NO. COA09-358

NORTH CAROLINA COURT OF APPEALS

Filed: 22 December 2009

STATE OF NORTH CAROLINA

v. Forsyth County
Nos. 08CRS051715
08CRS007628

HAROLD LEE BROOKS, JR.
Defendant.

Appeal by defendant from judgment entered on or about 28 October 2008 by Judge Jerry Cash Martin in Superior Court, Forsyth County. Heard in the Court of Appeals 14 December 2009.

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

Mercedes O. Chut, for defendant-appellant.

STROUD, Judge.

Harold Lee Brooks, Jr. ("defendant") appeals from judgment entered upon convictions of felony breaking and entering and resisting a public officer, and upon defendant's plea of guilty to having attained habitual felon status. Defendant contends the trial court erred in denying his motion to dismiss the charges for lack of sufficient evidence. We find no error.

The State's evidence tends to show that on 17 February 2008, Leroy Martin Dull was in the back yard of his house when he observed a man he did not know in his neighbor's yard by a storage building. He saw the man enter the shed through its front door.

Mr. Dull's neighbors are his uncles, Malon and Gordon Yates. He walked across the front yard and saw a light blue Chrysler or Chevy with faded paint. He then went inside and called the sheriff's department and told them that he thought someone was breaking into a shed. While waiting for law enforcement to arrive, Mr. Dull stayed inside and looked out his kitchen window. He observed a man "running out of the shed, looking around." The man was wearing a white sweatshirt and jeans. The storage building is about a hundred yards from Mr. Dull's yard.

About four or five minutes later, Mr. Dull saw "a man coming through my back yard - or my neighbor's back yard and through my front yard." He saw the second person from about twenty to twenty-five yards away, and he was able to get a "pretty good look" at the man's face. The second person was "bald and clean-shaven and a muscular build and a short neck, real short neck[,]" and he was wearing a green shirt. Mr. Dull called the sheriff's office a second time to let them know there was another person at the scene. Mr. Dull was able to identify defendant in the courtroom as the second man he saw running through the yard that day.

On 17 February 2008, Deputy P.L. Stringer and Corporal Barry L. Sales of the Forsyth County Sheriff's Department were dispatched to Mr. Dull's home on Lewisville-Vienna Road for a possible house break-in in progress. Deputy Stringer stated he drove a few feet past the residence when he saw a "dark-in-color Chevy car" which had been described by dispatch that backed up and pulled into the driveway. As he pulled past, he saw a person running through the

back yard of the residence. It was a heavyset black male with dark clothing on. Deputy Stringer jumped out of the car and yelled at the man to stop, but the man did not comply and kept running. The person was about 50 to 60 yards away when the officer yelled at him. Another person was standing at the passenger's side of the Chevy in the driveway. Deputy Stringer secured that person, who was later determined to be Corey Winfield. A record check on the car revealed it was registered to a female with the last name Brooks.

Corporal Sales arrived at the scene right behind Deputy Stringer. He observed a black male on the back end of a shed, wearing dark clothing and running. Corporal Sales started to pursue the person on foot, but the area behind the shed is thickly wooded. He returned to his car and began searching for the suspect. He soon spotted someone "ducking and hiding behind some bushes" about a block or two from the scene of the initial incident. Corporal Sales approached and told the person to get on the ground; the person complied. The man was wearing dark-colored clothing, was sweating heavily. He also had dirt on his hands and briars in his shirt. The man stated that he was doing yard work at the location, but could not produce any tools. Corporal Sales determined that the man's name was Harold Brooks, the defendant in this case, from a driver's license located in his pocket. Defendant said he had permission to be there, but could not provide an exact name.

At the request of the police officers, Malon Yates arrived at the property co-owned by his brother Gordon to help inspect for damage. Mr. Yates stated that although he could not remember the last time he checked on the property, he tried to visit it about once a week to check on things. There was a hole in the shed caused by a tree that had fallen on the back side of the roof. The hole was large enough to walk through while bending over. When Mr. Yates inspected the property on 17 February 2008 with the police, the door to the shed was already open, with the latch broken and lifted off the inside of the door. A pile of wire was on the floor consisting of copper wire that had been pulled from the ceiling. Mr. Yates stated that the wire was for lighting that his father had put in about sixty years ago. The wire was freshly stripped and had been stretched thin in some places due to pulling. A search of the car by officers revealed a "wadded-up bunch" of wire in the trunk, and in the back seat there were bolt cutters and a cordless drill.

Corporal Sales transported defendant to the magistrate's office. When he informed defendant that he was being charged with breaking and entering and larceny, defendant replied that "he didn't break into the shed, that it was a hole in the back side that he went into. He climbed into the barn through the back side."

Corey Winfield testified for the defense. He knows defendant as a friend. They were together on 17 February 2008, "going around to different places doing some recycling and things like that,

collecting junk and stuff from places that would give it to us." He dropped defendant off on Robinhood Road and went by himself to a house on Lewisville-Vienna Road to meet up with another person.

Defendant also testified. He was self-employed as a recycler, and had a small business called Harold's Home Improvement. On 17 February 2008, he was with Corey Winfield, who said he knew someone who "wanted to get some copper done - some recycling done." Defendant had Corey drop him off at a house on Robinhood Road near Lewisville-Vienna Road where the homeowner had hired defendant to do yard work. Defendant cleaned up leaves using a leaf blower and a rake when he saw sheriff's cars driving up and down the street. Corporal Sales came and put defendant in handcuffs. Defendant stated he had never been at the property where the incident in question took place, and that he never told Corporal Sales that he entered the shed, rather that he had entered a barn on Dexter Road, a completely different property.

At the close of the State's evidence and again at the close of all the evidence, defendant moved to dismiss the charges; the motions were denied. The jury returned verdicts of guilty of breaking and entering and resisting a public officer. Defendant pled guilty to habitual felon status. The trial court consolidated the offenses for judgment and sentenced defendant to an active term of 136 months minimum to 173 months maximum imprisonment. From the judgment entered, defendant appeals.

Defendant argues that the trial court erred in denying his motion to dismiss both charges for lack of sufficient evidence. In

reviewing a trial court's denial of a motion to dismiss, we review the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences to be drawn from the evidence. *State v. Taylor*, 337 N.C. 597, 604, 447 S.E.2d 360, 365 (1994). Any discrepancies or contradictions in the evidence must be resolved in the State's favor. *Id.* Substantial evidence must be presented as to each element of the offense charged, and as to the identity of the defendant being the perpetrator of the crime. *State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002). "'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, *disc. review denied*, 348 N.C. 506, 510 S.E.2d 665 (1998)). The reviewing court must consider both competent and incompetent evidence in making its determination. *Scott*, 356 N.C. at 596, 573 S.E.2d at 869.

With regard to the offense of breaking or entering, the following activity is prohibited by law:

> (a) Any person who breaks or enters any building with intent to commit any felony or larceny therein shall be punished as a Class H felon.
>
> (b) Any person who wrongfully breaks or enters any building is guilty of a Class 1 misdemeanor.
>
> (c) As used in this section, 'building' shall be construed to include any dwelling, dwelling house, uninhabited house, building under construction, building within the curtilage of

> a dwelling house, and any other structure designed to house or secure within it any activity or property.

N.C. Gen. Stat. § 14-54 (2007). The elements of felony breaking or entering thus consist of: (1) breaking or entering; (2) of any building; and (3) with the intent to commit any felony or larceny inside. *State v. White*, 84 N.C. App. 299, 301, 352 S.E.2d 261, 262, *cert. denied*, 321 N.C. 123, 361 S.E.2d 603 (1987).

Defendant contends the State did not present sufficient evidence of each of the three elements of breaking and entering. First, he argues the structure at issue here is not a "building" for purposes of this offense because no evidence was presented that the structure had any particular purpose or that it housed any activity or property. He cites to *State v. Gamble*, 56 N.C. App. 55, 286 S.E.2d 804 (1982), in which this Court cited to the following definition of "building" in its discussion of what types of structures are encompassed by section 14-54(c):

> [A] constructed edifice designed to stand more or less permanently, covering a space of land, usu. covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals, or other useful structure - distinguished from structures not designed for occupancy (as fences or monuments) . . . .

Gamble, 56 N.C. App. at 58, 286 S.E.2d at 806. Defendant contends that since the evidence shows that the shed is a ruin, was not repaired by its owners, and did not contain anything other than loose electrical wires, it is not a useful structure and therefore not a "building" pursuant to section 14-54.

Second, defendant asserts there was no evidence that he committed a breaking since there was a hole in the shed large enough to walk through. Finally, he argues there is no evidence that defendant had the intent to commit any felony or larceny once inside the shed, as there was nothing inside the shed worth stealing. We do not agree.

With respect to the question of whether the shed constitutes a "building," this Court in *Gamble* determined that by using words like "dwelling" and "dwelling house," "the legislature always intended 'building' to be restricted to that which has - or is intended to have - one or more walls and a roof." *Gamble*, 56 N.C. App. at 59, 286 S.E.2d at 806. The evidence presented in the instant case shows that the Yates' shed had walls, a door, and a roof, and was therefore enclosed. We find the evidence is sufficient to show that the shed was a "building" for purposes of the offense of breaking or entering.

Regarding the act of breaking or entering, a showing of any force at all "'to effect an entrance through any usual or unusual place of ingress'" constitutes a breaking. *State v. Wilson*, 289 N.C. 531, 539, 223 S.E.2d 311, 316 (1976) (citation omitted). We find that the following evidence is sufficient to support the element of breaking or entering: the door to the shed was partly open and the latch was broken and lifted off the inside of the door. Further, eyewitness Mr. Dull saw a man, later determined to be Corey Winfield, entering the shed through the front door. Defendant was seen in the backyard where the shed was located, and

a pair of bolt cutters were found in defendant's car. This evidence, taken in the light most favorable to the State including all reasonable inferences to be drawn therefrom, is sufficient to allow a juror to conclude that defendant effected a breaking into the shed.

As to the third element of intent to commit a felony or larceny, we note that "[i]ntent is a mental attitude which seldom can be proved by direct evidence, but must ordinarily be proved by circumstances from which it can be inferred." *State v. Kendrick*, 9 N.C. App. 688, 691, 177 S.E.2d 345, 347 (1970). The jury may infer intent from the acts of the defendant and the circumstances surrounding the incident. *State v. Costigan*, 51 N.C. App. 442, 445, 276 S.E.2d 467, 469 (1981). Here, the evidence shows that a pile of freshly stripped copper wires was found on the floor of the shed, with more loose wires hanging from the ceiling. An indeterminate amount of wire, along with bolt cutters and a cordless drill, was found in defendant's car. Defendant's argument that the shed contained nothing worth stealing is not persuasive. The evidence, taken in the light most favorable to the State, is sufficient to support a conclusion that defendant committed breaking or entering of the shed with the intent to steal the copper wire located inside. Since we find that sufficient evidence was presented on each element of the offense of felony breaking or entering, the trial court did not err in denying defendant's motion to dismiss the offense of breaking or entering. Defendant's assignment of error on this issue is overruled.

Defendant also asserts there was insufficient evidence presented that defendant "willfully did resist, delay and obstruct" Deputy Stringer by "running away and attempting to elude" as stated in the indictment. We do not agree.

Section 14-223 provides, "If any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of his office, he shall be guilty of a Class 2 misdemeanor." N.C. Gen. Stat. § 14-223 (2007). The elements of resisting, delaying or obstructing a police officer are thus:

> (1) that the victim was a police officer;
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> (2) that the defendant knew or had reasonable grounds to believe that the victim was a public officer;
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> (3) that the victim was discharging or attempting to discharge a duty of his office;
>
> (4) that the defendant resisted, delayed, or obstructed the victim in discharging or attempting to discharge a duty of his office; and
>
> (5) that the defendant acted willfully and unlawfully, that is intentionally and without justification or excuse.

State v. Dammons, 159 N.C. App. 284, 294, 583 S.E.2d 606, 612 (2003), *cert. denied*, 541 U.S. 951, 158 L. Ed. 2d 382 (2004). A law enforcement officer has discharged or attempted to discharge a duty of his office "when he began an investigation of a crime reported to him by eyewitnesses." *State v. Leigh*, 278 N.C. 243, 247, 179 S.E.2d 708, 710 (1971). Actual force or violence is not required to show that a person wilfully resisted, delayed or

obstructed a public officer under section 14-223. *State v. Kirby*, 15 N.C. App. 480, 489, 190 S.E.2d 320, 326, *appeal dismissed*, 281 N.C. 761, 191 S.E.2d 363 (1972).

Here, evidence was presented that Deputy Stringer and Corporal Sales were performing a duty of their office by investigating a potential home break-in when they pulled up at the scene. Both officers arrived in uniform, in marked patrol cars, and Corporal Sales had his car's blue lights flashing. Both officers spotted a person who was later determined to be defendant running across the Yates' backyard. Deputy Stringer jumped out of his car and yelled at defendant to stop; defendant was approximately 50 to 60 yards away from the officer at that point. Despite Deputy Stringer's order, defendant continued running, without any apparent justification or excuse. We find these facts are sufficient to support each essential element of the offense of resisting, delaying or obstructing a public officer, such that the matter was properly submitted to the jury for consideration. The trial court did not err in denying defendant's motion to dismiss this charge.

No error.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).