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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-61

Filed: 20 September 2016

Hoke County, Nos. 14 CRS 51077, 51097

STATE OF NORTH CAROLINA

v.

RICHARD CALVIN SMITH

Appeal by defendant from judgments entered 4 August 2015 by Judge Richard T. Brown in Hoke County Superior Court. Heard in the Court of Appeals 22 August 2016.

Roy Cooper, Attorney General, by Zachary Padget, Associate Attorney General, for the State.

Winifred H. Dillon for defendant-appellant.

DAVIS, Judge.

Richard Calvin Smith (“Defendant”) appeals from his convictions for felony larceny from a merchant and misdemeanor resisting a public officer. 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

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The State presented evidence at trial tending to establish the following facts: On 12 July 2014, Angela Dewitt (“Dewitt”) was on duty as a loss prevention officer at a Wal-Mart store in Hoke County, North Carolina. Shortly before 9:00 p.m., while making her final rounds, Dewitt observed Defendant in the electronics section of the store attempting to remove spider wrap¹ from television sets. She continued to watch as Defendant loaded three television sets into a shopping cart and proceeded to the housewares department. Once there, Defendant removed the spider wrap from two of the televisions, but could not take it off of the third set. Defendant left the third television on the ground and hid the removed spider wrap on a shelf under some rugs. Defendant then pushed the cart with the two televisions out of the store without paying for them.

While Dewitt was observing Defendant, she called law enforcement to report the incident. Deputy Kyle Stafford (“Deputy Stafford”) with the Hoke County Sheriff’s Office arrived at the Wal-Mart parking lot as Defendant was leaving the store. Deputy Stafford observed Defendant in the parking lot with two televisions in a cart, noted that he matched the description he had been given over the radio by dispatch, and stopped Defendant.

Deputy Stafford asked Defendant for his name and date of birth, and Defendant responded that his name was “John Smith” and he was born on 11

¹ Spider wrap is an anti-theft device used on larger store items.

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November 1962. Defendant informed Deputy Stafford that he did not have an ID or a driver's license and was currently living at a homeless shelter in Laurinburg, North Carolina.

Deputy Stafford relayed Defendant's purported name and date of birth to dispatch who ran a database ID search based on the information Defendant had provided. However, dispatch informed Deputy Stafford that they were unable to find any record of a "John Smith" born in 1962, and could not locate a homeless shelter in Laurinburg. Defendant refused to provide Deputy Stafford with any further identifying information. Deputy Stafford placed Defendant under arrest.

Corporal Jessica Tyner ("Corporal Tyner") also responded to the call to assist Deputy Stafford. Corporal Tyner testified that while on her way to the scene, she heard over dispatch that Defendant's name was John Richard Smith, born 11 November 1962. She attempted to verify Defendant's identity through a nationwide database search, but was also unable to locate any record of a "John Richard Smith" born in 1962 despite attempting multiple spelling variations of the name.

Corporal Tyner transported Defendant to jail, and when she arrived, she asked Detective Steven Blakley ("Detective Blakley") for assistance in ascertaining Defendant's identity. Defendant continued to insist his name was John Richard Smith, that he was born in 1962, and that he did not have any form of identification or birth certificate in order to identify himself. Detective Blakley warned Defendant

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that if he discovered Defendant was lying, he would charge Defendant with resisting a public officer.

Because Defendant's identity could not be determined, a warrant was issued for larceny from a merchant in the name of "John Doe," and the magistrate imposed the production of a form of identification as a condition of Defendant's release on bond. Several days later, after additional research and investigation of various law enforcement databases, Detective Blakley discovered Defendant's real name was Richard Calvin Smith. Detective Blakley also learned that an unnamed individual had posted bond for Defendant and produced a South Carolina Department of Motor Vehicles ID card identifying Defendant as Richard Calvin Smith, Jr. from McColl, South Carolina. Detective Blakley verified Defendant's identity by examining the picture on the South Carolina ID card and obtained a warrant charging Defendant with resisting a public officer.

On 2 February 2015, Defendant was indicted on charges of larceny from a merchant and resisting a public officer. A jury trial was held before the Honorable Richard T. Brown in Hoke County Superior Court on 3 August 2015.

At the close of the State's evidence, Defendant moved to dismiss the resisting a public officer charge on sufficiency of the evidence grounds, which the trial court denied. Defendant did not present any evidence at trial and renewed his motion to dismiss at the close of all the evidence. The trial court again denied the motion.

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The jury found defendant guilty of both charges. The trial court sentenced Defendant to consecutive sentences of 20-33 months imprisonment for the felony larceny of a merchant charge and 15 days for his misdemeanor resisting a public officer conviction. Defendant gave oral 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 the charge of misdemeanor resisting a public officer on sufficiency of the evidence grounds. 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 being the perpetrator of such offense. Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. 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. . . . 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. Holanek, __ N.C. App. __, __, 776 S.E.2d 225, 232 (internal citations and quotation marks omitted), *disc. review denied*, 368 N.C. 429, 778 S.E.2d 95 (2015), *cert. denied*, __ U.S. __, __ L.Ed.2d __ (2016).

Pursuant to N.C. Gen. Stat. § 14-223, any person who willfully and unlawfully resists, delays, or obstructs a public officer in discharging or attempting to discharge

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a duty of his office, shall be guilty of a misdemeanor. N.C. Gen. Stat. § 14-223 (2015). “[T]he failure to provide information about one’s identity during a lawful stop can constitute resistance, delay, or obstruction within the meaning of N.C. Gen. Stat. § 14-223.” *State v. Friend*, __ N.C. App. __, __, 768 S.E.2d 146, 148 (2014), *disc. review denied*, 368 N.C. 248, 771 S.E.2d 308 (2015). Additionally, this Court has held that providing a false name to an officer in the course of an investigation meets the substantial evidence requirement for resisting, delaying, or obstructing a public officer. *See In re J.L.B.M.*, 176 N.C. App. 613, 626, 627 S.E.2d 239, 247 (2006) (“In giving Officer Henderson a false name, the juvenile delayed the officer’s investigation, including any attempt to contact the juvenile’s parent or guardian.”).

In the present case, the indictment states that Defendant “unlawfully and willfully did resist, delay and obstruct Detective S. Blakley . . . by giving a false name to the officer rather than providing the Defendant’s actual name.” Defendant asserts the State presented insufficient evidence that (1) the name he provided to Detective Blakely was false; or (2) his actions were willful. Specifically, he contends his actions were not willful because he did not actually give officers a false name in that he provided his correct last name and at least one of his correct first two names as well as his correct birthdate.

Taking the evidence in the light most favorable to the State and giving the State the benefit of all reasonable inferences, we are satisfied that the State

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presented substantial evidence that Defendant resisted, obstructed, or delayed a public officer by providing a false name. Defendant's correct name is Richard Calvin Smith, yet he told three different officers his name was John Smith or John Richard Smith. He also told officers that he was homeless and had no form of identification.

Defendant was made aware that officers were having difficulty verifying his identity with the limited information he had provided and was expressly warned that he could face charges for resisting a public officer if he was withholding any information concerning his identity yet he continued to insist his name was John Richard Smith, that he did not have any form of identification, and that he had never possessed a birth certificate or any kind of official document with his name or date of birth recorded on it. Despite this assertion, however, Defendant was, in fact, able to produce a South Carolina ID card with his correct name, date of birth, and picture on it in order to secure his release from jail on bond.

We consequently hold that Defendant's withholding of his correct name and birthdate constituted a willful obstruction of multiple officers in the performance of their lawful duties. By not providing his correct full name and instead providing misleading false iterations of his name, Defendant intentionally frustrated and delayed the officers' investigation by causing it to unnecessarily continue for several additional days before Defendant's identity could finally be verified. This constitutes substantial evidence in support of the charge of misdemeanor resisting, delaying, or

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obstructing a public officer, and the trial court therefore did not err in denying Defendant's motions 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).