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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-342

Filed: 15 January 2019

Onslow County, Nos. 16 CRS 51621-23

STATE OF NORTH CAROLINA

v.

WILLIAM FATU HUGO

Appeal by defendant from judgments entered 2 November 2017 by Judge D. Jack Hooks in Onslow County Superior Court. Heard in the Court of Appeals 30 October 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Asher Spiller, for the State.

Kimberly P. Hoppin for defendant.

DIETZ, Judge.

Defendant William Fatu Hugo appeals his conviction and sentence for first degree burglary and felony conspiracy stemming from a home invasion in which he broke down the door of an apartment and brutally attacked the occupants. As explained below, we hold that the State presented sufficient evidence for the jury to

infer the intent element of a first degree burglary offense. Thus, the trial court properly denied Hugo's motion to dismiss on that charge.

After the jury returned its verdicts, the trial court arrested judgment on the conspiracy charge. The effect of that arrested judgment was to vacate the conspiracy conviction. Thus, as explained below, that arrested judgment is not appealable and we dismiss that portion of Hugo's appeal for lack of jurisdiction.

Facts and Procedural History

Kristen Brown had an on-and-off relationship with Defendant William Hugo until they broke up around February 2016. In early 2016, shortly before that breakup, Brown also began dating Derrick Alford.

On 20 February 2016, Alford spent the night with Brown and her children at Brown's apartment. The child of their neighbor, Falcon Huggins, also was with them. After Brown and Alford had gone to bed, Alford heard someone yelling and banging at the door. The noise eventually stopped, so Alford went back to sleep.

Later that night, Alford woke up to a loud bang at the front door. Then, he saw Hugo standing over him and yelling at Brown. Hugo grabbed a nearby lamp and struck Brown and Alford with it. The two men fought until Hugo went to the front door and yelled something in Samoan. The men resumed fighting until Hugo hit Alford on the back of his head. After that, Alford recalled "a slight glance and two people running in" and getting hit a few more times before blacking out.

Officer Ennio Giusti was among the police who arrived at the scene shortly after the assault. Officer Giusti saw bloody fingerprints and blood spatters all over the stairs leading up to the apartment. When he reached the apartment entrance, he noticed the deadbolt was still out and there was a footprint on the door as though it had been kicked in. Inside the apartment, Officer Giusti found Brown and a severely injured Alford, who was then transported to the hospital. Officer Giusti photographed the scene, finding a broken lamp, a broken television, and blood all over the apartment.

Meanwhile, Officer Kourtney Martin received reports indicating that a cab driver picked up Hugo and his twin cousins, Manu Bobby Ashiu and Kiva Ashiu, and drove them to Brown's apartment earlier that night. Law enforcement located the cab, which they also photographed after finding blood on the cab's exterior and interior.

The State indicted Hugo for first degree burglary, felony conspiracy, assault inflicting serious bodily injury, assault on a female, injury to personal property, and injury to real property. At trial, Alford testified about what happened that night and law enforcement described the results of their investigation of the crime. The jury also heard testimony from Falcon Huggins, who lived in the apartment below Brown's. On the night of the assault, Huggins returned home from work to pick up her daughter, whom Brown was babysitting. Brown told Huggins over the phone that

the children were asleep and that she would send her daughter home in the morning. At around 11:00 p.m. that night, Huggins heard some noise coming from upstairs. She saw Hugo pounding on the door of Brown's apartment and told him "[e]ither they're asleep or not there," after which he left. At around 3:30 a.m., she heard a loud boom and people yelling. She ran upstairs and saw Hugo in Brown's living room, hitting Brown with a television and then with a wooden chair. As she ran downstairs to call the police, she heard Hugo yelling in Samoan to a cab in the parking lot, after which she saw two men running into Brown's apartment and leaving five minutes later.

Hugo also testified at trial, claiming that, on the night at issue, he believed Brown was still his girlfriend and he did not know about her relationship with Alford. Hugo admitted to banging on Brown's apartment door until Huggins appeared, but insisted he only did so because the door was locked and he wanted to let Brown know she was invited to a birthday party. He testified that he attended the party, but left around 3:00 am with Kiva and Manu, who all took a cab back to Brown's apartment. Hugo admitted to kicking down the apartment door when he arrived, and said that when he discovered Brown sleeping next to Alford in the bedroom, he got "[a]ngry, mad" and "reacted." He denied remembering the details of what happened afterwards.

On cross-examination, the State questioned Hugo about a text message he sent Brown at around 2:30 a.m., saying "You want me to kick the door in?" When Brown did not respond, he sent her another text saying "OTW," meaning "on the way." Hugo claimed he "was more worried" than angry and was just "looking for a response."

Hugo twice moved to dismiss the charges for insufficient evidence, but the trial court denied the motions. The jury found Hugo guilty on all charges. The trial court arrested judgment on the conspiracy offense and sentenced Hugo to 60 to 84 months in prison for the burglary offense and a consecutive term of 15 to 27 months for the assault crimes. Hugo timely appealed.

Analysis

I. Sufficiency of the Evidence on Burglary Charge

Hugo first challenges the trial court's denial of his motion to dismiss the burglary charge. Hugo contends that the State presented insufficient evidence to send that charge to the jury. We review this issue *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007).

When a party moves to dismiss for insufficiency of the evidence to support a conviction, the motion "must be denied if, when viewing the evidence in the light most favorable to the State, there is substantial evidence to establish each essential element of the crime charged and that defendant was the perpetrator of the crime." *State v. Cody*, 135 N.C. App. 722, 727, 522 S.E.2d 777, 780 (1999). "Substantial

evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78, 265 S.E.2d 164, 169 (1980).

First degree burglary is defined as "the breaking and entering in the nighttime of an occupied dwelling . . . with intent to commit a felony therein." *State v. Bell*, 285 N.C. 746, 749, 208 S.E.2d 506, 508 (1974), *overruled in part on other grounds by State v. Collins,* 334 N.C. 54, 431 S.E.2d 188 (1993); *see also* N.C. Gen. Stat. § 14-51. The defendant "must intend to commit the felony at the time of entrance." *State v. Lawrence*, 352 N.C. 1, 19, 530 S.E.2d 807, 818 (2000). "Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred." *Bell*, 285 N.C. at 750, 208 S.E.2d at 508.

At trial, the State presented evidence that Hugo went to Brown's apartment around 11:00 p.m., banging on the door and yelling. He left after Huggins heard the noise from inside her apartment and told Hugo that "[e]ither they're asleep or they're not there." Three hours later, Hugo texted Brown "You want me to kick the door in?" After no response, he texted Brown that he was on his way. When he returned to the apartment, he broke into the apartment by kicking down the door.

Hugo contends there was insufficient evidence to show he intended to commit a felony "at the time of entrance." *Lawrence*, 352 N.C. at 19, 530 S.E.2d at 818. According to Hugo, he kicked in the door of the apartment because Brown had not responded to his earlier visit or his texts and he was concerned about her safety. Hugo

contends that there was no evidence he was aware of Brown's relationship with Alford and, when he saw them together in the bedroom, he "reacted" under circumstances "reminiscent of the heat of passion arising under sudden and adequate provocation . . . recognized in the context of voluntary manslaughter charges." Thus, he reasons, any intent he had to harm the couple formed *after* he had already broken in to check on Brown's well-being.

We reject this argument because it ignores the standard of review. To be sure, Hugo's defense theory is a plausible interpretation of the evidence. But it is far from the only reasonable interpretation of the evidence. As the State contends, a reasonable jury could have inferred that Hugo, after being told by a neighbor that "[e]ither *they're* asleep or *they're* not there," and then receiving no response from Brown to his repeated text messages, concluded that Brown was inside the apartment with another man. This angered Hugo and led him to return to the apartment, kick in the door, and attack Brown and Alford.

Moreover, the criminal intent of a defendant at the time of breaking and entering "may be inferred from the acts he committed subsequent to his breaking or entering the building." *State v. Williams*, 330 N.C. 579, 585, 411 S.E.2d 814, 818 (1992). Thus, a reasonable jury also could have considered Hugo's actions after he broke in, including that Hugo violently struck Alford and Brown with various household items, including a lamp, a television set, and a wooden chair. A law

enforcement officer who documented the attack and photographed the crime scene testified that Hugo's attack on the victims appeared to him "more brutal than wild, and calculated." Again, it is plausible, as Hugo contends, that his actions resulted from a "heat of passion" after he discovered Brown and Alford together and learned of their relationship for the first time. But a reasonable jury also could infer from this evidence that Hugo broke into the apartment with the intent to harm Brown and Alford because he had determined they were inside together and this angered him. In sum, because the State presented sufficient evidence from which a reasonable jury could conclude that Hugo committed each essential element of the crime, the trial court properly denied his motion to dismiss. *Cody*, 135 N.C. App. at 727, 522 S.E.2d at 780.

II. Arrested Judgment for Conspiracy

Hugo next challenges the trial court's denial of his motion to dismiss the conspiracy charge. The trial court arrested judgment on this charge and the State contends that, as a result, Hugo has no right to appeal on this issue. As explained below, we agree.

A defendant who is found guilty following trial may only appeal as a matter of right "when final judgment has been entered." N.C. Gen. Stat. § 15A-1444(a). Ordinarily, an arrested judgment is not a final judgment because it is an act that prevents entry of a final judgment. But this Court has recognized that some arrested

judgments are, in effect, final judgments. Thus, we must examine the context of the arrested judgment to determine if it is appealable.

Our case law has recognized two distinct categories of arrested judgments. In the first—and most common—category, judgment is arrested because of a "fatal error" in the proceeding such as some legal error or defect in "the charge made against the defendant," "the arraignment and plea," "the verdict," or "the judgment." *State v. Pakulski*, 326 N.C. 434, 439, 390 S.E.2d 129, 132 (1990). The effect of arresting judgment in this context is to vacate the defendant's conviction and prevent entry of a final judgment subject to appellate review. *Id.*

In the second category, judgment is arrested to avoid a double jeopardy problem, for example, when a defendant is convicted of both felony murder and the predicate felonies that were the basis of the felony murder conviction. *Id.* at 439–40, 390 S.E.2d at 132. The effect of arresting judgment here is not to vacate the underlying judgment but rather to withhold entry of judgment on a valid verdict to avoid a constitutional violation. *Id.* But that judgment might later be entered—for example, if the double jeopardy concerns are eliminated by vacatur or reversal of other convictions on appeal. *Id.*

The first category of arrested judgments—those that vacate the defendant's conviction—are not appealable. As this Court has explained, "this type of arrested judgment created no final judgment to review on appeal and appeal therefrom was

not properly before this Court." *State v. Reeves*, 218 N.C. App. 570, 576, 721 S.E.2d 317, 322 (2012); *see also State v. Woodard*, 210 N.C. App. 725, 730, 709 S.E.2d 430, 434 (2011).

By contrast, the second category of arrested judgments—those in which judgment is withheld to eliminate a double jeopardy issue—are appealable. *Reeves*, 218 N.C. App. at 576, 721 S.E.2d at 322. This is so because the conviction, although withheld, "remains on the docket and could be revisited on remand." *Id.*

Here, the trial court, in the judgment forms, acknowledged that the jury returned a guilty verdict on the conspiracy charge but indicated that it was arresting judgment on that charge. Neither party contends that the trial court did so because of double jeopardy issues and this Court cannot identify any reason why double jeopardy would have prevented the trial court from sentencing Hugo for both the conspiracy charge and the other, underlying charges concerning the break-in and assaults. Accordingly, we hold that this arrested judgment falls within the first (and more typical) category of arrested judgments, which had "the effect of vacating the verdict" on the charge. *Pakulski*, 326 N.C. at 439, 390 S.E.2d at 132. This type of arrested judgment in not appealable. *Reeves*, 218 N.C. App. at 576, 721 S.E.2d at 322. We therefore dismiss this portion of Hugo's appeal. *Id.*

Conclusion

We find no error in the trial court's denial of Hugo's motion to dismiss the

burglary charge. We dismiss Hugo's appeal concerning the conspiracy charge for lack of appellate jurisdiction.

NO ERROR IN PART; DISMISSED IN PART.

Judges BRYANT and INMAN concur.

Report per Rule 30(e).