NO. COA13-62
NORTH CAROLINA COURT OF APPEALS

Filed: 3 September 2013

STATE OF NORTH CAROLINA

v. Craven County
No. 11 CRS 53338

BRENDA YVETTE BRYANT

Appeal by defendant from judgment entered 18 July 2012 by Judge Jay D. Hockenbury in Craven County Superior Court. Heard in the Court of Appeals 19 August 2013.

Attorney General Roy Cooper, by Assistant Attorney General Joel L. Johnson, for the State.

Unti & Lumsden LLP, by Margaret C. Lumsden, for defendant-appellant.

DILLON, Judge.

Brenda Yvette Bryant (Defendant) appeals from a judgment entered based upon a jury verdict finding her guilty of disorderly conduct. Because the State presented sufficient evidence of the essential elements of disorderly conduct, we hold Defendant received a fair trial, free from error.

At trial, the State's evidence tended to show that on the evening of 3 August 2011, Yvette Dixon (Dixon) was driving around New Bern, North Carolina when she noticed Defendant following her. Dixon had previously been involved with Raymond West, whom Defendant was then dating. When Dixon stopped at a convenience store, Defendant turned into a gas station across the street and began yelling at Dixon, calling her a "bitch" and telling her to "come get him." While Dixon was getting a soda, West drove into the parking lot where Dixon was parked. Defendant then drove across the street and began "blurting" out words to both Dixon and West. Defendant kicked Dixon's car and ran back to her own car to get a box cutter. Defendant then "came at" Dixon and West with the box cutter, nearly striking West and scratching the paint job on Dixon's car. During the altercation, Defendant repeatedly swore at Dixon, calling her a "bitch" and "mother-fucker." Dixon drove off and subsequently swore out a warrant against Defendant.

At the close of the State's evidence, and again at the close of all the evidence, defense counsel made a motion for a directed verdict. The trial court treated the motions as motions to dismiss[1] and denied both. The jury found Defendant

[1] In a criminal case, a motion to dismiss for insufficient

guilty of disorderly conduct and defense counsel moved to set aside the verdict, a request which the trial court denied. Defendant now argues the State presented insufficient evidence to send the charge of disorderly conduct to the jury or sustain the conviction.

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted). "When ruling on a defendant's motion to dismiss, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged, and (2) that the defendant is the perpetrator of the offense." *Id.* "Substantial evidence is evidence from which any rational trier of fact could find the fact to be proved beyond a reasonable doubt. The evidence must be viewed in the light most favorable to the State, and the State is entitled to every reasonable inference that is drawn therefrom." *State v. McDowell*, 329 N.C. 363, 389, 407 S.E.2d 200, 215 (1991) (citation and quotation marks omitted). "[I]f there is substantial evidence – whether direct, circumstantial, or both – to support a finding that the offense charged has been

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evidence and a motion for a directed verdict have the same effect. *State v. Mize*, 315 N.C. 285, 290, 337 S.E.2d 562, 565 (1985).

committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied." *State v. Abshire*, 363 N.C. 322, 328, 677 S.E.2d 444, 449 (2009) (citation and quotation marks omitted). "The standard of review of a trial court's denial of a motion to set aside a verdict for lack of substantial evidence is the same as reviewing its denial of a motion to dismiss, i.e., whether there is substantial evidence of each essential element of the crime." *State v. Duncan*, 136 N.C. App. 515, 520, 524 S.E.2d 808, 811 (2000).

To convict Defendant of disorderly conduct as charged in this case, the State was required to prove that she intentionally caused a public disturbance by making or using "any utterance, gesture, display or abusive language which is intended and plainly likely to provoke violent retaliation and thereby cause a breach of the peace." N.C. Gen. Stat. § 14-288.4(a)(2) (2011). The following is the definition of public disturbance:

> Any annoying, disturbing, or alarming act or condition exceeding the bounds of social toleration normal for the time and place in question which occurs in a public place or which occurs in, affects persons in, or is likely to affect persons in a place to which the public or a substantial group has access. The places covered by this definition shall include, but not be limited to, highways, transport facilities, schools,

> prisons, apartment houses, places of business or amusement, or any neighborhood.

N.C. Gen. Stat. § 14-288.1(8) (2011).

Defendant argues she did not create a public disturbance or breach of the peace because only she, Dixon and West were present in the parking lot at the time of the altercation, and because her language, while profane, was not intended to provoke violent retaliation. Defendant's argument ignores, however, the fact that the altercation involved more than just abusive and profane language since she also kicked Dixon's car, "came at" Dixon with a box cutter, almost cut West with the box cutter, and scratched Dixon's car with the box cutter. Additionally, neither section 14-288.1(8) nor 14-288.4(a)(2) require large crowds to be present at the scene of the disturbance or the defendant have the intention to incite multiple people to violence. The fact that the altercation took place in the parking lot of a business with Dixon and West present is sufficient to constitute a public disturbance.

Defendant's yelling at Dixon to "come and get him" and the subsequent altercation in the parking lot constitutes substantial evidence of each of the elements of disorderly conduct as charged in this case. Accordingly, we find no error

in the trial court's denial of Defendant's motions for a directed verdict and to set aside the verdict.

NO ERROR.

Judges GEER and ERVIN concur.

Report per Rule 30(e).