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NO. COA11-862  
NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2012

STATE OF NORTH CAROLINA

v.	Onslow County
	No. 10 CRS 51270
ALAN JAMES WEBSTER	10 CRS 51543

Appeal by defendant from judgments entered 10 February 2011 by Judge Jack W. Jenkins in Onslow County Superior Court. Heard in the Court of Appeals 11 January 2012.

*Attorney General Roy Cooper by Assistant Attorney General Alexandra M. Hightower, for the State.*

*Rudolph A. Ashton of McCotter, Ashton & Smith, PA, attorney for defendant.*

ELMORE, Judge.

Alan James Webster (defendant) appeals judgments entered upon jury convictions of 1) two counts of first degree burglary, 2) one count of resisting an officer, 3) one count of violating a domestic violence protective order, 4) and one count of assault inflicting serious injury. After careful consideration, we conclude that defendant received a trial free from error.

In early January 2009, defendant began dating Sydney Shea, a twenty-year-old student who lived with her grandfather in Jacksonville. According to Shea, defendant became obsessive and possessive, and she attempted to break off the relationship with him several times. Shea finally broke up with defendant towards the end of 2009.

During the early morning hours of 20 February 2010, Shea and her cousin were asleep in Shea's house, when Shea heard someone in the garage. There was an entrance to the attic in the garage. Shea and her cousin then heard someone enter the interior hallway from the attic. Shea called the police, while her cousin called his mother. Shea and her cousin left the house and waited in her aunt's car for the police to arrive. Defendant attempted to flee the property as Officer Daniel Karratti of the Jacksonville Police Department arrived. As a result of this incident, Shea took out a restraining order against defendant.

Then, during the early morning hours of 5 March 2010, Shea was asleep in her room when she heard noises outside of her door. She shouted for her grandfather, who was also home and asleep in his room. Her grandfather saw a man standing in the hallway, and he then began struggling with the intruder. At

this time, Shea identified defendant as the intruder from his "distinct scent" and "grunting."

Defendant was charged with 1) first degree burglary and 2) misdemeanor resisting arrest for the incident that occurred on 20 February 2010. Defendant was also charged with 1) first degree burglary, 2) violation of a domestic violence protective order, and 3) assault with a deadly weapon with intent to kill resulting in serious bodily injury stemming from the incident that occurred on 5 March 2010. The case came on for trial by jury on 7 February 2011. At trial, defendant moved to dismiss the first degree burglary charge arising out of the incident on 20 February 2010 for insufficiency of the evidence. The trial court denied defendant's motion. Also at trial, defendant testified that he entered Shea's house on 20 February 2010 to retrieve items that he had given to her. Defendant was then convicted of 1) two counts of first degree burglary, 2) one count of resisting an officer, 3) one count of violating a domestic violence protective order, 4) and one count of assault inflicting serious injury. The trial court sentenced defendant to two consecutive terms of sixty-four to eighty-six months on the felony convictions, and sixty days for the misdemeanors, with credit for time served. Defendant now appeals.

Defendant first argues that the trial court erred in denying his motion to dismiss the first degree burglary charge for 20 February 2010, because there was insufficient evidence that he intended to commit larceny. We disagree.

A motion to dismiss is properly denied if "there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Crawford*, 344 N.C. 65, 73, 472 S.E.2d 920, 925 (1996) (citation omitted). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* "In ruling on a motion to dismiss, the trial court must consider the evidence in the light most favorable to the State and the State is entitled to every reasonable inference to be drawn from that evidence." *Crawford*, 344 N.C. at 73, 472 S.E.2d at 926 (quotations and citation omitted). "The elements of first-degree burglary are: (i) the breaking (ii) and entering (iii) in the nighttime (iv) into the dwelling house or sleeping apartment (v) of another (vi) which is actually occupied at the time of the offense (vii) with the intent to commit a felony therein." *State v. Singletary*, 344 N.C. 95, 101, 472 S.E.2d 895, 899 (1996) (citations omitted).

Here, at issue is whether there was substantial evidence that defendant intended to commit a felony, larceny. Larceny is "a wrongful taking and carrying away of the personal property of another without [her] consent[.]" *State v. Weaver*, 359 N.C. 246, 255, 607 S.E.2d 599, 604 (2005) (citation omitted). Here, defendant admitted that he entered the house in part to retrieve items he had given to Shea. He testified as follows:

[the State]: In addition to going over to Sydney's house to get those items, you went back to get anything you'd ever given her. Isn't that correct?

[defendant]: Not everything I had ever given her. Certain things that I had bought for her.

[the State]: That you had given to her?

[defendant]: Yes.

[the State]: That was her property. That is Sydney's property, once you gave it to her.

[defendant]: Yes.

This testimony indicates that defendant intended to remove items from the house that belonged to Shea without her consent. Therefore, the State presented substantial evidence to support this element of the crime. Accordingly, we conclude that the trial court did not err with regards to this issue.

Defendant next argues that the trial court erred in refusing to instruct the jury on the lesser included offense of

misdemeanor breaking and entering for the 20 February 2010 burglary charge. We disagree.

Our Supreme Court has held that:

[a] defendant is entitled to have a lesser included offense submitted to the jury only when there is evidence to support that lesser included offense. If the State's evidence is sufficient to fully satisfy its burden of proving each element of the greater offense and there is no evidence to negate those elements other than defendant's denial that he committed the offense, defendant is not entitled to an instruction on the lesser offense.

*State v. Smith*, 351 N.C. 251, 267-68, 524 S.E.2d 28, 40 (2000)  
(citations omitted).

Here defendant argues that he did not have the intent to commit larceny. However, defendant offered no evidence at trial to negate this element of the crime, other than his own denial. Furthermore, as we have previously discussed, defendant's own testimony at trial established the fact that he entered Shea's house with the intent to commit larceny. Therefore, we conclude that the trial court did not err with regards to this issue.

Lastly, defendant argues that the trial court should have arrested judgment on the 5 March 2010 burglary conviction, because the underlying felony in that offense was felony assault, and the jury only convicted him of misdemeanor assault. Defendant argues that the jury's verdicts were inconsistent, and

that the State failed to prove the final element of the burglary charge. We disagree.

Our Supreme Court has held that "[i]n North Carolina jurisprudence, a distinction is drawn between verdicts that are merely inconsistent and those which are legally inconsistent and contradictory." *State v. Mumford*, 364 N.C. 394, 398, 699 S.E.2d 911, 914 (2010) (citations omitted). "[M]ere inconsistency will not invalidate the verdict. However, when a verdict is inconsistent and contradictory, a defendant is entitled to relief." *Id.* (quotations and citations omitted). Verdicts are merely inconsistent when "they represented an apparent flaw in the jury's logic--presumably, a finding of guilt in the greater offense would establish guilt in the lesser offense. However, because each count of an indictment is, in fact and theory, a separate indictment, the inconsistencies [are] permissible, and not found . . . legally contradictory[.]" *Mumford*, 364 N.C. at 400, 699 S.E.2d at 915 (quotations and citations omitted). However, verdicts are inconsistent and legally contradictory when "a verdict purports to establish that the [defendant] is guilty of two separate and distinct criminal offenses, the nature of which is such that guilt of one necessarily excludes

guilt of the other.” *Id.* (quotations and citation omitted) (alteration in original).

Here, defendant was charged with burglary, an offense that included within it a second statutorily defined offense, felony assault. The jury convicted defendant of burglary, but they did not convict defendant of felony assault. As such, defendant’s convictions represent, at most, an apparent flaw in the jury’s logic. As we have discussed, our Supreme Court has categorized these types of convictions as being merely inconsistent. Merely inconsistent verdicts do not entitle defendant to relief. Therefore, we conclude that the trial court did not err by refusing to arrest judgment on the burglary conviction.

No error.

Judges BRYANT and ERVIN concur.

Report per Rule 30(e).