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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-732

No. COA 20-739

Filed 21 December 2021

Buncombe County, Nos. 18CRS638; 18CRS88244

STATE OF NORTH CAROLINA

v.

CLARENCE VIRGIL WROTEN

Appeal by Defendant from judgment entered 30 August 2019 by Judge Marvin P. Pope, Jr. in Buncombe County Superior Court. Heard in the Court of Appeals 6 October 2021.

*Forrest Firm, P.C., by Patrick S. Lineberry, for Defendant-Appellant.*

*Attorney General Joshua H. Stein, by Assistant Attorney General Eric R. Hunt, for the State.*

CARPENTER, Judge.

¶ 1 Clarence Virgil Wroten (“Defendant”) appeals pursuant to N.C. Gen. Stat. § 7A-27(b) (2019) from judgment entered after a jury found him guilty of possession of firearm by a felon pursuant to N.C. Gen. Stat. § 14-415.1 (2019). On appeal, Defendant argues the trial court erred by denying his motion to dismiss at the close of the State’s case. After careful review, we find no error.

## **I. Factual & Procedural Background**

¶ 2 Evidence presented at trial tends to show the following: During the early morning hours of 10 August 2018, Defendant knocked on the door to the apartment of David Werts (“Mr. Werts”). Mr. Werts, who was at home with a guest, Tammy Robinson (“Ms. Robinson”), answered the door and found himself in a disagreement with Defendant. Defendant attempted to push his way inside the home, and Mr. Werts responded in kind, pushing Defendant backwards away from the door. At this time, Mr. Werts saw Defendant with a silver revolver and heard a gunshot. After the gunshot, Defendant fled the scene.

¶ 3 Shortly thereafter, Mr. Werts called the police, and Sergeant John Zeigler (“Sgt. Zeigler”) of the Asheville Police Department responded. Mr. Werts and Ms. Robinson recounted the incident, and both identified Defendant. Mr. Werts reported Defendant shot a silver revolver into his apartment and fled the scene.

¶ 4 While Sgt. Ziegler was talking to Mr. Werts and Ms. Robinson, Defendant was spotted walking back toward Mr. Werts’ apartment. Sgt. Ziegler approached Defendant, and after a pat-down, found no weapons on Defendant’s person. Sgt. Ziegler placed Defendant into the back of a patrol car and continued to investigate. Later that evening, Sgt. Ziegler located a silver revolver next to a sidewalk a short walking distance from Mr. Werts’ apartment.

¶ 5 On 5 November 2018, Defendant was indicted for possession of a firearm by a felon, discharging a firearm in an occupied dwelling, and attaining the status of habitual felon. A jury trial was held from 28 August 2019 through 30 August 2019 in which the State presented, *inter alia*, testimony of witnesses and a certified copy of Defendant's prior felony judgment showing Defendant had been previously convicted of felony possession of a Schedule II controlled substance. Defendant did not present any evidence at trial.

¶ 6 At close of the State's case, Defendant moved to dismiss the charges against him. The trial court denied the motion. The jury, by unanimous verdict, found Defendant guilty of the charge of possession of a firearm by a felon but could not reach a unanimous verdict on the charge of discharging a firearm into an occupied dwelling. Defendant pled guilty to attaining the status of habitual felon. Defendant gave oral notice of appeal.

## **II. Jurisdiction**

¶ 7 This Court has jurisdiction to address Defendant's appeal pursuant to N.C. Gen. Stat. § 7A-27(b) (2019).

## **III. Issue**

¶ 8 The sole issue on appeal is whether the trial court erred by denying Defendant's motion to dismiss the charge of possession of a firearm by a felon.

Defendant argues the State failed to establish substantial evidence of each essential element of possession of firearm by a felon. For the following reasons, we disagree.

#### **IV. Standard of Review**

¶ 9 “We review the trial court’s denial of a motion to dismiss *de novo*.” *State v. McSwain*, 2021-NCCOA-216, ¶ 19 (quotations omitted).

A motion to dismiss for insufficient evidence is properly denied if 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. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. All evidence, both competent and incompetent, and any reasonable inferences drawn therefrom, must be considered in the light most favorable to the State. Additionally, circumstantial evidence may be sufficient to withstand a motion to dismiss when a reasonable inference of defendant's guilt may be drawn from the circumstances. If so, it is the jury’s duty to determine if the defendant is actually guilty.

*Id.* at ¶ 19 (quoting *State v. Blakney*, 233 N.C. App. 516, 518, 756 S.E.2d 844, 846 (2014)).

¶ 10 “The State is entitled to every reasonable inference to be drawn from the evidence. Contradictions and discrepancies do not warrant dismissal of the case; rather, they are for the jury to resolve.” *State v. Franklin*, 327 N.C. 162, 172, 393 S.E.2d 781, 787 (1990).

#### **V. Analysis**

¶ 11 In North Carolina, it is “unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in [N.C. Gen. Stat. §] 14-288.8(c).” N.C. Gen. Stat. § 14-415.1 (2019). “Therefore, there are two elements to the offense. The State must provide substantial evidence that the defendant has a prior felony conviction, and a firearm in his possession.” *State v. Hussey*, 194 N.C. App. 516, 521, 669 S.E.2d 864, 867 (2008).

A. *Prior Felony Conviction*

¶ 12 First, the State must provide substantial evidence of a prior felony conviction. *Id.*, 669 S.E.2d at 867. Previously, we have held a certified copy of a defendant’s prior felony convictions is sufficient. *Id.*, 669 S.E.2d at 867.

¶ 13 Here, the State provided evidence of Defendant’s prior felony conviction via a certified copy of a judgment showing a prior felony possession of cocaine conviction marked State’s Exhibit 20. **{R. p. 79-80}**. A certified copy of Defendant’s prior felony conviction judgment amounts to substantial evidence Defendant had a prior felony conviction. *See Hussey*, 194 N.C. App. at 521, 669 S.E.2d at 867. Defendant does not challenge the veracity of the certified copy of his conviction.

B. *Possession of a Firearm*

¶ 14 Next, the State must provide substantial evidence Defendant was in possession of a firearm. *See Hussey*, 194 N.C. App. at 520-21, 669 S.E.2d at 867. We have held

victim testimony amounts to sufficient substantial evidence to satisfy this element on a motion to dismiss. *Id.*, 669 S.E.2d at 867 (finding a victim’s in-court identification is competent evidence, the weight of which goes to the jury). “The State is entitled to every reasonable inference to be drawn from the evidence. Contradictions and discrepancies do not warrant dismissal of the case; rather, they are for the jury to resolve.” *Franklin*, 327 N.C. at 172, 393 S.E.2d at 787.

¶ 15 In the present case, Mr. Werts identified Defendant as the person Mr. Werts encountered outside his apartment and testified that Defendant was in possession of a weapon of the exact type and color as that of the weapon recovered from the scene. Shortly after Sgt. Ziegler’s arrival, Sgt. Ziegler found Defendant on a path consistent with Mr. Werts’ description of where Defendant fled. Finally, Sgt. Ziegler testified he found the firearm near the path Defendant took after leaving Mr. Werts’ apartment.

¶ 16 Defendant’s identification and arrest near Mr. Werts’ apartment, as well as the location of the recovered weapon, coupled with Mr. Werts’ in court identification of Defendant, amount to substantial evidence tending to show Defendant perpetrated the offense. *See Franklin*, 327 N.C. at 172, 393 S.E.2d at 787. *See also Hussey*, 194 N.C. App. at 521, S.E.2d at 867. When viewed in the light most favorable to State, Mr. Werts’ testimony provided substantial evidence for the jury to reasonably infer that Defendant was in possession of the firearm recovered by Sgt. Ziegler. Although

there may be discrepancies, it is the province of the jury to resolve them. *See Franklin*, 327 N.C. at 172, 393 S.E.2d at 787. As such, we hold substantial evidence existed to support the second element of possession of a firearm by a felon. *See McSwain*, 2021-NCCOA-216, ¶ 20. *See also Hussey*, 194 N.C. App. at 521, S.E.2d at 867.

## **VI. Conclusion**

¶ 17 Defendant's argument the trial court erred by denying his motion to dismiss is unpersuasive. The State's presentation of a certified copy of Defendant's prior felony conviction amounted to substantial evidence indicating Defendant had a prior felony conviction. Testimony from the State's witnesses amounted to substantial evidence Defendant possessed a firearm. The State provided substantial evidence sufficient to establish each element of the charge of possession of firearm by a felon. Therefore, we affirm the trial court's denial of Defendant's motion to dismiss.

AFFIRM.

Judges WOOD and ZACHARY concur.

Report per Rule 30(e).