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NO. COA12-580
NORTH CAROLINA COURT OF APPEALS

Filed: 4 December 2012

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 10 CRS 214084

CHARLES CLAYTON WINCHESTER,
Defendant.

Appeal by defendant from judgment entered 3 October 2011 by Judge Linwood O. Foust in Mecklenburg County Superior Court. Heard in the Court of Appeals 22 October 2012.

Roy Cooper, Attorney General, by Michael E. Bulleri, Assistant Attorney General, for the State.

Mary McCullers Reece, for defendant–appellant.

MARTIN, Chief Judge.

Defendant Charles Clayton Winchester was charged in true bills of indictment with two counts of burning a public building in violation of N.C.G.S. § 14-59. Upon defendant's motion at the close of the State's case, the trial court dismissed one count for insufficiency of the evidence. A jury found defendant guilty of the remaining charge. Judgment was entered upon the

jury's verdict sentencing defendant to not less than 20 months and not more than 24 months of imprisonment. Defendant appeals.

The evidence at trial tended to show that on or about 26 March 2010, the remnants of a small fire were discovered in the third floor men's bathroom of the Mecklenburg County Courts Office Building ("CCOB"). On that day, Mecklenburg County Assistant District Attorney Gary Bryan Crocker and several co-workers left their third floor offices to go to lunch when they smelled smoke in the hallway. Crocker noticed the odor was strongest adjacent to a nearby men's bathroom door. Crocker entered the bathroom where he observed the room was "actually clouded with visible smoke and the smell was a lot more overpowering once . . . inside [the] bathroom." The smoke smelled like "burnt toilet paper." Fire department personnel and arson investigators were summoned to the CCOB.

Inside the bathroom, a ceiling tile making up a portion of the drop ceiling had been charred along with part of the building structure. There were also charred remains of a paper product——likely toilet paper or paper towels——on both the ceiling tile as well as in the void above the drop ceiling.

Charlotte Fire Department Investigator Thomas Aaron Goforth, qualified as an expert in "fire investigation" and "origin and cause determination of fires," testified that the

charring in the bathroom was caused by a fire. He also testified that based upon his investigation, neither the HVAC system nor an electrical failure at the CCOB was the cause of the fire. Investigator Goforth opined that the fire was "intentionally set."

On the day of the fire, investigators obtained footage from the CCOB's video surveillance system. The video cameras covered various angles of the first floor entrance and lobby, as well as the second and third floors. There were no video cameras in the bathrooms or on the fourth or fifth floor. The video surveillance footage shows that an individual wearing a blue hooded sweatshirt with writing on the front, olive green pants, and brown shoes arrived at the CCOB at approximately 12:10 p.m. The individual got on the elevator in the first floor lobby with the sweatshirt's hood down. At approximately 12:14 p.m., the same individual exited the elevator on the third floor with the sweatshirt hood up over his head. The individual entered the third floor men's bathroom at 12:14 p.m. and exited approximately four minutes later at 12:18 p.m. The individual then got back on the third floor elevator. At 12:19 p.m. he exited the first floor elevator with his hood down again. The individual then departed the building. No other persons went to the third floor or into the bathroom during this time period

until employees began congregating in the hallway because of the smoke. Three witnesses who testified at trial identified the individual seen on the video as defendant.

On the day of the fire, investigators also obtained a sign-in log from the Youth and Family Services office on the fifth floor of the CCOB bearing defendant's name and dated that same day. Members of Youth and Family Services testified that defendant had requested a bus pass three days earlier and picked the bus pass up from the front desk of Youth and Family Services on the day of the fire. Based upon the surveillance video and the sign-in log, investigators obtained an arrest warrant for defendant.

The State presented evidence of an altercation that occurred between defendant and social workers with Mecklenburg County Child Protective Services. On 5 February 2010, the social workers took custody of a three-month-old child who was, at the time, the legal——but not biological——child of defendant. After the child had been placed in the social workers' vehicle, defendant arrived and began yelling, screaming, and cursing. Defendant then began to hit and kick the car windows. Once the social workers called 911 and seven law enforcement officers arrived, the social workers were able to leave with the child. The social workers' office——Mecklenburg County Child Protective

Services——is located in the CCOB.

The State also presented evidence concerning an almost identical fire that occurred in the same bathroom ten days after the altercation between defendant and Child Protective Services. However, video surveillance from 15 February 2010——the day of the alleged fire——was not available, because of an issue with the surveillance system hard drive. Based upon insufficiency of evidence, the trial court dismissed the charge related to the 15 February fire.

Defendant's sole issue on appeal is whether the trial court erred in denying his motion to dismiss the 26 March 2010 charge against defendant for insufficiency of the evidence.

"Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). "'The trial court in considering such motions is concerned only with the sufficiency of the evidence to carry the case to the jury and not with its weight.'" *State v. Carter*, __ N.C. App. __, __, 707 S.E.2d 700, 706 (quoting *Powell*, 299 N.C. at 99, 261

S.E.2d at 117), *disc. review denied*, 365 N.C. 202, 710 S.E.2d 9 (2011). "The test of the sufficiency of the evidence to withstand the motion is the same whether the evidence is direct, circumstantial or both," and it requires the court to decide "whether a reasonable inference of defendant's guilt may be drawn from the circumstances." *Powell*, 299 N.C. at 99, 261 S.E.2d at 117. When testing the sufficiency of evidence, it must be viewed in the light most favorable to the State and the State "is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom . . . ." *Id.*

Under the facts of this case, in order to properly survive a motion to dismiss, the State must have presented substantial evidence of the following elements of burning a public building: (1) defendant wantonly and willfully; (2) set fire to, burned or caused to be burned; (3) a building owned or occupied by Mecklenburg County. N.C. Gen. Stat. § 14-59 (2011); *In re J.L.B.M.*, 176 N.C. App. 613, 626, 627 S.E.2d 239, 247 (2006).

Defendant contends "[t]he State failed to offer sufficient evidence showing that [he] was the person who set the 26 March 2010 fire in the CCOB." Specifically, he relies on *State v. Blizzard*, 280 N.C. 11, 184 S.E.2d 851 (1971), to argue that the State's evidence of motive and opportunity are "insufficient to support more than conjecture that [defendant] set the fire." We

disagree.

In *Blizzard*, our Supreme Court set aside a conviction of malicious burning of a dwelling house for insufficiency of the evidence. *Id.* at 17, 184 S.E.2d at 855. The State presented evidence that the defendant had recently purchased gasoline in a gallon vinegar jug, owned boots with a tread pattern that matched shoe tracks found sixty feet from the crime scene, and parked his car within one and one-quarter miles of the home on the evening of the fire. *Id.* at 14–15, 184 S.E.2d at 853–54. However, the defendant testified and presented evidence that did not contradict the State's evidence, but offered a rational alternative explanation that "explain[ed] and rebut[ted] inferences of guilt on the house burning count." *Id.* at 15–16, 184 S.E.2d at 854. The Court concluded that "'the evidence leaves us with the impression that it falls short of the degree of proof required to convict a defendant in a criminal prosecution.'" *Id.* at 16, 184 S.E.2d at 855 (quoting *State v. Cranford*, 231 N.C. 211, 212, 56 S.E.2d 423, 423 (1949)).

In *State v. Hicks*, 70 N.C. App. 611, 320 S.E.2d 697, *disc. review denied*, 312 N.C. 87, 321 S.E.2d 911 (1984), this Court examined and distinguished *Blizzard*, noting:

> [T]he State's circumstantial evidence was insufficient because . . . the defendant had offered evidence tending to show that the circumstances were consistent with his

> version of the incident. That is, the defendant was able to explain the circumstances in a way that was logical and consistent with his innocence. In the present case, defendant failed to offer any evidence tending to explain his attempted solicitation of another to burn his house, or his absence from the place where he was staying at the time the fire started in any way that pointed towards his innocence.

Id. at 613, 320 S.E.2d at 699.

In *State v. Sheetz*, 46 N.C. App. 641, 653—54, 265 S.E.2d 914, 922 (1980), this Court again distinguished *Blizzard*. We held that the evidence was sufficient to withstand a motion to dismiss where the fire occurred within five minutes of the defendant closing the shop, the fire was not caused by electrical malfunction, the premises was still secure when the fire department arrived, and there was evidence of heavy indebtedness combined with a recent increase in insurance providing motive. *Id.* at 654, 265 S.E.2d at 922.

In the instant case, defendant's reliance on *Blizzard* is misplaced. Here, as in *Hicks*, defendant did not present any evidence. As in *Sheetz*, the State presented evidence of motive and opportunity——defendant's confrontation with Child Protective Services and the surveillance video placing only defendant in the third floor bathroom minutes before the recent fire was discovered. When viewed in the light most favorable to the State, this evidence is sufficient for a jury to reasonably

infer defendant's guilt from the circumstances. *See Powell*, 299 N.C. at 99, 261 S.E.2d at 117. Therefore, defendant's argument is without merit.

No Error.

Judges STEELMAN and ERVIN concur.

Report per Rule 30(e).