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NO. COA13-407
NORTH CAROLINA COURT OF APPEALS

Filed: 5 November 2013

STATE OF NORTH CAROLINA

v.

Cherokee County
No. 12 CRS 50718

TERRY DEWAYNE OWNBEY

Appeal by defendant from judgment entered 9 January 2013 by Judge James U. Downs in Cherokee County Superior Court. Heard in the Court of Appeals 21 October 2013.

Attorney General Roy Cooper, by Deputy Director Attorney General Caroline Farmer, for the State.

William B. Gibson for defendant-appellant.

STEELMAN, Judge.

Where the State presented substantial evidence of all of the elements of misdemeanor stalking, the trial court did not err in denying defendant's motion to dismiss.

I. Factual and Procedural Background

Terry DeWayne Ownbey (defendant) and Heidi Lampman (Lampman) had "an on again/off again" relationship. Lampman called the Murphy Police Department and informed them that, "she

didn't want [defendant] to have anything to do with her." As a result of this conduct, officers spoke to defendant and "explained to [him] not to have any more contact with her [Lampman]."

On the morning of 1 June 2012, Lampman again told defendant by text and by phone that she "didn't want to see or speak with him[.]" Lampman was alone at her residence she shared with her two sons. Defendant did not reside at Lampman's home. Lampman saw defendant drive by her house at least three times. She then saw defendant park his truck in front of her house. Lampman felt she was being harassed. Although Lampman was not "in fear of death or bodily injury[,]" she was getting "emotional[.]" Lampman called Assistant Chief of Police Dustin Smith (Smith), requesting the assistance of police to stop the harassment because her attempts to do so were not working. Lampman told Smith that "[defendant] was back" outside of her house. Smith described Lampman as "upset" during the telephone call.

When Smith and Officer Samuel Allen arrived at Lampman's house, they found defendant inside his truck parked on the street "blocking half [of Lampman's] driveway." Officer Allen asked defendant why he was at Lampman's house and defendant replied that "he'd come . . . to check on the tomatoes." The

tomato plants were not visible from defendant's truck. Defendant told Smith that "he was there looking at his tomatoes and watching [] Lampman." The police then took defendant into custody. Lampman came out of her house after the police had placed defendant in custody. Defendant was charged with misdemeanor stalking and second degree trespass.

At trial, the court dismissed the second degree trespass charge at the close of the State's evidence. The jury found defendant guilty of misdemeanor stalking. The trial court sentenced defendant to a term of 150 days in the Misdemeanant Confinement Program.

Defendant appeals.

II. Denial of Defendant's Motion to Dismiss

In his only argument on appeal, defendant contends that the trial court erred in denying his motion to dismiss the stalking charge at the close of the State's evidence. We disagree.

A. Standard of Review

"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. Fritsch, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "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). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *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).

B. Analysis

N.C. Gen. Stat. § 14-277.3A(c) provides that a person engages in misdemeanor stalking when he

willfully on more than one occasion harasses another person without legal purpose or willfully engages in a course of conduct directed at a specific person without legal purpose and the defendant knows or should know that the harassment or the course of conduct would cause a reasonable person to do any of the following:

. . . .

(2) Suffer substantial emotional distress by

placing that person in fear of death, bodily injury, or continued harassment.

N.C. Gen. Stat. § 14-277.3A(c).

Defendant asserts that the State failed to prove that: (1) he acted without a legal purpose; (2) he harassed Lampman on more than one occasion; and (3) he knew that his conduct would cause a reasonable person to suffer substantial emotional distress based upon a fear of continued harassment.

1. Legal Purpose

Defendant contends that the evidence shows he was acting with a harmless legal purpose of merely checking on the tomato plants. However, the State presented evidence that the tomato plants were on Lampman's property, that defendant did not live there, and that the tomato plants could not be seen from the location where defendant had parked his truck. Defendant also admitted to Smith that he was "watching [] Lampman." Accordingly, we hold that the State presented substantial evidence of defendant's lack of a legal purpose.

2. Harassment

N.C. Gen. Stat. § 14-277.3A defines "harassment" as follows:

Knowing conduct, including written or printed communication or transmission, telephone, cellular . . . directed at a

specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose.

N.C. Gen. Stat. § 14-277.3A(b) (2).

The State presented evidence that tended to show that Lampman had informed defendant she did not want to have contact with him. On the morning of 1 June 2012, Lampman again told defendant via text and phone that she did not want to see him. Despite this clear message, defendant drove by her home at least three times and then parked his car in front of Lampman's home, partially blocking her driveway. Lampman testified that she felt harassed and emotional. As a result of defendant's course of conduct on 1 June 2012, Lampman found it necessary to call the Murphy Police Department for assistance. Smith testified that during the phone call Lampman was upset and said that defendant "was harassing her outside her house."

We hold that the State presented substantial evidence that defendant harassed Lampman.

3. Conduct Caused Reasonable Person to Suffer Substantial Emotional Distress

A "reasonable person" is "[a] reasonable person in the victim's circumstances." N.C. Gen. Stat. § 14-277.3A(b) (3). "Substantial emotional distress" is defined as "[s]ignificant mental suffering or distress that may, but does not necessarily,

require medical or other professional treatment or counseling.”
N.C. Gen. Stat. § 14-277(b)(4).

Lampman had previously asked defendant to leave her alone. Despite this, defendant continued to approach her. Defendant repeatedly drove his car by Lampman's house and blocked half of her driveway with his car. Smith testified that when he spoke to Lampman she was upset and at her wits end. Lampman hid from defendant in the home and would only come out of the house once police arrived. As discussed above, this was not the first time that Lampman called the police concerning defendant's harassment.

We hold that the State presented substantial evidence that a reasonable person would suffer substantial emotional distress by being placed in fear of continued harassment.

NO ERROR.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).