IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-36

Filed: 19 July 2016

Forsyth County, Nos. 13 CRS 5895, 50970

STATE OF NORTH CAROLINA

v.

WINGS MICHAEL GIBSON

Appeal by defendant from judgment entered 8 December 2014 by Judge William Z. Wood in Forsyth County Superior Court. Heard in the Court of Appeals 7 June 2016.

Attorney General Roy Cooper, by Assistant Attorney General Joseph E. Elder, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Daniel L. Spiegel, for defendant-appellant.

BRYANT, Judge.

Where the State presented substantial evidence of circumstances that defendant's fingerprints could only have been impressed at the time of the crime and that defendant was the perpetrator, the trial court properly denied defendant's motion to dismiss, and we find no error in the judgment of the trial court.

On 9 January 2013, Ashley Mooney was asleep in her home on 705 Gaston Place in Winston-Salem, North Carolina. Sometime in the middle of the night, she

was awakened from her sleep by a noise which sounded like the slashing of a screen. She got up and looked around. But it was dark, and she saw nothing. The next morning, on 10 January 2013 at 6:00 AM, Mooney was preparing to leave for work and noticed her purse was missing. She typically kept her purse either on the kitchen counter or on a stool below a kitchen window. She then noticed that the two kitchen window screens had been cut. One of the cut screens was on the window under which was located the stool where she often kept her purse.

Outside on her deck, Mooney found a glove, which had been taken from her unlocked car, and she noted that things inside her car appeared to be out of place. Mooney looked around her yard and found her purse hanging from a tree, its contents on the ground in the leaves.

Corporal James Wooten of the Winston-Salem Police Department responded to a call to investigate a reported break-in at Mooney's house. Corporal Wooten observed the cut screens and the glove on the deck. He requested a forensics and services technician and the case was turned over to the criminal investigations division.

Jessica Goldstein, a forensics and services technician, photographed the scene and dusted for fingerprints on the center console of Mooney's car, the exterior and interior doors of the car, the fence gates, and the exterior windows of the house. One print was obtained from the center console of the car, and five prints were obtained

from the glass of an unlocked exterior window, which was determined to be the point of entry at the back of the house.

The prints were run through a computer database, and two hits from prints taken from the window came back for Wings Michael Gibson, defendant. Police determined that defendant lived at 621 Corona Street, approximately 300 to 500 yards away from Mooney's residence. "[Corona Street] parallels . . . Gaston Place. It is basically one street over." Mooney did not know defendant, had never seen him before, and had never invited him to her house. There was no reason he should have ever been in her house or her car.

This case came on for trial at the 22 September 2014 Criminal Session of Forsyth County Superior Court before the Honorable William Z. Wood on indictments alleging first-degree burglary, larceny after burglary, breaking or entering a motor vehicle, and attaining habitual felon status.

At the close of the State's evidence, defense counsel moved to dismiss all the charges. The trial court denied defendant's motion to dismiss all charges.

On 24 September 2014, the jury found defendant guilty of first-degree burglary, felony larceny, and attaining habitual felon status. The jury acquitted defendant of breaking and entering a motor vehicle. On 8 December 2014, the trial court sentenced defendant to a consolidated term of 80 to 104 months imprisonment. Defendant gave notice of appeal in open court.

On appeal, defendant argues that the trial court erred in denying defendant's motion to dismiss, as the evidence failed to establish that the prints could only have been impressed at the time of the crime. 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) (citation omitted). In order to survive a motion to dismiss based on the sufficiency of the evidence, the State must present substantial evidence of each essential element of the charged offense and the defendant's being the perpetrator. *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000). "What constitutes substantial evidence is a question of law for the court." *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992) (citation omitted). "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) (citations omitted). "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, 192–93, 451 S.E.2d 211, 223 (1994) (citing *State v. Sumpter*, 318 N.C. 102, 107, 347 S.E.2d 391, 399 (1986)).

Generally, fingerprint evidence is admissible to prove the identity of the perpetrator of a crime. *See State v. Irick*, 291 N.C. 480, 488, 231 S.E.2d 833, 839 (1977). However, "[f]ingerprint evidence, standing alone, is sufficient to withstand a motion [to dismiss] 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." *Id.* at 491–92, 231 S.E.2d at 841 (citations omitted) (quoting *State v. Miller*, 289 N.C. 1, 4, 220 S.E.2d 572, 574 (1975)). Whether fingerprints could have been impressed only at the time when the crime was committed is ordinarily a question of fact for the jury. *Id.* at 489, 231 S.E.2d at 839 (citations omitted).

Defense counsel argued in his motion to dismiss that, as fingerprints can stay on a surface for over two years, the fingerprints could have been placed on the surface of Mooney's house before she lived there, as she had been in the home for only eighteen months. However, as we noted, this is a question of fact for the jury. "Circumstantial evidence that the fingerprint could only have been impressed at the time the crime was committed comes in several different forms." *State v. Scott*, 296 N.C. 519, 523, 251 S.E.2d 414, 417 (1979) (citation omitted). The form in which the evidence is presented is not material if it "substantially demonstrates that the fingerprint could have been placed at the scene only at the time the crime was committed." *Id.*

In many cases, the location of the fingerprints has provided circumstances sufficient to withstand a motion to dismiss. In *State v. Evans*, 99 N.C. App. 88, 392 S.E.2d 441 (1990), the occupant of an apartment returned home from work to find her apartment had been broken into and several items had been stolen. *Id.* at 90, 392 S.E.2d at 443. The State's evidence showed that the defendant's fingerprints were found on the exterior window sash, which had been covered with a screen prior to the breaking and entering, and fingerprints were also found on a piece of broken glass inside the apartment. *Id.* This fingerprint evidence was sufficient to provide circumstances from which a jury could conclude that the defendant left the prints at the time of the breaking and entering. *Id.* at 93, 392 S.E.2d at 444.

In another case, very factually similar to the instant case, the defendant's fingerprints were lifted from the exterior window at the back of an apartment. *State v. Clark*, No. COA14-637, 2015 WL 1201354, at *3 (N.C. Ct. App. Mar. 17, 2015) (unpublished). A mother, her three children, and her godmother resided in the apartment and were all out of the residence during the day the break-in occurred. *Id.* at *1. Upon her return, the mother discovered the kitchen window at the rear of the apartment was raised and the screen covering the window was out. *Id.* The window had been continuously covered by a screen during the time they lived in the apartment. *Id.* This Court determined that the placement of the defendant's palm print on the window that had been continuously covered by a screen was sufficient

for a jury to find that the palm print was impressed at the time the crime was committed. *Id.* at *4.

Here, defendant's fingerprints were left in a location and under circumstances that, when viewed in the light most favorable to the State, support an inference they were impressed at the time of the burglary. The evidence showed that prints were lifted from the exterior side of the window located at the back of Mooney's house. A palm print and fingerprint from each hand was lifted from the upper and lower parts of the window, and like the window in *Clark*, Mooney's window was covered from the outside by a screen which had always been in place during the time she lived in the home. *See id.* at *1.

Our holding in this case is supported by cases where the occupant of the broken-into premises testified that they had never seen the defendant before or given him permission to enter the premises, and where such testimony was sufficient to show that fingerprints at the crime scene could only have been impressed at the time the crime was committed. *See Irick*, 291 N.C. at 492–93, 231 S.E.2d at 841–42; *State v. Tew*, 234 N.C. 612, 618, 68 S.E.2d 291, 295 (1951) (holding that fingerprint evidence together with testimony from owner of burglarized service station that she had never seen defendant before the crime, was sufficient evidence to "take the case to the jury and to support a finding by the jury that [the] defendant was present when

the crime was committed and that he, at least, participated in its commission") (citation omitted).

Here, the evidence of defendant's fingerprints on the window together with testimony from Mooney that she did not know defendant and had never given him permission to be on her property, raised more than mere speculation or conjecture that defendant was the perpetrator of the crime. Indeed, "the court is not required to exclude 'every reasonable hypothesis of innocence' prior to denying a motion to dismiss." *State v. Futrell*, 112 N.C. App. 651, 668, 436 S.E.2d 884, 893 (1993) (quoting *State v. Powell*, 299 N.C. 95, 101, 261 S.E.2d 114, 118 (1980)).

Accordingly, the State presented substantial evidence of circumstances that logically tended to show that defendant's fingerprints could only have been impressed at the time of the crime and that defendant was the perpetrator. The trial court properly denied defendant's motion to dismiss.

NO ERROR.

Judges TYSON and INMAN concur.

Report per Rule 30(e).