

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA02-697

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

STATE OF NORTH CAROLINA

v.

Rockingham County
No. 97 CRS 13322

RICKY DONNELL HAIRSTON

On writ of certiorari to review judgment dated 28 July 1998 by Judge Peter M. McHugh in Rockingham County Superior Court. Heard in the Court of Appeals 30 December 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General Elizabeth Leonard McKay, for the State.

Paul Pooley for defendant appellant.

GREENE, Judge.

Ricky Donnell Hairston (Defendant), by writ of *certiorari*, appeals a judgment dated 28 July 1998 entered consistent with a jury verdict finding Defendant guilty of felonious breaking and entering and being a habitual felon.

On 9 March 1998, Defendant was charged with felonious breaking and entering into the Sadler Elementary School (the school) with the intent to commit a felony therein. Defendant was also charged with attaining habitual felon status. The evidence at trial revealed that, at approximately 12:41 a.m. on 19 December 1997,

Sergeant Billy King, Jr. (Sergeant King) and Deputy Chris Rice of the Rockingham County Sheriff's Department were dispatched to the school in response to a triggered alarm. The officers reached the school in five to seven minutes and checked the exterior of the building. When the school principal arrived five minutes later, she and the officers went to the school office where the alarm system was located.

As they approached the office, the officers and the principal noticed a chair in front of the office door and broken glass on the floor. The principal told Sergeant King the chair did not belong in front of the door and neither the chair nor the glass had been there when she left the school. Sergeant King, who heard a voice from inside the office, drew his weapon and called out to the person in the office. Defendant stepped out of the office with his hands up, stating: "I give up, I give up." Defendant then told the officers there were two other people in the school.

During a search of the premises, the police found a point of entry where a window had been pulled out and the screen removed, allowing someone to climb inside. The window, located in the school basement, was a two-minute walk from the school office. The police did not find anyone else in the school. On cross-examination, Sergeant King testified he did not know when the window screen was removed. Also on cross-examination, the principal testified that the computer equipment located in the school office was not taken, moved, or disconnected. Defendant did not present any evidence but moved the trial court to dismiss the

charges against him due to insufficiency of the evidence. The trial court denied the motion.

The issue is whether the trial court erred in denying Defendant's motion to dismiss because there was insufficient evidence from which to conclude he had the intent to commit larceny once inside the school.

The standard for ruling on a motion to dismiss is whether the evidence, considered in the light most favorable to the State, is substantial (1) as to each essential element of the offense charged and (2) indicates that the defendant is the perpetrator of the offense. *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). Substantial evidence is that relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *State v. Patterson*, 335 N.C. 437, 449-50, 439 S.E.2d 578, 585 (1994).

"The essential elements of felonious breaking or entering are (1) the breaking or entering (2) of any building (3) with the intent to commit any felony or larceny therein." *State v. White*, 84 N.C. App. 299, 301, 352 S.E.2d 261, 262 (1987). If the evidence presents no other explanation for breaking into a building and there is no showing of the owner's consent, intent to commit a felony inside "may be inferred from the circumstances surrounding the occurrence." *State v. Myrick*, 306 N.C. 110, 115, 291 S.E.2d 577, 580 (1982) (quoting *State v. Thorpe*, 274 N.C. 457, 464, 164 S.E.2d 171, 176 (1968)).

In this case, the evidence tended to show that: the police found Defendant inside the school office around 1:00 a.m.; the school office contained computer equipment; and the office was a short distance from an open window. Furthermore, when Sergeant King called out, Defendant emerged from the office and stated "I give up." Although Defendant offered no explanation for breaking into the school, the circumstantial evidence was sufficient to permit the jury to infer he had broken into the school with the intent to commit larceny. See *id.* Accordingly, the trial court properly denied Defendant's motion to dismiss.

No error.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).