IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-134

Filed: 4 October 2016

Yancey County, Nos. 15 CRS 50297-99, 15 CRS 269

STATE OF NORTH CAROLINA

v.

JASON TODD LAWS, Defendant.

Appeal by defendant from judgment entered 29 October 2015 by Judge Mark E. Powell in Yancey County Superior Court. Heard in the Court of Appeals 10 August 2016.

Roy Cooper, Attorney General, by Nancy D. Hardison, Assistant Attorney General, for the State.

Hollers & Atkinson, by Russell J. Hollers, III, for defendant-appellant.

DAVIS, Judge.

Jason Todd Laws ("Defendant") appeals from his convictions for breaking and entering, domestic criminal trespass, and attaining the status of a habitual felon. On appeal, he contends that the trial court erred in denying his motions to dismiss. After careful review, we conclude that Defendant received a fair trial free from error.

Factual Background

The State presented evidence at trial tending to establish the following facts: On 23 June 2015 at approximately 9:30 p.m., a woman named Lisa Bell called the Yancey County Sheriff's Office reporting that someone had broken into her house and vandalized it. Deputy Scott Rogers answered the call and arrived at the house around 9:37 p.m. Bell answered the door, and Deputy Rogers observed that her two young daughters were crying. The house was in disarray. Deputy Rogers noticed there was a milk jug left out on the kitchen counter, and Bell stated to him that "there was food on the kitchen table that . . . was not there prior to her leaving."

Bell told Deputy Rogers that Defendant, her ex-boyfriend at the time, was responsible for the mess. She stated that she had heard Defendant yelling for her outside the house when she got home but that she had told him to leave because she did not want him there. Bell told Deputy Rogers that she wanted to press charges against Defendant.

Deputy Rogers and Bell drove to the magistrate's office. On the way, Deputy Rogers received a call from Bell's neighbor that Defendant's pickup truck was on the neighbor's property and that he wanted it removed.

After Bell and Deputy Rogers went into the magistrate's office, they heard a loud commotion outside. Deputy Rogers went out to investigate the noise and saw Defendant banging on the outside of the magistrate's door. Defendant was cursing at Bell and was noticeably angry at her. Deputy Rogers attempted to calm Defendant

down at which point Defendant got in his truck and indicated his intent to drive home.

After warrants for domestic criminal trespass and felony breaking and entering had been issued, Deputy Rogers went back outside and told Defendant that he needed to "step out of the vehicle" or else "[t]here could be additional charges if [he ran]." In response, Defendant stated to Deputy Rogers that "I was hungry and I needed some food" and "all I wanted was some food and clothes, and Lisa's just trying to hurt me and send me away[.]" Deputy Rogers directed Defendant to turn off his vehicle, but Defendant instead drove out of the parking lot. Deputy Rogers later apprehended Defendant and arrested him with the assistance of the Burnsville Police Department.

On 24 August 2015, Defendant was indicted by a grand jury for domestic criminal trespass, felony breaking and entering, and resisting a public officer. On 29 October 2015, a jury trial was held in Yancey County Superior Court before the Honorable Mark E. Powell. At the close of the State's case, the Defendant moved to dismiss the charges of domestic criminal trespass and felony breaking and entering. He renewed this motion to dismiss at the close of all the evidence. The trial court denied Defendant's motions to dismiss, and the jury found Defendant guilty of all three charges. Defendant then pled guilty to attaining the status of a habitual felon.

He was sentenced to 103 to 136 months imprisonment. Defendant gave notice of appeal in open court.

Analysis

Defendant's sole argument on appeal is that the trial court erred in denying his motions to dismiss. We disagree.

"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." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (citation omitted), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "Substantial evidence is . . . evidence that 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) (citations omitted). In reviewing challenges to the sufficiency of the evidence, we must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences. *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992) (citation omitted).

"Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence." *State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988) (citation omitted). If the court decides that a reasonable inference of the defendant's guilt may be drawn from

the circumstances, then "it is for the jury to decide whether the facts, taken singly or in combination, satisfy them beyond a reasonable doubt that the defendant is actually guilty." *State v. Thomas*, 296 N.C. 236, 244, 250 S.E.2d 204, 209 (1978) (citation and emphasis omitted). When ruling on a motion to dismiss, the trial court should only be concerned with whether "the evidence is sufficient to get the case to the jury; it should not be concerned with the weight of the evidence." *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649, 652 (1982).

Defendant was convicted of felony breaking and entering under N.C. Gen. Stat. § 14-54(a).

> To support a conviction for felonious breaking and entering under G.S. § 14-54(a), there must exist substantial evidence of each of the following elements: (1) the breaking or entering, (2) of any building, (3) with the intent to commit any felony or larceny therein. Moreover, there must be a showing that a breaking or entering occurred in a building with intent to commit a felony or other infamous crime therein to satisfy the felony requirement of this statute[,] and the intent proven must be that which was alleged by the State.

State v. Walton, 90 N.C. App. 532, 533, 369 S.E.2d 101, 103 (1988) (internal citations and quotation marks omitted).

Defendant was also convicted of domestic criminal trespass under N.C. Gen. Stat. § 14-134.3, which provides, in pertinent part, as follows:

> Any person who enters after being forbidden to do so or remains after being ordered to leave by the lawful occupant, upon the premises occupied by a present or

> former spouse or by a person with whom the person charged has lived as if married, shall be guilty of a misdemeanor if the complainant and the person charged are living apart[.]

N.C. Gen. Stat. § 14-134.3(a) (2015).

Defendant makes two specific arguments in support of his contention that the trial court erred in failing to grant his motions to dismiss. First, he asserts that he had Bell's consent to enter her residence, thereby negating an element of the crimes of felony breaking and entering and domestic criminal trespass. Second, he argues that he merely intended to vandalize the home — rather than to steal food — such that there was no evidence of his "intent to commit any felony or larceny therein" as required for the offense of felony breaking and entering. We address each argument in turn.

I. Consent to Enter Residence

Defendant first argues there was insufficient evidence that he committed the offenses of felony breaking and entering or domestic criminal trespass because Defendant had permission to enter Bell's residence with his key. Defendant contends that he had a good faith belief that he had permission to enter the home because he had been in a relationship with Bell and she had given him a key to enter her residence. Defendant further testified that he and Bell spoke on the phone and texted "all the time."

The State presented evidence at trial tending to show that Defendant's relationship with Bell ended at either the end of May 2015 or the beginning of June 2015, when the Yancey County Department of Social Services ("DSS") had become involved. The evidence further demonstrated that (1) DSS had forbidden Defendant from being in the residence when Bell's daughters were staying with her; (2) in order for him to be allowed inside the home, Defendant would generally call Bell to receive advance permission to enter; and (3) on the night of 23 June 2015, Bell's daughters were staying at her residence and Defendant never called Bell to ask for permission to enter the home.

For these reasons, the State clearly introduced sufficient evidence to support a jury finding that Defendant did not have permission to enter the home on 23 June 2015. *See State v. Thomas*, 153 N.C. App. 326, 334, 570 S.E.2d 142, 147 (2002) (upholding denial of motion to dismiss charge of felonious breaking and entering where State presented adequate circumstantial evidence of each element of offense).

II. Intent to Commit Larceny

Defendant next argues that the State failed to offer substantial evidence that Defendant intended to commit larceny or some other felony inside Bell's home upon his entry. For this reason, Defendant argues, the trial court should have granted his motion to dismiss the charge of felonious breaking and entering.

"[I]ntent to commit any felony or larceny" is an essential element of felony breaking and entering. N.C. Gen. Stat. § 14-54(a); *see Walton*, 90 N.C. App. at 533, 369 S.E.2d at 103. "Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred." *State v. Bell*, 285 N.C. 746, 750, 208 S.E.2d 506, 508 (1974) (citation omitted). "Without other explanation for breaking into the building or a showing of the owner's consent, intent may be inferred from the circumstances." *State v. Myrick*, 306 N.C. 110, 115, 291 S.E.2d 577, 580 (1982) (citation omitted).

During the State's direct examination of Deputy Rogers, the prosecutor asked him about statements Defendant had made to him shortly after the break-in:

> [THE PROSECUTOR]: [Defendant] told you why he was going to his house. Did he tell you why he went into her house?
>
> [DEPUTY ROGERS]: Right. He said, "I'm so f-ing messed up. I've not slept for three days and I was hungry and I needed some food." So I took that as it was and I told [Defendant] to turn off the vehicle, and that's when he gave us the birdie finger and said, "F you" and spun out of the driveway.
>
> [THE PROSECUTOR]: Was his quote "all I wanted was some food and clothes, and Lisa's just trying to hurt me and send me away?"
>
> [DEPUTY ROGERS]: Yes.

Defendant argues that it is unclear whether this statement was referring to the reason why Defendant entered Bell's home or the reason Defendant fled from

Deputy Rogers. However, viewing this evidence in the light most favorable to the State — as we must do in reviewing the denial of a motion to dismiss — Defendant's statement to Deputy Rogers constituted substantial evidence that Defendant intended to steal food from Bell's residence upon entering the home. As such, Deputy Rogers's testimony satisfied the intent element for the offense of felony breaking and entering. *See State v. Stafford*, 166 N.C. App. 118, 127, 601 S.E.2d 219, 226 (2004) ("[V]iewing this evidence in the light most favorable to the State, we hold that the trial court properly denied defendant's motion to dismiss[.]"). Accordingly, the trial court did not err in denying Defendant's motion to dismiss.

Conclusion

For the reasons stated above, we conclude that Defendant received a fair trial free from error.

NO ERROR.

Judges ELMORE and DIETZ concur.

Report per Rule 30(e).