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NO. COA08-1095

NORTH CAROLINA COURT OF APPEALS

Filed: 7 July 2009

STATE OF NORTH CAROLINA

v.

Edgecombe County
No. 07 CRS 052812

GERROD ALLEN BROWN

Appeal by defendant from judgment entered 29 May 2008 by Judge Frank R. Brown in Edgecombe County Superior Court. Heard in the Court of Appeals 8 June 2009.

Roy Cooper, Attorney General, by Sharon Patrick-Wilson, Special Deputy Attorney General, for the State.

Glenn, Mills, Fisher & Mahoney, P.A., by Carlos E. Mahoney, for defendant-appellant.

MARTIN, Chief Judge.

Defendant appeals from a judgment entered upon jury verdicts finding him guilty of first-degree burglary and of robbery with a dangerous weapon. We find no error.

At trial, Shareka Wilkins testified that, on the evening of 7 July 2007, she was at her home when she heard her front doorbell ring. Ms. Wilkins went to the door, which was shut and locked, and saw defendant standing on her porch. Defendant, who was the only person Ms. Wilkins saw on her porch, asked Ms. Wilkins if "Chris" was home. Moments after Ms. Wilkins told defendant he was at "the wrong house," a man wearing a mask and carrying a gun kicked in Ms.

Wilkins' backdoor. Ms. Wilkins began screaming. The man pointed his gun at her and said, "[S]hut up . . . or I'll kill you." The man demanded money, and Ms. Wilkins walked toward her bedroom to satisfy the demand. On the way to the bedroom, she heard the man unlock the front door and another person enter the house. As Ms. Wilkins and the man searched the bedroom for money and "weed," Ms. Wilkins heard "somebody in the kitchen," then "heard [a] truck start up." Ms. Wilkins owned a truck at the time of the incident, and the truck's keys were on the breakfast bar in the kitchen. The man ordered Ms. Wilkins into a bathroom and apparently left the scene. The next day, Ms. Wilkins found her truck in a field behind her house. A few days later, Ms. Wilkins discovered that some jewelry was missing from her house, and she subsequently reported the incident to the Edgecombe County Sheriff's Office. From a photo line-up, Ms. Wilkins identified defendant as the man standing on her front porch that night in July.

The State argued to the jury that defendant and the masked man acted in concert to commit the crimes. The jury convicted defendant of both crimes, and the court sentenced defendant to a term of 77 to 102 months imprisonment. Defendant appeals.

On appeal, defendant concedes that the State presented substantial evidence that the masked man committed the crimes and that defendant was present at the scene of the crimes. Defendant argues, however, that the trial court erred in denying defendant's motions to dismiss for insufficient evidence because the State did

not present sufficient evidence that defendant and the masked man acted together pursuant to a common plan or purpose.

When reviewing a motion to dismiss, the court views "the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn from it." *State v. Locklear*, 322 N.C. 349, 358, 368 S.E.2d 377, 382 (1988). "If substantial evidence exists to support each essential element of the crime charged and that defendant was the perpetrator, it is proper for the trial court to deny the motion." *State v. Morgan*, 359 N.C. 131, 161, 604 S.E.2d 886, 904 (2004), *cert. denied*, 546 U.S. 830, 163 L. Ed. 2d 79 (2005); *see also State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984) (defining "substantial evidence").

"To act in concert means to act together, in harmony or in conjunction one with another pursuant to a common plan or purpose." *State v. Joyner*, 297 N.C. 349, 356, 255 S.E.2d 390, 395 (1979). Our Supreme Court has "specifically delineated two essential elements of acting in concert: 1) presence at the scene of the crime, and 2) acting together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose." *State v. Wallace*, 104 N.C. App. 498, 504, 410 S.E.2d 226, 230 (1991) (citing *State v. Williams*, 299 N.C. 652, 656-57, 263 S.E.2d 774, 777-78 (1980)), *appeal dismissed and disc. review denied*, 331 N.C. 290, 416 S.E.2d 398, *cert. denied*, 506 U.S. 915, 121 L. Ed. 2d 241 (1992).

In this case, the evidence tended to show that immediately after defendant asked Ms. Wilkins whether "Chris" was home, a masked man kicked in Ms. Wilkins' back door. Soon after entering Ms. Wilkins' house, the masked man unlocked the front door and another person entered the house through that door. Defendant was the only person Ms. Wilkins saw standing outside her front door. Despite defendant's assertion that "[d]efendant's presence at the front door was merely coincidental," viewing this evidence in the light most favorable to the State, we conclude that the State presented substantial evidence that defendant acted together with the masked man pursuant to a common plan or purpose. Accordingly, we hold the trial court did not err in denying defendant's motion to dismiss the charges. Therefore, defendant's assignments of error are overruled.

No error.

Judges STEPHENS and HUNTER, JR. concur.

Report per Rule 30(e).