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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-289

Filed: 15 December 2015

Guilford County, No. 13CRS87731, 13CRS24631

STATE OF NORTH CAROLINA

v.

BOBBY FREDERICK WALLS, JR., Defendant.

Appeal by defendant from judgments entered 13 November 2014 by Judge L. Todd Burke in Guilford County Superior Court. Heard in the Court of Appeals 24 September 2015.

Attorney General Roy Cooper, by Assistant Attorney General Justin M. Hampton, for the State.

The Law Office of Bruce T. Cunningham, Jr., by Bruce T. Cunningham, Jr., for defendant-appellant.

DIETZ, Judge.

A jury convicted Defendant Bobby Frederick Walls, Jr. of felonious breaking and entering under a theory of aiding and abetting. At trial, the evidence showed that a man entered a home, ransacked it, and stole various items. While this occurred, Walls waited in a nearby car with the trunk and back passenger door open. When a neighbor became suspicious and approached the car, it suddenly sped away. The neighbor flagged down a nearby police officer and provided the fleeing car's

license plate number, which police traced to Walls's sister. A different witness saw Walls inside the car as it sped away. At the time Walls was subject to electronic monitoring which placed him at the scene.

On appeal, Walls contends that there was insufficient evidence to convict him of breaking and entering under the theory of aiding and abetting, and insufficient evidence to instruct the jury on that theory of criminal liability. As explained below, we reject these arguments because the State's evidence was sufficient for a reasonable jury to infer that Walls aided in the commission of the breaking and entering by serving as a lookout and getaway driver for the man who broke into the home. Accordingly, we find no error.

Facts and Procedural Background

On 13 August 2013, police contacted Stephen Jackson about a possible break-in at his home in Greensboro. Mr. Jackson returned home and found his side door broken and the interior of his home ransacked. Many things had been stolen from his home, including a shotgun, a PlayStation gaming console, headphones, a laptop, and a bag containing a handgun and ammunition. Mr. Jackson testified that no one had permission to be in his home.

At trial, several witnesses testified about what they saw that day. Chris Robinette testified that he was standing outside his business when he noticed a dark colored Hyundai parked near Mr. Jackson's home with the trunk and back passenger

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door open. Mr. Robinette testified that he saw someone in the car but did not see the person's face. Mr. Robinette also watched a second man, who had a white cast on his arm, walk away from the car, through a fence, and into Mr. Jackson's home. The man in the cast raised Mr. Robinette's suspicions because he did not recognize the man and had never seen anyone enter Mr. Jackson's home that way before. Because he was concerned about the man in the cast, Mr. Robinette began to walk towards the car to get a closer look. As he did, the car suddenly pulled away.

Around the same time, Corporal Grant of the Guilford County Sheriff's Office pulled onto the street. Mr. Robinette waived him over and pointed out the suspicious car. Mr. Robinette also took down the fleeing car's license plate number.

Mr. Robinette then saw the man with the cast run through Mr. Jackson's backyard, jump the fence, and head into the adjacent woods. Police later recovered a shotgun stolen from Mr. Jackson's home in the woods where Mr. Robinette saw the man flee.

Patricia Willard testified that she was driving down Mr. Jackson's street at the same time that Mr. Robinette approached the dark colored Hyundai parked on the side of the road. As she attempted to go around the car, the driver accelerated and almost hit her. Ms. Willard was able to see the driver's face and identified him as Walls. She also testified that when she first turned onto the street she saw a man in

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a white shirt standing near the trunk but she did not see where the man went or if he was with the man inside the car.

Law enforcement traced the license plate of the fleeing car to the home of Walls's sister and arrested Walls.

Walls has a criminal history and was subject to electronic monitoring at the time of the crime. Law enforcement traced the plotter points from Wall's electronic monitoring device and saw that he was present near Mr. Jackson's home at the time witnesses saw the dark Hyundai there. The location of his monitoring device then moved throughout the area several times over the next two hours, in a manner consistent with a driver searching for someone to pick up.

Walls did not present any evidence at trial. He moved to dismiss the charges for insufficient evidence and the trial court denied the motion. The court instructed on felony breaking and entering based on aiding and abetting. After beginning deliberations, the jury asked the trial court to explain the elements of aiding and abetting again. The court reinstructed them on what the State was required to prove to establish aiding and abetting liability. The jury continued their deliberations and soon returned a guilty verdict for felony breaking and entering. Walls timely appealed.

Analysis

I. Sufficiency of the Evidence

Walls first argues that the trial court erred in denying his motion to dismiss. Specifically, Walls contends that there was insufficient evidence to show that he aided and abetted the commission of a breaking and entering. For the reasons explained below, we disagree.

“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). “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 (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 reviewing the denial of a motion to dismiss, this Court must view the evidence “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).

The elements of breaking and entering under North Carolina law are: (1) the breaking or entering; (2) of any building; and (3) with the intent to commit any felony

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or larceny therein. N.C. Gen. Stat. § 14-54. To convict a defendant under a theory of aiding and abetting, the State must prove: (1) that the crime was committed by another; (2) that the defendant knowingly advised, instigated, encouraged, procured, or aided the other person; and (3) that the defendant's actions or statements caused or contributed to the commission of the crime by the other person. *State v. Francis*, 341 N.C. 156, 161, 459 S.E.2d 269, 272 (1995).

Here, when viewed in the light most favorable to the State, the evidence shows that a man entered the victim's home, ransacked it, and stole a number of items. The evidence also shows that Walls served as a lookout and getaway driver during the commission of this crime, waiting in a nearby car to pick up the man and the stolen items.

Electronic monitoring placed Walls in the car parked next to the victim's home with its trunk and back passenger door open as the man broke into the home. A witness saw Walls inside the car. When a neighbor became suspicious and approached the car, it suddenly sped away, but not before the witness recorded the license plate number, which police traced back to Walls's sister. Electronic monitoring showed that, in the two hours after the car fled, Walls roamed the neighborhood in a manner that suggested he was attempting to locate and pick someone up nearby.

This evidence is sufficient for a reasonable jury to conclude that Walls was the driver of the car seen by witnesses next to the victim's home and that Walls was there to aid in the commission of a breaking and entering by serving as a lookout and getaway driver. Accordingly, the trial court properly denied the motion to dismiss.

II. Jury Instructions

Walls next argues that the trial court erred in instructing the jury on aiding and abetting because there was insufficient evidence to permit the use of that theory of criminal liability. As explained above, the State presented substantial evidence establishing that Walls acted as a lookout and getaway driver for the man who broke into the victim's home and stole various items from inside. This evidence was sufficient to permit the trial court to instruct the jury on aiding and abetting. Accordingly, we reject Walls's argument.

Conclusion

We find no error in the trial court's judgment.

NO ERROR.

Judges HUNTER, JR. and DILLON concur.

Report per Rule 30(e).