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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-316

Filed: 21 November 2017

Person County, No. 15 CRS 52133

STATE OF NORTH CAROLINA

v.

DONALD DOUGLAS REAVES

Appeal by Defendant from judgment entered 20 July 2016 by Judge W. Osmond Smith III in Superior Court, Person County. Heard in the Court of Appeals 26 October 2017.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Donna D. Smith, for the State.

Kimberly P. Hoppin for Defendant-Appellant.

McGEE, Chief Judge.

Donald Douglas Reaves (“Defendant”) appeals his conviction for misdemeanor injury to personal property. Defendant contends the trial court erred by denying his motion to dismiss the charge of injury to personal property because it was not supported by sufficient evidence. For the reasons discussed below, we find no error in Defendant’s trial.

I. Background

The State's evidence at trial tended to show the following: Defendant was employed as a roofer at a roofing company owned by Haywood Thaxton ("Mr. Thaxton"). Mr. Thaxton considered Defendant "one of the best workers . . . on the job." In mid-October 2015, Mr. Thaxton agreed to help Defendant purchase a truck ("the truck"). Defendant and Mr. Thaxton subsequently had an argument when Defendant asked to borrow some money and Mr. Thaxton declined. Mr. Thaxton had the truck towed to his mother's house. The following day, Mr. Thaxton went to the Department of Motor Vehicles ("DMV") to retrieve paperwork in order to repossess the truck. When Mr. Thaxton returned to his mother's house later that afternoon, Defendant was present, along with several law enforcement officers. Mr. Thaxton showed the officers the DMV paperwork indicating he held a lien on the truck. Mr. Thaxton testified that "[t]here was a big argument going on, and [Defendant] told [Mr. Thaxton] that [he] would never drive [the truck], [and] that [Defendant] was going to tear it all up." Defendant also said Mr. Thaxton "had done him wrong[.]"

Mr. Thaxton was at home on 3 November 2015 when his dogs began barking outside around 12:30 a.m. Mr. Thaxton opened his door and saw Defendant walking on the side of the road. Defendant did not live within walking distance of Mr. Thaxton's home. Mr. Thaxton asked Defendant what he was doing, but Defendant

“started cussing at [Mr. Thaxton][.]” Mr. Thaxton went back in his house and went to bed.

When Mr. Thaxton went outside around 9:00 o’clock a.m., he found the tires slashed on his car, the repossessed truck, a tractor, and a trailer attached to the truck. The word “snitch” had been carved into the hood of the truck, the trailer, and the side doors of the car. Some of the vehicles’ seats had been cut and two vehicles had cracked windshields. The damages totaled approximately \$4,000.00. Defendant was arrested on 5 November 2015 on a charge of misdemeanor injury to personal property.

Mr. Thaxton testified he had recently engaged in conduct for which he could be considered a “snitch,” which Mr. Thaxton understood to mean “telling the law on people[.]” He further testified that only Defendant had ever threatened to damage his vehicle.

The jury found Defendant guilty of injury to personal property causing damage in excess of \$200.00, and the trial court sentenced Defendant to 120 days’ imprisonment. Defendant appeals.

II. Defendant’s Motion to Dismiss

Defendant argues the trial court erred by denying his motion to dismiss the charge of injury to personal property because there was insufficient evidence that he caused the damages to Mr. Thaxton’s property. We disagree.

A. *Standard of Review*

“This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted). In ruling on a motion to dismiss, “the question for the [trial c]ourt is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [the] defendant’s being the perpetrator of such offense. If so, the motion is properly denied.” *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Smith*, 186 N.C. App. at 62, 650 S.E.2d at 33 (citation and quotation marks omitted). “In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994) (citation omitted). “If the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it, the motion should be allowed.” *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455 (citation omitted).

B. *Analysis*

Defendant contends that, although the State’s evidence was sufficient to raise a suspicion of guilt, it “did not rise to the level of substantial evidence that

[Defendant] was the perpetrator of [the] offense.” Specifically, Defendant cites the lack of physical evidence, such as fingerprints, linking him to the damaged vehicles. He also notes there was no video surveillance footage of the incident and no testimony about the condition of any of Mr. Thaxton’s vehicles prior to 3 November 2015.

This Court has held that

[c]ircumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence. If the evidence presented is circumstantial, the [trial] court must consider whether a reasonable inference of [the] defendant’s guilt may be drawn from the circumstances. Once the court decides that a reasonable inference of [the] defendant’s guilt may be drawn from the circumstances, then it is for the jury to decide whether the facts, taken singly or in combination, satisfy [it] beyond a reasonable doubt that the defendant is actually guilty.

Id. at 379, 526 S.E.2d at 455 (citations, internal quotation marks, and emphasis omitted).

When the State relies entirely on circumstantial evidence to establish that a particular defendant was the perpetrator of a particular offense, “courts often [look to] proof of motive, opportunity, capability and identity to determine whether a reasonable inference of [the] defendant’s guilt may be inferred or whether there is merely a suspicion that the defendant is the perpetrator.” *State v. Hayden*, 212 N.C. App. 482, 485, 711 S.E.2d 492, 494 (2011) (citation and internal quotation marks omitted) (first alteration in original). “In most cases these factors are not essential

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elements of the crime, but instead are circumstances which are relevant to identify an accused as the perpetrator of a crime.” *State v. Bell*, 65 N.C. App. 234, 238, 309 S.E.2d 464, 467 (1983).

It is well-established that “evidence of *either* motive or opportunity alone is insufficient to carry a case to the jury.” *Id.* at 238-39, 309 S.E.2d at 467 (emphasis in original) (citations omitted). However, “whether evidence of *both* motive and opportunity will be sufficient to survive a motion to dismiss . . . rest[s] more upon the strength of the evidence of motive and opportunity, as well as other available evidence, rather than an easily quantifiable ‘bright line’ test.” *Id.* at 239, 309 S.E.2d at 468 (emphasis in original).

In the present case, the State’s evidence showing Defendant’s motive, opportunity, capability, and identity was sufficient to withstand Defendant’s motion to dismiss. Mr. Thaxton testified that, after he repossessed the truck from Defendant, Defendant made direct threats, including that Mr. Thaxton “would never drive [the truck]” and that Defendant planned to “tear it all up.” Defendant also said Mr. Thaxton “had done him wrong.” Mr. Thaxton testified he had recently given information to law enforcement officers that could be considered “snitching.” He further testified he observed Defendant walking near his home at 12:30 a.m. on 3 November 2015, and that Defendant responded combatively when Mr. Thaxton asked

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what he was doing. Hours later, Mr. Thaxton discovered the damage to his vehicles. Considered together, this evidence was sufficient to send the case to the jury.

III. Conclusion

Because the State's evidence supported a reasonable inference of Defendant's guilt, the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Judges STROUD and DILLON concur.

Report per Rule 30(e).