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NO. COA11-1556  
NORTH CAROLINA COURT OF APPEALS

Filed: 4 September 2012

STATE OF NORTH CAROLINA

v.

Henderson County  
No. 10 CRS 447

ROBERT SAMUEL SINGLEY

Appeal by defendant from judgment entered 19 May 2011 by Judge James U. Downs in Henderson County Superior Court. Heard in the Court of Appeals 16 August 2012.

*Attorney General Roy Cooper, by Special Deputy Attorney General Valerie Bateman and Associate Attorney General Christina E. Simpson, for the State.*

*Appellate Defender Staples Hughes, by Assistant Appellate Defender Emily H. Davis, for defendant-appellant.*

CALABRIA, Judge.

Robert Samuel Singley ("defendant") appeals from a judgment entered upon a jury verdict finding him guilty of first-degree arson. We find no error.

I. Background

In September 2009, defendant was a tenant at the Caldwell

Inn boarding house ("Caldwell Inn") located at 729 Maple Street in Hendersonville, NC. Defendant's room was located on the first floor of the building. Defendant had resided at the Caldwell Inn intermittently for ten to twelve years. During that time, defendant had been late paying his rent on five or six occasions. On 23 September 2009, since defendant was behind on his rent, Sam Angram ("Angram"), the owner of the Caldwell Inn, told him that because he had failed to pay his rent he had to leave. Despite Angram's request, defendant did not vacate his room.

The next day, defendant left his room at the Caldwell Inn around 7:10 a.m. for breakfast. Defendant rode his bike and on the way to Burger King, encountered Nancy Evans ("Evans"), a woman with whom he had recently had a romantic relationship. Evans was a resident at the Mission homeless shelter, located a block from the Caldwell Inn. They spoke briefly, and then defendant continued riding his bike to Burger King. Video surveillance confirmed that defendant visited Burger King on the morning of the fire.

Rochelle Lindsay ("Lindsay") also a tenant of the Caldwell Inn, lived on the second floor. Her room was located directly above defendant's room. Around 7:30 a.m. on the morning of the

fire, Lindsay awoke when she smelled smoke and noticed her floor was hot. When she went downstairs and saw smoke coming from underneath defendant's door, she woke Ingram to inform him. Ingram broke down defendant's door and started using a fire extinguisher. However, the window in defendant's room was open, and Ingram's attempt to quell the blaze with the fire extinguisher caused the fire to expand. Lindsay ran upstairs to warn the other tenants. Since the fire caused the stairs to collapse, the tenants were unable to exit by the stairs. Lindsay, along with other tenants, jumped from an upstairs balcony.

At 7:32 a.m. someone called 911 to report the fire at the Caldwell Inn. Law enforcement and the fire department were dispatched to the scene. They attempted to rescue tenants and extinguish the fire until sometime that evening.

While defendant was eating at Burger King, he overheard a woman discussing a building that was on fire. She referred to the burning building as an apartment building that was located in the vicinity of the Caldwell Inn. Since defendant suspected that the building the woman was referring to could be the Caldwell Inn, defendant left Burger King and proceeded on his bike towards the Caldwell Inn. On his way, he met two

individuals he knew. One indicated the Caldwell Inn was on fire and that the fire had started in his room. The other individual told defendant that he was the one who was suspected of arson. Subsequently, defendant called his mother and asked her to transport him to the police station. Defendant was interviewed by three different detectives and indicated to them that he was unaware of how the fire started but stated that he did not start a fire in his room.

Fire Marshall Robert Henderson contacted the North Carolina State Bureau of Investigation ("SBI") to determine the cause and origin of the fire. Once it was determined that the building was safe to enter, Special Agent David Campbell ("Special Agent Campbell"), of the SBI, investigated the fire. Special Agent Campbell determined that the fire originated in defendant's room. Although he was uncertain of the exact location, Special Agent Campbell believed the fire originated on defendant's bed. During his investigation, Special Agent Campbell collected samples from defendant's room, including samples from the area where the mattress and box springs were located. The samples were tested. According to the test results, heavy petroleum distillates were found in the materials that had been gathered from the area where defendant's mattress and box springs were

located. Materials that are characterized as heavy petroleum distillates include such materials as kerosene, diesel fuel and some charcoal starters, but also include common household items such as insecticides, tennis shoes, newsprint and different floor finishes. The identity of the accelerant was never determined.

Defendant was subsequently arrested and charged with first-degree arson. The jury returned a verdict finding defendant guilty of first-degree arson. Defendant was sentenced to a minimum of 61 and a maximum of 83 months in the North Carolina Department of Correction. Defendant appeals.

## II. Motion to Dismiss

Defendant alleges that the trial court erred by denying his motion to dismiss because the State produced insufficient evidence to support the offense of first-degree arson. We disagree.

Upon a defendant's motion to dismiss, the trial court determines "only whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Vause*, 328 N.C. 231, 236, 400 S.E.2d 57, 61 (1991). Whether substantial evidence exists "is a question of law for the court." *Id.*

“‘Substantial evidence’ is that amount that ‘a reasonable mind might accept as adequate to support a conclusion.’” *State v. Stevenson*, 328 N.C. 542, 545, 402 S.E.2d 396, 398 (1991) (citation omitted). The evidence must be evaluated “in the light most favorable to the State” and “[t]he defendant’s evidence is not to be considered unless it is favorable to the State.” *State v. Williams*, 154 N.C. App. 176, 178, 571 S.E.2d 619, 620-21 (2002). “If a reasonable inference of defendant’s guilt can be drawn from evidence that is not merely speculative, but real and substantial, then it is the jury’s decision whether such evidence convinces them beyond a reasonable doubt of defendant’s guilt.” *State v. Pigott*, 331 N.C. 199, 208, 415 S.E.2d 555, 560 (1992) (internal quotations and citation omitted).

A. Malicious and Willful Burning

Defendant contends that the State failed to produce evidence supporting the essential element of a malicious and willful burning. We disagree.

North Carolina uses the common law definition for arson, “the willful and malicious burning of the dwelling house of another person.” *State v. Barnes*, 333 N.C. 666, 677, 430 S.E.2d 223, 229 (1993) (citation omitted). “For a burning to be

'willful and malicious' in the law of arson, it must simply be done voluntarily and without excuse or justification and without any bona fide claim of right." *State v. Eubanks*, 83 N.C. App. 338, 339, 349 S.E.2d 884, 885 (1986). There is no requirement of "intent or animus against either the property itself or its owner." *Id.*

In *State v. Curmon*, a door mat was set on fire. 171 N.C. App. 697, 700, 615 S.E.2d 417, 421 (2005). According to SBI testing, gasoline had been poured on the mat and therefore such an act confirmed that someone intentionally set the fire. *Id.* at 701, 615 S.E.2d at 421. In *State v. Sexton*, the SBI agent determined the fire "was started by a plastic bottle filled with gasoline which was ignited by a fabric fuse." 153 N.C. App. 641, 645, 571 S.E.2d 41, 44 (2002), *aff'd in part*, 357 N.C. 235, 581 S.E.2d 57 (2003). Thus, the trial court properly determined there was sufficient evidence for the jury to decide whether the crime of arson occurred. *Id.* In *State v. Sheetz*, this Court found that since an inference of guilt could be drawn from the evidence, the trial court properly denied the motion to dismiss. 46 N.C. App. 641, 654, 265 S.E.2d 914, 922 (1980). In *Sheetz*, evidence was presented that on the day of the fire, the owner defendant closed the shop, the fire occurred within five minutes

after the closing, the fire was not the result of an electrical malfunction and the premises were secure when the firemen arrived. *Id.* This evidence, coupled with the defendant's heavy indebtedness and potential for insurance proceeds, was a reasonable inference of guilt sufficient to survive the defendant's motion to dismiss. *Id.*

In the instant case, Special Agent Campbell testified for the State regarding the origin and cause of the fire. Special Agent Campbell determined that the fire originated in defendant's room, most likely on defendant's bed. Ingram's testimony confirmed that the fire started on defendant's bed, because when he entered defendant's room on the morning of the fire, there was a flame on defendant's bed. In addition, Timothy Suggs ("Suggs"), the forensic scientist manager of the trace evidence section of the State Crime Laboratory in Raleigh testified about the samples that were taken from the area where defendant's bed was located. Suggs determined that samples from defendant's bed contained heavy petroleum distillates. Examples of heavy petroleum distillates include kerosene, diesel fuel and some charcoal starters.

The State presented evidence that the fire started in defendant's room and that defendant left his room prior to the



fire. In addition, it was determined that accelerants were present from testing the samples that were collected from the area where the mattress and box springs were located in defendant's room. Therefore, the State met its burden of proving the essential element that the fire was "willful and malicious" and thus the offense of first-degree arson was properly submitted to the jury for the jury to determine whether the evidence convinced them that a fire was started voluntarily.

Defendant claims that because Special Agent Campbell did not determine that the burning was the result of an incendiary act that his conviction must be vacated. Defendant is mistaken. Even though Special Agent Campbell did not testify that the fire was the result of an incendiary act, the fact that accelerants were present in defendant's room even though no explanation was given for the presence of those accelerants, was sufficient evidence for the jury to determine whether the fire was started voluntarily. Furthermore, Special Agent Campbell did not testify that the fire was a result of natural or accidental causes. Based on the evidence presented, it was the jury's responsibility to apply the law to the facts. See *State v. Pallas*, 144 N.C. App. 277, 286, 548 S.E.2d 773, 780 (2001) (the jury is the party that should resolve contradictions and

discrepancies in the evidence).

B. Defendant as the Perpetrator

Defendant also argues that there was insufficient evidence to support a finding that defendant was the perpetrator. We disagree.

"Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence." *State v. Fritsch*, 351 N.C. 373, 379, 526 S.E.2d 451, 455 (2000) (citation and internal quotation marks omitted). When the State presents circumstantial evidence, "the court must consider whether the defendant's guilt may reasonably be inferred from those circumstances." *Curmon*, 171 N.C. App. 697, 702, 615 S.E.2d 417, 422 (2005). "[T]he trial judge 'may resort to circumstantial evidence of motive, opportunity and capability to identify the accused as the perpetrator of the crime.'" *Id.* (citation omitted).

According to the evidence, in the light most favorable to the State: (1) defendant was in danger of being evicted from the Caldwell Inn as evidenced by his disagreement with Angram the day before the fire, demonstrating defendant's motive to set the fire; (2) the fire started in defendant's room, most likely on

or underneath his bed; (3) according to eyewitness testimony, defendant left the Caldwell Inn just prior to reports of the fire and was in the vicinity of the Caldwell Inn at the time the fire occurred, therefore he had the opportunity to set the fire; and (4) accelerants present near defendant's bed indicated that someone voluntarily set the fire. This evidence was sufficient to submit the offense of first-degree arson to the jury.

Defendant claims that the evidence was insufficient to submit the offense of arson to the jury because circumstances in the case support a finding that defendant did not start the fire. We disagree. While there was evidence presented that other individuals may have had the motive, means or opportunity to start the fire, to withstand a motion to dismiss "the evidence does not [have to] rule out every hypothesis of innocence." *Fritsch*, 351 N.C. at 379, 526 S.E.2d at 455 (citation and internal quotation marks omitted). The State's evidence was sufficient to withstand defendant's motion to dismiss.

### III. Conclusion

The trial court did not err when it denied defendant's motion to dismiss. Despite contradictions and discrepancies in the evidence, in the light most favorable to the State, the

trial court properly determined that the State presented substantial evidence to submit the offense of first-degree arson to the jury.

No error.

Judges STROUD and McCULLOUGH concur.

Report per Rule 30(e).