NO. COA08-563

NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2008

STATE OF NORTH CAROLINA

v. Henderson County
No. 07 CRS 52537

EDDIE DEAN PAYNE

Appeal by Defendant from judgment entered 7 December 2007 by Judge Dennis J. Winner in Henderson County Superior Court. Heard in the Court of Appeals 17 November 2008.

Attorney General Roy Cooper, Jr., Assistant Attorney General Richard A. Graham, for the State.

J. Clark Fischer, for Defendant.

ARROWOOD, Judge.

Eddie Dean Payne (Defendant) appeals from judgment entered upon conviction for discharging a weapon into occupied property. On appeal Defendant argues the trial court erred by denying his motion to dismiss for lack of sufficient evidence. We find no error.

On 10 September 2007 Defendant was indicted on the charge of discharging a weapon into occupied property. At trial, the State's evidence tended to show that on the afternoon of 29 April 2007, the Parcell family was at home when gunshots were fired nearby. Mr.

Parcell stated that he and his two-year old son were outside in the yard setting off firecrackers and Mrs. Parcell was inside the house. Mr. Parcell heard a gunshot and saw grass fly off the ground about ten to fifteen feet away from him. After a pause, Mrs. Parcell came out on the porch and asked if the sound was a gunshot. Another shot was heard, and Mr. Parcell saw more grass fly about the same distance away as the first time. Mr. Parcell told his wife to go back in the house, he picked up his son and ran into the basement. Once he was inside the house, he heard about seven or eight shots in quick succession, then a pause, then another series of shots in a quick succession. Mrs. Parcell also testified, and stated that when she first heard the initial shot, she went outside and spoke to her husband. She went back inside when more shots were fired in quick succession. Neither of the Parcells knew where the shots were coming from. Upon investigation, a bullet hole was found at the front of the house where a bullet had gone into the interior of the Parcells' bedroom. A bullet was later found in the back of the bedroom closet.

Defendant lives about one hundred yards from the Parcells, with a small field and a small road in between. The houses are visible from one another. The only item located between the houses on the day in question was an empty refrigerated trailer. Mr. Parcell stated that he knew Defendant as a neighbor and that the two had been neighbors for about a year, but that he had never spoken with Defendant. He stated he had never seen Defendant with a rifle or other weapons before.

Witness Keith Morton, a truck driver, testified that on 29 April 2007, he had parked his truck in an area between Defendant's house and the Parcells' house and was doing paperwork. The area was used by a truck maintenance company that Mr. Morton used to service his truck. He heard noises that he at first thought came from a roll of firecrackers, but he couldn't initially determine where the noise was coming from. The noises stopped, and after a pause he heard more, and they sounded more like gunfire. When he looked around, he saw Defendant standing on his steps with a beer in one hand and a gun in his other hand. The gun was pointed straight, and Mr. Morton saw Defendant fire two last shots and then stop and go inside the house. Mr. Morton was about thirty to forty yards away from Defendant when he saw the shooting. After walking around the trailer that was sitting there, Mr. Morton noticed fragments, some of which went through the trailer, some of which had not. Soon thereafter, Mr. Morton ran into Mr. Parcell, and relayed what he had seen.

Deputy Lance Mahoney was called to investigate the complaint of shots fired. He testified that after receiving information from Mr. Morton, he interviewed Defendant at the house. Defendant appeared to be intoxicated and told Deputy Mahoney that he didn't like people shooting and that's why he shot back. When Deputy Mahoney asked Defendant for clarification if he had shot at the Parcell's house, Defendant immediately denied saying that he had shot toward the house. The deputy noticed a large assault rifle with a banana clip about ten feet inside Defendant's house.

Defendant refused access to his house until officers returned with a search warrant. They seized the rifle found just inside the door of the house, which had 18 shells in the magazine of the gun. One shell casing was discovered on the hood of Defendant's truck in his driveway. Corporal Alan Corn was also at the house when Deputy Mahoney interviewed Defendant, and upon Deputy Mahoney's question to Defendant whether he had fired the weapon, Defendant replied yes, "these f[—]ers don't need to be messing with me in this neighborhood." Corporal Corn investigated the refrigerated trailer, and noticed it had small holes in it. Upon further investigation, it appeared that about twenty rounds had hit the trailer and gone through both walls of it.

Expert testimony from State Bureau of Investigation Agent Shane Greene revealed that the shell found on Defendant's truck was fired from the seized rifle. However, Agent Greene could not conclude with certainty that the bullet recovered from the Parcell home was fired from the seized rifle.

Defendant testified on his own behalf that on 29 April 2007, he was annoyed at hearing someone in the neighborhood shooting what sounded to him like a .22 caliber rifle, so he took his own rifle outside and shot it in the air. Defendant stated he wanted to make a louder noise so that the person shooting the .22 rifle would stop, and that he only shot into the ground five or six times, not into the trailer or toward the Parcell house. He stated that the Parcell home was not visible from his house due to a truck parked

in the light of sight between the houses. He indicated he knew of the Parcells and had waved at them in passing.

Defendant's motions to dismiss the charges at the close of the State's evidence and again at the close of all the evidence were denied by the trial court. The jury returned a verdict of guilty of discharging a weapon into occupied property. The trial court sentenced Defendant as a Level II offender to a term of 29 to 44 months. The trial court ordered that Defendant serve eleven months of the sentence with credit given for time already served. The trial court suspended the remainder of the active term and placed Defendant on thirty-six months supervised probation. From the judgment entered, Defendant appeals.

Defendant argues the State failed to present sufficient evidence that he knew or had reasonable grounds to know that the Parcell home was occupied at the time he discharged his gun. He contends since no evidence was presented of any outward signs that the Parcell home was occupied, the trial court should have granted his motion to dismiss for insufficient evidence. We disagree.

In deciding a motion to dismiss for lack of sufficiency of evidence, the evidence must be viewed in the light most favorable to the State, including all reasonable inferences to be drawn therefrom. *State v. Scott*, 356 N.C. 591, 596, 573 S.E.2d 866, 869 (2002) (citation omitted). Any contradictions or discrepancies in the evidence are for the jury to resolve and do not warrant dismissal of the case. *Id.* Substantial evidence must be presented as to each element of the offense charged. *Id.* at 595, 573 S.E.2d

at 868. "'Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *State v. Jarrett*, 137 N.C. App. 256, 262, 527 S.E.2d 693, 697 (2000) (quoting *State v. Jacobs*, 128 N.C. App. 559, 563, 495 S.E.2d 757, 760-61 (1998)). Evidence may be direct, circumstantial, or both, as long as it substantially supports "'a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied.'" *State v. McNeil*, 359 N.C. 800, 804, 617 S.E.2d 271, 274 (2005) (quoting *State v. Butler*, 356 N.C. 141, 145, 567 S.E.2d 137, 140 (2002)).

The elements of the offense of discharging a firearm into occupied property pursuant to N.C. Gen. Stat. § 14-34.1 are: "(1) the wilful or wanton discharging (2) of a firearm (3) into any building (4) while it is occupied." *State v. Jones*, 104 N.C. App. 251, 258, 409 S.E.2d 322, 326 (1991). The perpetrator of the offense must also be found to have knowledge or reasonable grounds to believe that the building is occupied. *Id.*

Here, we find that sufficient evidence was presented to show that Defendant had reasonable grounds to believe the Parcells' home was occupied at the time he discharged his gun. The incident took place on a weekend on a Sunday afternoon, when people are more likely to be at home. Mr. Parcell was outside his house setting off firecrackers, which apparently was the noise that annoyed Defendant to such an extent that he began firing his gun. Defendant was seen firing his gun straight out, not into the air or

the ground, and evidence was presented that the Parcell home is visible from defendant's porch, where he stood firing his gun. This evidence, while largely circumstantial, is sufficient to permit a jury to find that Defendant had reasonable grounds to believe the Parcell home was occupied when he fired into it. Thus, the trial court did not err in denying Defendant's motion to dismiss, and this assignment of error is overruled.

No Error.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).