NO. COA10-74

NORTH CAROLINA COURT OF APPEALS

Filed: 21 September 2010

STATE OF NORTH CAROLINA

v. New Hanover County
No. 08 CRS 61046

ANTHONY JUNIOR BARNHILL

Appeal by defendant from judgment entered 7 October 2009 by Judge Robert F. Floyd, Jr. in New Hanover County Superior Court. Heard in the Court of Appeals 13 September 2010.

Attorney General Roy Cooper, by Assistant Attorney General Susannah P. Holloway, for the State.

Winifred H. Dillon, for defendant-appellant.

MARTIN, Chief Judge.

Defendant appeals from a judgment entered upon his conviction by a jury of first-degree burglary and felony larceny. We find no error.

The State's evidence tended to show that on the evening of 8 July 2008, defendant and Ricky Kellam planned to rob a house. Driving defendant's Chevrolet Lumina, defendant and Kellam picked up a third man, Isaiah Parker, to help with the robbery. The three men drove to 2740 Warlick Drive in Wilmington, North Carolina, and Parker got out of the car to check to see if anyone was home. Determining that no one was home, Parker and defendant went around

to the back of the house and broke in through the back door. Shayla Durst and her two children were in the house at the time. After hearing loud banging, Durst called 911 to report a possible breaking and entering. When officers arrived a few minutes later, Kellam drove off, leaving defendant and Parker behind. Officers quickly stopped Kellam and ordered him out of the car. He was then placed under arrest. Officers apprehended Parker at the scene in possession of some of the items he and defendant had taken from the house. Defendant jumped a fence and escaped, but was later apprehended on 25 September 2008 at the scene of another breaking and entering. Defendant was indicted on charges of first-degree burglary and felony larceny. After a trial, a jury convicted him of both charges. Having determined his prior record level to be III, the trial court consolidated the offenses and sentenced defendant in the presumptive range to a minimum term of 103 months and a maximum term of 133 months imprisonment. Defendant gave notice of appeal in open court.

In his first issue presented for review, defendant contends it was plain error for the trial court to allow Officer Mark Beguhl's testimony surrounding the circumstances of his arrest. However, defendant has not set forth any argument as to how the inclusion of this testimony amounts to plain error. Accordingly, this issue is deemed abandoned. N.C. R. App. P. 28(b)(6) ("Issues not presented in a party's brief, or in support of which no reason or argument is stated, will be taken as abandoned.").

Defendant next argues the trial court erred in denying his motion to dismiss the charges of first-degree burglary and felony larceny because the State presented insufficient evidence that defendant was the perpetrator of the crimes. "In ruling on a defendant's motion to dismiss, the trial court must determine whether the State has presented substantial evidence (1) of each essential element of the offense and (2) of the defendant's being the perpetrator." *State v. Boyd,* 177 N.C. App. 165, 175, 628 S.E.2d 796, 804 (2006) (citing *State v. Robinson*, 355 N.C. 320, 336, 561 S.E.2d 245, 255, *cert. denied*, 537 U.S. 1006, 154 L. Ed. 2d 404 (2002)). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Matias*, 354 N.C. 549, 552, 556 S.E.2d 269, 270 (2001) (internal quotation marks omitted). "When considering a motion to dismiss, the trial court must view all of the evidence presented 'in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.'" *Boyd*, 177 N.C. App. at 175, 628 S.E.2d at 804 (quoting *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995)).

At trial, the State presented the testimony of Kellam and Parker to prove that defendant was the perpetrator of the crimes. Kellam testified that he and defendant planned the burglary together. With defendant driving, they picked up Parker and went to the scene of the crime. Kellam testified that he remained in

the car as a lookout while defendant and Parker went into the backyard of the house. Parker testified that two men whom he did not know picked him up to break into a house. Parker specifically identified Kellam as one of the two men, but was unsure if defendant was the other man. Parker described in detail how he and the driver of the car broke into the home, and how he was arrested at the scene of the crime after the driver fled and Kellam drove away. This testimony is sufficient to establish defendant as the perpetrator of both the burglary and larceny. *See State v. Lester*, 294 N.C. 220, 225-26, 240 S.E.2d 391, 396 (1978) ("The unsupported testimony of an accomplice, if believed, is sufficient to support a conviction.").

Defendant, however, suggests that this testimony does not provide substantial evidence of defendant's identity as the perpetrator of these crimes because both Parker and Kellam were unreliable witnesses who "participated in the crime, and obtained reduced charges in return for their testimony." "The credibility of witnesses is a matter for the jury except where the testimony is inherently incredible and in conflict with the physical conditions established by the State's own evidence." *State v. Begley*, 72 N.C. App. 37, 43, 323 S.E.2d 56, 60 (1984). While both Kellam and Parker testified pursuant to plea agreements with the State, their testimony was not inherently incredible and did not conflict with the physical conditions established by the State's other evidence. Accordingly, the credibility of Kellam and Parker was a question for the jury and did not implicate the sufficiency of the evidence

necessary to survive a motion to dismiss. Taking the evidence in the light most favorable to the State, the testimony of Kellam and Parker is sufficient to establish defendant as the perpetrator of the burglary and larceny at issue, and we hold the trial court did not err in denying defendant's motion to dismiss the charges against him.

No error.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).