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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-356

Filed: 2 October 2018

Mecklenburg County, No. 17 CRS 213900

STATE OF NORTH CAROLINA

v.

LAMAR EMANUEL BROWN

Appeal by defendant from judgment entered 9 November 2017 by Judge Robert C. Ervin in Mecklenburg County Superior Court. Heard in the Court of Appeals 27 September 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Mary Carla Babb, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for defendant.

DIETZ, Judge.

Defendant Lamar Emanuel Brown appeals his conviction for felony breaking or entering. Brown's appellate counsel filed an *Anders* brief stating that she is unable to find any issue of merit. Brown filed a *pro se* brief, arguing that the trial court erred in denying his motion to dismiss for insufficient evidence. We reject Brown's

argument because the State presented sufficient evidence to send the matter to the jury. We therefore find no error in the trial court's judgment.

Facts and Procedural History

Around 2:00 a.m. on 13 April 2017, Thomas Campbell was awakened by a phone call from his alarm company, which informed Campbell that motion sensors had been triggered on an exterior door and inside the warehouse of his company, Carolina Industrial Supply. Campbell went to the location and observed that one of his exterior docking bay doors had been pushed in.

Law enforcement arrived and entered the building with Campbell. They discovered Defendant Lamar Emanuel Brown inside the warehouse. Campbell noticed that a bag of tools and some steel had been moved from their normal locations and placed next to the damaged door. Brown was arrested.

The State indicted Brown for felony breaking or entering. Beginning 8 November 2017, Brown was tried by a jury in Mecklenburg County Superior Court. On 9 November 2017, the jury found Brown guilty. The trial court sentenced Brown to 11 to 23 months in prison. Brown appealed.

Analysis

Counsel appointed to represent Brown is unable to identify any nonfrivolous issues on appeal and asks that this Court conduct its own review of the record for possible prejudicial error. She has shown to the satisfaction of this Court that she has

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complied with the requirements of *Anders v. California*, 386 U.S. 738 (1967), and *State v. Kinch*, 314 N.C. 99, 331 S.E.2d 665 (1985), by advising Brown of his right to file written arguments with this Court and providing him with the documents necessary for him to do so.

Brown has filed a *pro se* brief, arguing that the trial court erred by denying his motion to dismiss for insufficient evidence. “Upon defendant’s motion for dismissal, the question for the Court 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 defendant’s being the perpetrator of such offense. If so, the motion is properly denied.” *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993). “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. Litchford*, 78 N.C. App. 722, 725, 338 S.E.2d 575, 577 (1986).

Here, the State presented evidence that Brown pried open an external docking bay door at Carolina Industrial Supply and used the open door to enter the company’s warehouse. Additionally, there was evidence that he moved items of value from inside the warehouse to near that door before he was caught in the act by law enforcement. This evidence was sufficient to survive Brown’s motion to dismiss.

Brown also argues that the State failed to comply with procedural rules contained in the Federal Rules of Criminal Procedure. Those rules do not apply to

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North Carolina state criminal cases and any alleged violation of them would not provide a basis for relief.

In accordance with *Anders*, we have fully examined the record to determine whether any issues of arguable merit appear and whether the trial court committed any prejudicial errors. After that review, we find no error in the trial court's judgment.

Conclusion

We find no error in the trial court's judgment.

NO ERROR.

Judges STROUD and MURPHY concur.

Report per Rule 30(e).