene "just so it could heat it up so it could produce those vapors." According to Captain Arnold, the fact that snow was on the ground on 28 February 2004 would have delayed the speed at which the kerosene reached its flash point and ignited.

Defendant offered no evidence but moved to dismiss the charge at the conclusion of the State's case. The trial court denied his motion to dismiss.

On appeal, defendant first claims the evidence was insufficient to sustain the charge of attempted arson, absent a showing that he actually intended to burn the trailer, rather than merely to threaten Beamon. While acknowledging the "copious evidence that kerosene had been poured across the deck" of the trailer, he insists that "the State's only physical evidence that [he] intended to light the spilled kerosene was his possession of two BIC lighters." Defendant avers the evidence revealed the countervailing circumstances reflecting his intention only to threaten Beamon. He points to Jones's testimony that he might have had cigarettes in his pocket, thereby explaining his possession of the lighters. Defendant further notes that he did not bring the

kerosene to the scene, that he splashed kerosene on his own clothing and thus risked burning himself if he burned the trailer, and that he made other "empty threats" toward Beamon.

We review defendant's challenge to the sufficiency of the evidence under the following familiar standard:

> The evidence is sufficient to sustain a guilty verdict if substantial evidence was presented on every element of the offense charged. "Substantial evidence" is defined as that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. In ruling upon defendant's motion[] challenging the sufficiency of the evidence, the trial court is required to interpret the evidence in the light most favorable to the State, drawing all reasonable inferences therefrom in the State's favor.

State v. Wright, 302 N.C. 122, 126, 273 S.E.2d 699, 703 (1981) (citations omitted). To withstand a motion to dismiss, the evidence of defendant's guilt "'must be existing and real but need not exclude every reasonable hypothesis of innocence.'" *State v. Walker*, 332 N.C. 520, 533, 422 S.E.2d 716, 723-24 (1992) (citation omitted).

The crime of arson is defined as "the willful and malicious burning of the dwelling house of another person." *State v. Eubanks*, 83 N.C. App. 338, 339, 349 S.E.2d 884, 885 (1986). First degree arson includes the burning of a "mobile home or manufactured-type house or recreational trailer home which is the dwelling house of another and which is occupied at the time of the burning[.]" N.C. Gen. Stat. § 14-58.2 (2005). Here, defendant was found guilty of attempted arson. "The elements of an attempt to commit any crime are: (1) the intent to commit the substantive

offense, and (2) an overt act done for that purpose which goes beyond mere preparation, but (3) falls short of the completed offense." *State v. Miller*, 344 N.C. 658, 667, 477 S.E.2d 915, 921 (1996). A person's subjective intent typically "'"must be proved, if proven at all, by circumstantial evidence, that is, by proving facts from which the fact sought to be proven may be reasonably inferred."'" *State v. Alexander*, 337 N.C. 182, 188, 446 S.E.2d 83, 86-87 (1994) (citations omitted). Accordingly, the charge of attempted first degree arson may be sustained upon "evidence from which a jury could reasonably find that there was an attempt to burn [an occupied dwelling] which failed[.]" *State v. Shaw*, 305 N.C. 327, 342, 289 S.E.2d 325, 333 (1982).

We conclude the State adduced substantial evidence that defendant attempted to burn the trailer occupied by Beamon and his children on 28 February 2004. Defendant's actions of dousing the front of the trailer with kerosene and then holding his lighter up to the dwelling were overt acts beyond mere preparation sufficient to constitute an attempt to burn the structure. Moreover, we find that the circumstances, including defendant's threats to Beamon, supported a reasonable inference that defendant actually intended to burn the trailer, knowing it was occupied, but was interrupted by Flinchum before the kerosene reached its flash point. While defendant insists on appeal that his threats to burn the trailer were empty, "'[a] man's intentions can only be judged by his words and deeds; he must be taken to intend those consequences which are the natural and immediate results of his acts.'" *State v. Webb*,

309 N.C. 549, 557, 308 S.E.2d 252, 257 (1983) (quoting *State v. Smith*, 268 N.C. 167, 173, 150 S.E.2d 194, 200 (1966)). The possibility that defendant was merely pretending to ignite the kerosene in order to goad Beamon into opening his door was a matter for the jury to consider, but did not exclude a finding of guilt. *See Walker*, 332 N.C. at 533, 422 S.E.2d at 723-24. Because the evidence was sufficient to support the charge, we overrule this assignment of error.

Defendant next avers the trial court committed reversible error by overruling his objection to "inflammatory, grossly prejudicial, victim impact, hearsay evidence concerning the key issue to be decided by the jury[.]" The transcript reflects defendant's objection to the following testimony by Beamon regarding the effect of the incident upon his daughter:

> Q. What were your children doing [as defendant was pouring kerosene on your door]?
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> A. Running around screaming and crying man. My little girl knows what's going on. She's four years old. She's very intelligent. It's kind of scary to be honest with you to have a four year old little girl that looks at you to this day and says, daddy, that man is not going to come burn our house down right before she goes to sleep. I'm looking at my little girl, no baby, I would never let this happen.
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> [DEFENSE COUNSEL]: Objection, your Honor.
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> THE COURT: Overruled.

Defendant offered no grounds for his objection and did not ask to be heard on the issue. He now contends that Beamon's testimony about his daughter's response was hearsay, "expressing her belief

that [defendant]'s intent was to burn her house down." Defendant further claims that a father's testimony regarding the fear of his young daughter invited the jury to rule based on emotion rather than the objective facts.

"'A general objection, when overruled, is ordinarily not adequate unless the evidence, considered as a whole, makes it clear that there is no purpose to be served from admitting the evidence.'" *State v. Perkins*, 154 N.C. App. 148, 152, 571 S.E.2d 645, 648 (2002) (quoting *State v. Jones*, 342 N.C. 523, 535, 467 S.E.2d 12, 20 (1996)). Here, "[d]efendant's counsel gave no basis for the objection[] and the transcript does not clearly demonstrate grounds for the objection[]." *Id.* Accordingly, having failed to articulate the grounds for his objection, defendant failed to properly preserve this issue for appeal. *Id.* (citing *State v. Gardner*, 315 N.C. 444, 447, 340 S.E.2d 701, 704 (1986)).

We note that Beamon's trial testimony was replete with additional references to his children "screaming and crying[,]" "freaking out[,]" "flipping out[,]" and being "petrified" and "terrified" in response to defendant's assault on their residence. Brent Boykin of the Raleigh Wake County 911 Center testified that he "remember[ed] . . . hearing the kids or children screaming in the background" during Beamon's 911 call. Flinchum likewise testified that when she arrived and confronted defendant, she "could hear [her two grandchildren] screaming and hollering" inside the trailer. Defendant's failure to object to substantially similar evidence of the fear experienced by Beamon's children

waived any objection on this basis. *See State v. Shamsid-Deen*, 324 N.C. 437, 445, 379 S.E.2d 842, 847 (1989). We further note that Beamon's daughter did not assert knowledge of defendant's intention during the incident. Rather, she merely expressed her concern about his possible future actions based on her observations. Therefore, contrary to defendant's argument on appeal, the child's request for Beamon's assurance that "that man is not going to come burn our house down" did not constitute hearsay evidence of defendant's intent to commit arson. *See* N.C.R. Evid. 801(c) (defining hearsay as an out-of-court statement "offered in evidence to prove the truth of the matter asserted" by the declarant). Finally, assuming, *arguendo*, that the child's statement to Beamon was inadmissible hearsay, "we are not convinced that there is a reasonable possibility that a different result would have been reached at trial had this statement not been admitted. Thus, we find no prejudicial error." *State v. Locklear*, 349 N.C. 118, 149, 505 S.E.2d 277, 295 (1998).

The record on appeal includes additional assignments of error not addressed by defendant in his brief to this Court. Pursuant to Rule 28 of our Rules of Appellate Procedure, we deem them abandoned. *See* N.C.R. App. P. 28(b)(6).

No error.

Judges WYNN and McGEE concur.

Report per Rule 30(e).