IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-986

Filed: 3 May 2016

Forsyth County, No. 14 CRS 51595

STATE OF NORTH CAROLINA

v.

RENALDO MIQUEL MARTIN, Defendant.

Appeal by defendant from judgment entered 18 November 2014 by Judge Anderson D. Cromer in Forsyth County Superior Court. Heard in the Court of Appeals 10 February 2016.

Attorney General Roy Cooper, by Assistant Attorney General Robert K. Smith, for the State.

Staples Hughes, Appellate Defender, by Assistant Appellate Defender Jon J. Hunt, for defendant-appellant.

DIETZ, Judge.

Defendant Renaldo Miquel Martin appeals his conviction for burglary and larceny after breaking and entering. The night of the crime, a witness saw three African American men and one Hispanic man breaking into the victim's home and leaving with what appeared to be stolen property. Law enforcement dusted the victim's home for fingerprints and found Martin's print on a box in which the victim stored her cell phone, which was among many items stolen from her home. Martin

roughly matched the description of the Hispanic man seen by a witness outside the victim's home that night.

At trial, Martin moved to dismiss the charges on the ground that there was insufficient evidence to establish he was the perpetrator of the burglary. The trial court denied the motion, and that is the primary issue in this appeal. As explained below, we hold that the State's fingerprint evidence, combined with the witness testimony about the Hispanic suspect seen at the victim's home—a description that generally matched Martin's own height, weight, and build—was sufficient to send the case to the jury. Accordingly, we find no error in Martin's conviction.

Martin also challenges the trial court's award of restitution on the ground that the record does not support it. The original record on appeal—on which both parties initially agreed—did not contain any documentary support for the court's restitution award. The State later moved to amend the record, indicating that it initially omitted invoices reviewed by the trial court that supported the restitution award. In the interests of judicial economy, we allow that motion to amend and, in light of that additional evidence, find no error in the award of restitution.

Facts and Procedural History

On the night of 6 January 2014, a neighbor saw four young men on the porch of the victim's home. The neighbor described the four men as three African American males and one "kind of short, kind of plump" Hispanic male with long hair. The

neighbor observed two of the four men enter the home, while the two other men stayed outside. The neighbor then heard one of the men outside tell the others, "Hurry up. I see some car lights." Several minutes later, the men ran away, with one appearing to have something concealed in his jacket.

Around the same time, the victim's son, Michael, was taking a nap in the basement of the home, where he lived. Michael woke to the sound of two sets of footsteps coming from the main floor of the residence. Michael thought the footsteps were odd because his mother rarely had company. He then called his mother to see if she was upstairs and, when she said she was not, told her to call the police. The police arrived shortly after, as did the victim, who confirmed that her home had been invaded and various personal items had been stolen, including most of her jewelry, a cell phone, and a laptop.

A crime scene technician dusted for fingerprints and recovered six prints from the box in which the victim kept the stolen cell phone. The crime lab matched one of those fingerprints to Martin's right middle finger. At the time of his arrest, Martin was 5'7" tall and nearly 300 pounds and roughly matched the eyewitness description of the Hispanic male among the four suspects seen on the victim's porch the night of the burglary.

The State indicted Martin for first degree burglary and larceny after breaking and entering. At trial, the victim testified that she did not know Martin, that he had

never been to her home, and that no one other than her ever touched the box in which she kept her cell phone, which was used solely for work-related purposes.

At the close of the State's evidence, Martin moved for dismissal on the ground that the State had failed to present sufficient evidence to support the charges against him. The trial court denied that motion. Martin renewed his motion for dismissal at the close of all evidence, and that motion was again denied.

The jury convicted Martin of first degree burglary and larceny after breaking and entering. Martin timely appealed.

Analysis

I. Sufficiency of the evidence

Martin first argues that the trial court erred by denying his motions to dismiss. Specifically, Martin contends that there was insufficient evidence to link him to the crimes. 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 first degree burglary under North Carolina law are: "(1) the breaking (2) and entering (3) in the nighttime (4) into a dwelling house or a room used as a sleeping apartment (5) of another (6) which is actually occupied at the time of the offense (7) with the intent to commit a felony therein." *State v. Clagon*, 207 N.C. App. 346, 350, 700 S.E.2d 89, 92 (2010). The crime of larceny is a felony without regard to the value of the property in question if the larceny is committed in connection with first or second degree burglary. N.C. Gen. Stat. § 14–72.

Here, there are two distinct pieces of evidence tying Martin to the burglary. First, Martin roughly fits the description of the "kind of short, kind of plump" Hispanic male that an eyewitness saw among the four men suspected of the burglary. Second, the State presented evidence that Martin's fingerprint was on the box in which the victim kept her stolen phone. The victim testified that she did not know Martin, that Martin had not been in her home, and that no one but the victim had permission to touch the box in which she kept her cell phone.

Martin cites our Supreme Court's decision in *State v. Irick* for the proposition that fingerprint evidence is admissible only if the State can show that the fingerprints must have been left during the commission of the crime. But that is not *Irick*'s holding. In *Irick*, the Supreme Court established that "[f]ingerprint evidence, *standing alone*, is sufficient to withstand a motion for nonsuit only if there is *substantial* evidence of circumstances from which the jury can find that the fingerprints could only have been impressed at the time the crime was committed." *State v. Irick*, 291 N.C. 480, 491–92, 231 S.E.2d 833, 841 (1977) (first emphasis added). But the Court also emphasized that this rule does not apply if "other circumstances tend to show that defendant was the criminal actor." *Id.* In *Irick*, for example, police saw the defendant near the scene of the crime and found "in his pocket at the time of his arrest loose bills in the same denominations and total amount as those stolen" from the victim's home. *Id.*

Here, the State did not rely solely on the fingerprint evidence to place Martin at the scene of the crime. Martin also matched the description of one of the suspects seen outside the victim's home on the night of the burglary. Taken together, this evidence is sufficient to survive a motion to dismiss and send the charges to the jury.

II. Restitution

Martin next argues that the trial court committed reversible error in ordering him to pay restitution without sufficient evidence to support the award. We do not agree.

"A trial court's judgment ordering restitution must be supported by evidence adduced at trial or at sentencing." *State v. Mumford*, 364 N.C. 394, 403, 699 S.E.2d 911, 917 (2010). Here, the trial court ordered Martin to pay $3,319.00 in restitution for the items stolen from the victim's home. The sentencing transcript shows that the trial court considered vendor invoices establishing the value of the stolen items. These invoices were not included in the original record on appeal, but the State moved to amend the record to include them. This Court typically is reluctant to permit amendments to the record on appeal—one purpose of which is to establish the evidence that may be considered by this Court in reviewing the parties' arguments. But in the interests of judicial economy, we will allow the motion because, as the transcript indicates, the trial court considered those invoices in awarding restitution. If we were to vacate and remand because the invoices were not included in the record on appeal, it would not change the outcome on remand. Accordingly, we will consider those invoices on appeal and, because they adequately support the trial court's award, we find no error in the award of restitution.

Conclusion

For the reasons set out above, we find no error in Martin's conviction and sentence.

NO ERROR.

Judges ELMORE and STROUD concur.

Report per Rule 30(e).