IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-215

Filed: 21 November 2017

Alamance County, Nos. 15 CRS 50316, 1994

STATE OF NORTH CAROLINA

v.

WILLIE ANTHONY JUNIO FARRAR

Appeal by Defendant from judgment entered 19 May 2016 by Judge James K. Roberson in Superior Court, Alamance County. Heard in the Court of Appeals 26 October 2017.

Attorney General Joshua H. Stein, by Associate Attorney General Jessica B. Helms, for the State.

Guy J. Loranger for Defendant-Appellant.

McGEE, Chief Judge.

Willie Antonio Junio Farrar ("Defendant") appeals from judgment entered upon his conviction for felony breaking or entering and attaining habitual felon status. After careful review, we find no plain error.

The evidence at trial establishes the following factual background. Sherri Hancock ("Ms. Hancock") was at home on the afternoon of 17 January 2015, when

she heard a car pull into her driveway. Her house was at the end of a long driveway, and not visible from the road. She looked out a window and saw a red Honda Accord ("the car") parked next to some bushes beside her house. Ms. Hancock did not recognize the car, so she wrote down its license plate number. She then saw a man she later identified as Defendant, exit the car and walk across her yard to the back deck of her house. She did not know Defendant and did not invite him to her home.

Defendant knocked on the back door and, from Ms. Hancock's position, she could see him turning the door knob. The knocking stopped, and Defendant then went around to the front door. She heard Defendant knocking on her front door and jiggling the door's handle. He then returned to the back of the house, and Ms. Hancock heard him turn the door knob again. She also heard him attempt to push the door open with his shoulder, but the door would not open because she had locked the deadbolt. Ms. Hancock testified that Defendant "just continued to go in circles knocking on each door many times and turning knobs and handles[.]"

Ms. Hancock then heard a "screeching" sound coming from a small window in her utility room. However, she knew no one could open the window because it was blocked by a large wardrobe. She then heard a "God awful screeching sound" coming from a window in the living room — it sounded like someone was "tearing the whole window out." Ms. Hancock attempted to call 911 but her cell phone kept losing power. She twice pulled back the blinds from the window and pointed her handgun at

Defendant, hoping he would run. However, Defendant "was still coming in," so Ms. Hancock shot through the window, hitting Defendant. Ms. Hancock testified that Defendant initially "jiggled" after the first shot, but then "he took a step and that's what made me shoot a second time. But as I was shooting that second time he turned and ran back and got in his car and left." She then inserted the charger into her phone and called 911.

Tracy Beckom ("Ms. Beckom"), a crime scene investigator with the Alamance County Sheriff's Office, testified that she observed the window in the utility room, which "had been raised but it was a large piece of furniture blocking it. So you could not make entry into that window." Ms. Beckom also observed that a window in the living room had two bullet holes in it, "[t]he window was partially raised . . . and the screen was pulled up. The screen was broken and lifted up."

Detective Matthew Ward ("Detective Ward") of the Alamance County Sheriff's Office conducted an interview with Ms. Hancock at the scene in which she gave him the license plate number of the car. They then walked through Ms. Hancock's house. Detective Ward observed that the living room window had two bullet holes and its screen had been pulled off. Detective Ward then walked around outside and noticed a big bush next to the window with the bullet holes, and footprints in the ground at that location. Detective Ward saw tire tracks and a leaf blower sitting nearby. He

asked Ms. Hancock about the leaf blower, and she replied that it was kept on the porch and did not belong in the spot where Detective Ward found it.

Detective Ward also learned that a suspect matching Defendant's description had sought treatment at Moses Cone Hospital for a gunshot wound to his left shoulder. A red Honda Accord, with a license plate number matching the number on Ms. Hancock's note, was parked in the hospital's parking lot. Detective Ward interviewed Defendant at the Sheriff's Office after he was discharged from the hospital. Defendant told Detective Ward that he went to Ms. Hancock's home for rims or "something to do with a vehicle." Ms. Hancock testified that her home was located on Highway 62 and had a long, winding driveway that was barely visible from the road, and was very secluded. Ms. Hancock described it as being "in the country." The driveway contained a "no trespassing" sign near the roadway. The driveway also contained classic cars that Ms. Hancock's son and nephew were restoring, but it had been more than five years since a business had operated on the property. The cars lining the driveway were not for sale and the property had no signs advertising cars or car parts for sale.

Defendant was charged in bills of indictment with felony breaking or entering, larceny, and attaining habitual felon status. As to the breaking or entering charge, the jury was instructed on felony breaking or entering and the lesser-included offense of misdemeanor breaking or entering. The jury found Defendant guilty of felony

breaking or entering. However, it found Defendant not guilty of larceny. Defendant thereafter entered a plea of guilty to attaining habitual felon status. The trial court sentenced Defendant to an active term of imprisonment of 89 to 119 months. Defendant appeals.

In his sole argument on appeal, Defendant contends the trial court committed plain error by failing to instruct the jury on the lesser-included offenses of first- and second-degree trespass. We disagree.

Defendant neither objected to the trial court's instructions on breaking or entering nor requested instructions on trespass. *See* N.C. R. App. P. 10(a)(2). Therefore, Defendant did not preserve any such error, and this Court's review is limited to whether the trial court's failure to instruct the jury on trespass constituted plain error. *See State v. Odom*, 307 N.C. 655, 659-61, 300 S.E.2d 375, 378 (1983); N.C. R. App. P. 10(a)(4). In order to demonstrate plain error, Defendant must show that "absent the error, the jury probably would have returned a different verdict." *State v. Lawrence*, 365 N.C. 506, 519, 723 S.E.2d 326, 335 (2012).

Defendant contends that, because he offered an alternative explanation for being at Ms. Hancock's home and no items were taken, the trial court should have instructed the jury on the lesser-included trespass offenses. *See* N.C. Gen. Stat. § 14-159.14 (2015) (first- and second-degree trespass are lesser included offenses of breaking or entering). In order to prove felony breaking or entering, the State must

prove that a defendant committed a breaking or an entering of any building with the intent to commit larceny or a felony therein. *State v. Hamilton*, 132 N.C. App. 316, 321, 512 S.E.2d 80, 84 (1999). Misdemeanor breaking or entering is proven by evidence that a defendant "'wrongfully breaks or enters any building.'" *Id*. No intent to commit a felony or larceny within the building need be proven to support a conviction for misdemeanor breaking or entering. *Id*.

The elements of first- and second-degree trespass are as follows:

> Offense. – A person commits the offense of first degree trespass if, without authorization, he enters or remains:
>
> (1) On premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or
>
> (2) In a building of another.

N.C. Gen. Stat. § 14-159.12(a) (2015).

> Offense. – A person commits the offense of second degree trespass if, without authorization, he enters or remains on premises of another:
>
> (1) After he has been notified not to enter or remain there by the owner, by a person in charge of the premises, by a lawful occupant, or by another authorized person; or
>
> (2) That are posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter the premises.

N.C. Gen. Stat. § 14-159.13(a) (2015).

First, Defendant fails to demonstrate that the evidence at trial would have supported convictions for first- or second-degree trespass.

> An instruction on a lesser included offense must be given . . . only if there is evidence to support [a] conviction of the less grievous offense. The trial court is not, however, obligated to give a lesser included instruction if there is "no evidence giving rise to a reasonable inference to dispute the State's contention." The mere possibility that a jury might reject part of the prosecution's evidence does not require submission of a lesser included offense.

Hamilton, 132 N.C. App. at 321, 512 S.E.2d at 84 (citations omitted). First- and second degree trespass can be proven by "entering" a building but, unlike breaking or entering, trespass cannot be proven solely on evidence of a "breaking."

> In the instant case there is substantial evidence of at least a breaking. The door had been opened from one to two inches, and the bolt had been dislodged from its locked position. "A breaking in the law of burglary constitutes any act of force, however slight, 'employed to effect an entrance through any usual or unusual place of ingress, whether open, partly open, or closed.'" Thus, this Court has held that "[t]he breaking of the store window, with the requisite intent to commit a felony therein, completes the offense even though the defendant is interrupted or otherwise abandons his purpose without actually entering the building." Thus, the dislocation of the door from its locked position was a sufficient breaking even if defendant did not otherwise enter the building.

State v. Myrick, 306 N.C. 110, 114–15, 291 S.E.2d 577, 580 (1982) (citations omitted). Evidence of the broken and bent window screen, along with Ms. Hancock's testimony, was clearly sufficient to support that a breaking had occurred. Defendant makes no

argument that his actions constituted an entry of a building, and there was no evidence that Ms. Hancock's property was "so enclosed or secured as to demonstrate clearly an intent to keep out intruders[.]" N.C.G.S. § 14-159.12(a). Therefore, Defendant fails to demonstrate that an instruction on first-degree trespass would have been proper. Further, concerning second-degree trespass, Defendant does not argue on appeal that any of Ms. Hancock's initial actions notified Defendant not to remain on her property. N.C.G.S. § 14-159.13(a)(1). Although Ms. Hancock testified that there was a single "no trespassing" sign attached to a tree near the entrance of her driveway, Defendant fails to demonstrate that this limited testimony satisfied the requirement that Ms. Hancock's premises were "posted, in a manner reasonably likely to come to the attention of intruders, with notice not to enter[.]" N.C.G.S. § 14-159.13(a)(2). Clearly, shooting Defendant was an unambiguous notification that Defendant was not welcome on the property; however, the evidence is that Defendant immediately left following the shooting.

Even assuming, *arguendo*, that Defendant was entitled to an instruction on trespass as a lesser-included offense, any error on the part of the trial court does not amount to plain error. First, there was substantial evidence to support the jury's verdict. The evidence demonstrates that Ms. Hancock's home was not a place of business. Ms. Hancock described in detail several attempts Defendant made to gain entry into her home, including removing a window screen. Law enforcement officers

later observed that a screen on a window at Ms. Hancock's home had been removed and damaged, thereby corroborating her story. Additionally, Ms. Hancock testified that the family's leaf blower had been moved from her porch and left near the area where Defendant's car had been parked. From this, one can infer that Defendant intended to take the leaf blower with him, but left it as he fled Ms. Hancock's home. Given Defendant's actions, one can readily infer that he broke into Ms. Hancock's home for the purpose of committing larceny, or some felony.

Furthermore, we find it noteworthy that the jury *was* instructed on a lesser-included offense — misdemeanor breaking or entering — yet still convicted Defendant of the felony offense. Thus, it appears the jury considered Defendant's explanation for being on Ms. Hancock's property, found it lacking in credibility, and rejected it. Had the jury believed Defendant was on Ms. Hancock's property for a non-felonious reason, it could have convicted him of misdemeanor breaking and entering instead of felony breaking or entering. Even had the jury been instructed on trespass, it is highly unlikely the jury would have skipped over misdemeanor breaking or entering and instead convicted Defendant of trespassing. Defendant has failed to show that "absent the [alleged] error, the jury probably would have returned a different verdict." *Lawrence*, 365 N.C.at 519, 723 S.E.2d at 335. We therefore hold that Defendant cannot demonstrate any plain error.

NO PLAIN ERROR.

Judges STROUD and DILLON concur.

Report per Rule 30(e).