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NO. COA09-1510

NORTH CAROLINA COURT OF APPEALS

Filed: 6 July 2010

STATE OF NORTH CAROLINA

v.

Union County
Nos. 08-CRS-4459, 54626

KENNETH COREY THOMPSON

Appeal by defendant from judgment entered 6 August 2009 by Judge W. David Lee in Union County Superior Court. Heard in the Court of Appeals 21 June 2010.

Attorney General Roy Cooper, by Assistant Attorney General Katherine A. Murphy, for the State

Carol Ann Bauer for defendant-appellant.

ERVIN, Judge.

Defendant Kenneth Corey Thompson was convicted of malicious conduct by a prisoner and admitted to having attained the status of an habitual felon. Based upon these convictions, the trial court sentenced defendant to a minimum of 107 months and a maximum of 138 months imprisonment. Defendant noted an appeal to this Court from the trial court's judgment. After careful consideration of defendant's argument on appeal in light of the record and the applicable law, we conclude that there was no error in the proceedings leading to the entry of the trial court's judgment.

On 15 January 2008, defendant was confined in the Union County Jail in a special cell reserved for combative or disruptive inmates. Before being assigned this cell, defendant had been placed in a standard cell with two bunk beds, a toilet and a sink. Due to his disruptive behavior, defendant was moved from this standard cell into a segregated cell that contained a bed and toilet. After defendant flooded the cell block in which this segregated cell was located, he was transferred to the special cell, which was furnished with a sleeping mat and had a grate-covered hole in the floor that served the purpose of a toilet. Since the cell in question did not have running water, drinking water was supplied to the cell's occupant in a styrofoam cup. In addition, individuals housed in this special cell were occasionally supplied with a spray bottle that they could use to clean themselves.

On 15 January 2008, Sergeant Jeff Greene of the Union County Sheriff's Department, accompanied by two other officers, went to defendant's cell for the purpose of retrieving a spray bottle that had previously been provided to defendant. Sergeant Greene opened the window door for the purpose of looking into defendant's cell through a plexiglass window. Since he could not see into the cell because a brown substance had been smeared all over the window, Sergeant Greene instructed defendant to move to the back of the cell and face away from the door.

After giving that instruction, Sergeant Greene cracked the door of the cell open for the purpose of looking inside. When he

did so, he saw defendant standing with his back to the wall and holding his sleeping mat in front of him in such a manner that it covered his entire body except for his head. Sergeant Greene told defendant several times to put the mat down, turn, face away from the door, and stand against the rear wall. However, defendant refused to comply with these instructions, leading Sergeant Greene to draw his taser and point it at defendant.

In response to Sergeant Greene's command, defendant displayed a styrofoam cup in his hand and moved this hand forward in a slinging motion. As Sergeant Greene retreated to close the cell door, a brown substance, which Sergeant Greene and the other officers involved in this incident identified as feces, struck the cell door at about the location where Sergeant Greene's face had been before he took evasive action and splattered against the door onto the faces and uniforms of the three officers. Before defendant threw the substance in the styrofoam cup, Sergeant Greene observed that the cell walls were smeared with the brown substance and that other styrofoam cups were filled with it as well.

On appeal, defendant contends that the trial court erred by denying his motion to dismiss the charge of malicious conduct by a prisoner on the grounds that the evidence was insufficient to support his conviction for that offense. In evaluating whether to grant or deny a motion to dismiss, the trial court must determine whether there is substantial evidence supporting the existence of each element of the offense charged and identifying the defendant as the perpetrator of the crime charged. *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) (citation omitted). In ruling on a motion to dismiss, the court must consider the evidence in the light most favorable to the State, giving it the benefit of every reasonable inference that may be drawn from the evidence. *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). If the court finds substantial evidence, whether direct, circumstantial, or both, to support a finding that the offense charged has been committed and that the defendant committed it, the court must deny the motion and allow the case to go to the jury. *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991).

The elements of the offense of malicious conduct by a prisoner in violation of N.C. Gen. Stat. § 14-258.4 are that: (1) "the defendant threw, emitted, or caused to be used as a projectile a bodily fluid or excrement at the victim"; (2) "the victim was a State or local government employee"; (3) the victim was engaged in the performance of his or her State or local government duties at the time; (4) "the defendant acted knowingly and willfully"; and (5) the defendant was in the custody of the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, any law enforcement officer, or any local confinement facility at the time. *State v. Robertson*, 161 N.C. App. 288, 292-93, 587 S.E.2d 902, 905 (2003) (citing N.C. Gen. Stat. § 14-258.4 (2001)). In challenging the sufficiency of the evidence to

establish his guilt of the offense for which he was convicted, defendant argues that the State failed to present substantial evidence that he acted "knowingly and willfully."

"Knowledge is a mental state that may be proved by offering circumstantial evidence to prove a contemporaneous state of mind. Jurors may infer knowledge from all the circumstances presented by the evidence." *State v. Bogle*, 324 N.C. 190, 195, 376 S.E.2d 745, 748 (1989). A defendant's knowledge "may be proved by the conduct and statements of the defendant, by statements made to him by others, by evidence of reputation which it may be inferred had come to his attention, and by [other] circumstantial evidence from which an inference of knowledge might reasonably be drawn." *State v. Boone*, 310 N.C. 284, 294-95, 311 S.E.2d 552, 559 (1984) (citations omitted). "Likewise, the willfulness of a defendant's conduct may be inferred from the circumstances surrounding the crime." *State v. Crouse*, 169 N.C. App. 382, 389, 610 S.E.2d 454, 459, *disc. review denied*, 359 N.C. 637, 616 S.E.2d 923 (2005).

After a careful review of the record, we conclude that a jury could appropriately find, based upon inferences reasonably drawn from the circumstances, that defendant acted knowingly and willingly in slinging the feces at Sergeant Greene and the other officers. As a result of his disruptive behavior, defendant had twice been moved from one cell to another, each time being transferred from a less restrictive to a more restrictive environment. Defendant smeared the window and walls of the cell he occupied with feces, making it difficult for Sergeant Greene and

others to see into his cell. Defendant deposited feces into other styrofoam cups in addition to the one he used to throw feces at Sergeant Greene and the other officers. At the time that Sergeant Greene opened the cell door, defendant stood behind his sleeping mat with his hands concealed from Sergeant Greene's view. After refusing to obey Sergeant Greene's repeated commands to put down the mat, thereby displaying his hands, defendant slung the feces toward Greene's face and head.

Based upon this evidence, we conclude that there was ample justification for a conclusion that defendant acted knowingly and willfully at the time that he threw feces on Sergeant Greene and the other officers. As a result, we hold that the court properly denied defendant's dismissal motion.

No error.

Judges STEPHENS and BEASLEY concur.

Report per Rule 30(e).