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NO. COA07-1443

NORTH CAROLINA COURT OF APPEALS

Filed: 5 August 2008

STATE OF NORTH CAROLINA,  
Plaintiff,

v.

Iredell County  
Nos. 05 CRS 57155-57

TRESSIN EUGENE YOUNG,  
Defendant.

# Court of Appeals

Appeal by defendant from judgments entered on or about 4 May 2007 by Judge Susan C. Taylor in Iredell County Superior Court. Heard in the Court of Appeals 21 July 2008.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Linda Kimball, for the State*

# Slip Opinion

*Robert W. Ewing, for defendant-appellant.*

STROUD, Judge.

On 4 May 2004 defendant was found guilty of first degree burglary and two counts of robbery with a dangerous weapon. He was sentenced to three consecutive terms of 77-102 months.

The State presented evidence tending to show that between 9:00 and 9:30 p.m. on 20 July 2005, Heather Reavis walked out of her boyfriend's apartment (hereinafter "apartment") in Statesville to retrieve a duffle bag from her car. As she walked back toward the apartment, two men armed with guns came running at her from behind. She screamed and dropped the duffle bag. One of the men grabbed

her by the arm and, holding a gun to her, took her inside the apartment.

Emily Buck, who was inside the apartment, heard Ms. Reavis scream. Ms. Buck opened the door to the apartment and saw two masked men holding Ms. Reavis by the arms and pointing guns at her. One of the men pointed a gun at Ms. Buck and the two men entered the apartment with Ms. Reavis.

The two men ordered all of the occupants who were gathered in a back bedroom to lie on the floor. The men covered them with sheets and blankets. A fifth occupant, who was in another room, heard a commotion and came into the back bedroom to investigate. As he walked in the door, one of the perpetrators, identified as defendant, hit him and knocked him unconscious.

Uttering threats to shoot or kill the occupants, the perpetrators demanded money and marijuana from them. The two men walked through the apartment looking for items to steal. The men seized cash, car keys and a cell phone.

Officers of the Statesville Police Department arrived at the apartment while the crimes were in progress. One of the two men escaped through a window. Defendant attempted to escape but was apprehended by the police officers inside the apartment.

Defendant moved to dismiss the charges at the close of the State's evidence. Defendant did not present any evidence.

On appeal, defendant contends the trial court erred by denying his motion to dismiss the charge of first degree burglary for insufficient evidence. He contends the evidence is insufficient to

establish the element of a breaking because the door was already open when defendant entered the apartment.

In deciding a motion to dismiss, the trial court examines the evidence to determine whether there is substantial evidence to establish each element of the offense charged and to identify the defendant as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651 (1982). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). In making this determination, the trial court must consider the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference that may be drawn from the evidence and leaving contradictions or discrepancies for the jury to resolve. *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992).

First degree burglary consists of (1) the breaking and entering (2) at night (3) into the dwelling of another (4) that is occupied at the time (5) with the intent to commit a felony therein. *State v. Simpson*, 303 N.C. 439, 449, 279 S.E.2d 542, 548 (1981). A breaking sufficient to withstand a motion to dismiss may either be actual or constructive. *State v. Wilson*, 289 N.C. 531, 539, 223 S.E.2d 311, 316 (1976). "A constructive breaking occurs when entrance is obtained as the result of violence commenced or threatened by a defendant." *State v. Parker*, 350 N.C. 411, 425, 516 S.E.2d 106, 117 (1999), *cert. denied*, 528 U.S. 1084, 145 L. Ed. 2d 681 (2000). The evidence in the case at bar shows that Ms. Buck

opened the door after Ms. Reavis screamed when she was accosted by two gun-wielding men, one of whom was identified as defendant. As one of the men pointed a gun at Ms. Buck, the two men entered the apartment while holding Ms. Reavis by her arms. A jury could reasonably find based upon the foregoing evidence that the defendant and his accomplice obtained entrance "as a result of violence commenced or threatened by a defendant." *Parker*, 350 N.C. at 425, 516 S.E.2d at 117. Based upon this evidence, a jury could find the element of a breaking.

Defendant's remaining contention is that the indictments charging robbery with a dangerous weapon are fatally defective because they fail to allege all of the essential elements of the offense; namely, that the victim did not voluntarily consent to the taking and carrying away of the property, that defendant knew he was not entitled to the property, and that defendant intended to deprive the victim of the property permanently. This contention must be overruled. This Court recently rejected an identical contention in *State v. Patterson*, 182 N.C. App. 102, 105-06, 641 S.E.2d 376, 378-79 (2007), in which this Court upheld an indictment charging that the defendant did "steal, take and carry away another's personal property, from the person and presence of [a named person]," by the use or threatened use of an identified deadly weapon "whereby the life of the person was threatened and endangered." *Patterson*, 182 N.C. App. at 105, 641 S.E.2d at 378. The indictments in the case at bar employ similar language and state the same elements of the offense. Our decision in *Patterson*

is controlling and we are bound by that decision until it is overturned by a higher court. *State v. Jones*, 358 N.C. 473, 487, 598 S.E.2d 125, 134 (2004). We hold defendant received a fair trial, free of prejudicial error.

No error.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).