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NO. COA10-700

NORTH CAROLINA COURT OF APPEALS

Filed: 21 December 2010

STATE OF NORTH CAROLINA

v. Buncombe County
Nos. 09 CRS 63314,
TERRY LANE FRECK, 09 CRS 63315
Defendant.

Appeal by defendant from judgment entered 10 February 2010 by Judge Forrest Don Bridges in Buncombe County Superior Court. Heard in the Court of Appeals 4 November 2010.

Roy Cooper, Attorney General, by Joan M. Cunningham, Assistant Attorney General, for the State.

William B. Gibson, for defendant-appellant.

THIGPEN, Judge.

Defendant was indicted on 2 November 2009 for injury to personal property and felonious cruelty to animals. On 5 February 2010, defendant gave notice that he planned to use the defense of self-defense at trial. On 10 February 2010, a jury found defendant guilty of both charges. The trial court sentenced defendant to a minimum of four and a maximum of five months in the custody of the Department of Correction, but suspended the sentence. Defendant was also ordered to pay restitution in the amount of \$123.00. Defendant gave written notice of appeal on 15 February 2010.

Defendant first argues the trial court erred in denying his motion to dismiss the charge of felonious cruelty to animals. "In making a determination as to whether a motion to dismiss for insufficiency of the evidence should be granted, the trial court must decide whether there is substantial evidence: (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Davis*, 130 N.C. App. 675, 678, 505 S.E.2d 138, 141 (1998) (internal quotation marks omitted). "Substantial evidence is evidence from which any rational trier of fact could find the fact to be proved beyond a reasonable doubt." *State v. Sumpter*, 318 N.C. 102, 108, 347 S.E.2d 396, 399 (1986). "Contradictions and discrepancies are for the jury to resolve and do not warrant dismissal." *State v. Smith*, 300 N.C. 71, 78, 265 S.E.2d 164, 169 (1980).

Defendant was charged under N.C.G.S. § 14-360(b). This statute states that it shall be a Class I felony to "maliciously torture ... any animal." N.C. Gen. Stat. § 14-360(c) (2009) defines torture as "any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death." The same section states "'intentionally' refers to an act committed knowingly and without justifiable excuse, while the word 'maliciously' means an act committed intentionally and with malice or bad motive." N.C. Gen. Stat. § 14-360(c). "It has always been understood that malice, as used in statutes describing an offense or a wrong, means, in its legal sense, a wrongful act, done intentionally, without just cause

or excuse." *State v. Knotts*, 168 N.C. 173, 182, 83 S.E. 972, 976 (1914).

The State's evidence tended to show that on the afternoon of 6 October 2009, Ms. Alice Iniguez was outside playing with her three children and her sister's children. One of her nephews was playing with their pet pit bull when she heard two gunshots. She testified that she saw blood on the dog and on her nephew. Ms. Iniguez stated that she looked in the direction of the shots and saw defendant with "a big gun in his hand." Ms. Iniguez testified that both her nephew and the dog were on the property when defendant shot the dog. Evidence was presented that the pit bull suffered multiple puncture wounds to the left chest cavity, the left leg, the front part of the chest, penis, and ear. One veterinarian noted that the dog was "painful" and "shocky" and arranged for emergency medical treatment to stabilize the animal. Another veterinarian prescribed the dog medication for pain. A third veterinarian and noted that the pit bull's "pain and potential for infection" needed to be addressed. This veterinarian also noted that the pit bull was "very sensitive" to pressure applied to the wounds and his skin would ripple involuntarily. He also stated that dogs tend to hide their pain.

Defendant testified and gave an alternative version of the facts. He stated the dog had gone onto his property while he was outside and had threatened him. He claimed he shot the dog in self-defense.

As outlined above, the State and defendant presented two different versions of what happened on the day of the shooting. The

jury, as evidenced by their guilty verdict, clearly chose to believe the State's evidence. We conclude substantial evidence was presented for each element of this crime from which a jury could find "the fact to be proved beyond a reasonable doubt." *Sumpter*, 318 N.C. at 108, 347 S.E.2d at 399.

Defendant finally argues that the State presented insufficient evidence on the charge of injury to personal property on the elements that defendant acted "without justification or excuse" and that defendant "did not act in self-defense." Again, we conclude, based on the above evidence, substantial evidence was presented for each element of this crime from which a jury could find "the fact to be proved beyond a reasonable doubt." *Sumpter*, 318 N.C. at 108, 347 S.E.2d at 399.

NO ERROR.

Judges CALABRIA and GEER concur.

Report per 30(e).