IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-196

No. COA19-1009

Filed 4 May 2021

Gaston County, Nos. 16 CRS 059263, 16 CRS 59270-76

STATE OF NORTH CAROLINA

v.

PATRICK WAYNE CHRISTOPHER

Appeal by defendant from judgment entered 26 March 2019 by Judge Daniel A. Kuehnert in Superior Court, Gaston County. Heard in the Court of Appeals 25 August 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Jessica Macari, for the State.

Mark L. Hayes, for defendant-appellant.

STROUD, Chief Judge.

¶ 1 Defendant appeals from his convictions for first degree burglary, larceny after breaking and entering, assault with a deadly weapon inflicting serious injury, felony conspiracy to commit first degree burglary, misdemeanor larceny, and felony conspiracy to commit larceny after breaking and entering. Defendant argues the conspiracy to commit burglary offense should have been dismissed because there was

no evidence to support that Defendant and Holly Mesker agreed he would commit the crime at night. Viewing the evidence in the light most favorable to the State, we conclude there was sufficient substantial evidence to support an inference of a conspiracy to commit the crime during the nighttime. Accordingly, the trial court did not err by denying Defendant's motion to dismiss.

I. Background

¶ 2 At trial, the State's evidence tended to show that on 3 August 2016 Aaron Sanders told his girlfriend, Holly Mesker that she and her daughter needed to move out of his home in Stanley. He told her to leave because he had just learned she had been texting and seeing another man. Late that night, Ms. Mesker sat in a vehicle outside Mr. Sanders's house and called Defendant, an ex-boyfriend and father of her child. Ms. Mesker asked Defendant about watching their child while she found a place to stay. Ms. Mesker told Defendant she had no money because she had given Mr. Sanders money for rent, but he would not return it. Defendant asked Ms. Mesker if she wanted him to get the money. Ms. Mesker said yes and told him about the security cameras at Mr. Sanders's house. Defendant said he would rough Mr. Sanders up.

¶ 3 During the same night, at about 4:00 AM, Mr. Sanders woke up when he was tased, and he saw two men in his bedroom. One man, Defendant, had a baseball bat and the other man had a machete and taser. Defendant struck Mr. Sanders on the

head with the bat and asked him where the drugs and money were. The men tied Mr. Sanders up, and then they searched his home. The two men removed the surveillance camera box in Mr. Sanders's bedroom. Mr. Sanders pretended to have a seizure and the men rolled Mr. Sanders off his bed. They pushed a mattress on top of him and left in one of Mr. Sanders's vehicles. Mr. Sanders freed himself and went to a neighbor's house for help; the neighbor called 911.

¶ 4 Defendant met Ms. Mesker at a hotel a few hours after talking to her on the phone. Defendant was driving Mr. Sanders' Jeep. He handed Ms. Mesker $100 and told her they did "rough him up."

¶ 5 Defendant was indicted on offenses of attempted first degree murder, first degree burglary, larceny after breaking and entering, larceny of a motor vehicle, assault with a deadly weapon with intent to kill and inflict serious injury, conspiracy to commit attempted first degree murder, conspiracy to commit first degree burglary, and conspiracy to commit felony larceny after breaking and entering. Following a jury trial in Superior Court, Gaston County, Defendant was convicted of first degree burglary, larceny after breaking and entering, assault with a deadly weapon inflicting serious injury, felony conspiracy to commit first degree burglary, misdemeanor larceny, and felony conspiracy to commit larceny after breaking and entering. Defendant was found not guilty of attempted first degree murder. Defendant was sentenced accordingly, and he gave notice of appeal in open court.

II. Conspiracy to Commit Burglary

¶ 6 Defendant argues "because no evidence was presented that Ms. Mesker and [Defendant] agreed to a nightime [sic] robbery, the conspiracy to commit burglary charge should have been dismissed." (Original in all capitals.)

A. Standard of Review

¶ 7 "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). "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. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)). "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). "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).

"Circumstantial 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 court must consider whether a reasonable inference of defendant's guilt may be drawn from the circumstances. Once the court decides that a reasonable inference of 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.'"

Fritsch, 351 N.C. at 379, 526 S.E.2d at 455 (alteration in original) (citations omitted).

B. "At Night" Element

¶ 8 Defendant argues "the State presented no substantive evidence that Ms. Mesker and [Defendant] agreed to a home invasion at night," and only challenges the nighttime element of conspiracy to commit burglary.

¶ 9 The elements of burglary are "(1) a breaking (2) and entering, (3) in the nighttime, (4) into the dwelling house or sleeping apartment of another, (5) which is actually occupied at the time of the offense, (6) with the intent to commit a felony therein." *State v. Allah*, 231 N.C. App. 88, 92, 750 S.E.2d 903, 907 (2013). "Criminal conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means." *State v. Cox*, 375 N.C. 165, 169, 846 S.E.2d 482, 485 (2020).

> Under the law of conspiracy, the agreement need not be express; """[a] mutual, implied understanding is sufficient . . . ."" Direct proof of the charge is not essential and is rarely obtainable. A conspiracy generally is "established

> by a number of indefinite acts, each of which, standing alone, might have little weight, but, taken collectively, they point unerringly to the existence of a conspiracy." Criminal conspiracy is complete upon "a meeting of the minds," when the parties to the conspiracy
>
> > (1) give sufficient thought to the matter, however briefly or even impulsively, to be able mentally to appreciate or articulate the object of the conspiracy, the objective to be achieved or the act to be committed, and
> > (2) whether informed by words or by gesture, understand that another person also achieves that conceptualization and agrees to cooperate in the achievement of that objective or the commission of the act.
>
> "Ordinarily, the existence of a conspiracy is a jury question," and where reasonable minds could conclude that a meeting of the minds exists, the trial court does not err in denying a motion to dismiss for insufficiency of the evidence.

State v. Sanders, 208 N.C. App. 142, 145-46, 701 S.E.2d 380, 383 (2010) (alteration in original) (citations omitted).

¶ 10 Here, even though Ms. Mesker testified she did not "know when the defendant was going to come and get [the] money," in the light most favorable to the State, the totality of the evidence would allow the jury to determine there was a conspiracy to commit the offense at night. Ms. Mesker called Defendant at night after she had been forced to leave Mr. Sanders's home, seeking assistance. She accepted Defendant's offer for his assistance in getting her rent money back from Mr. Sanders. After making that call, Ms. Mesker removed her child from Mr. Sanders's residence and

went to a motel. Shortly after Ms. Mesker left Mr. Sanders's home, Defendant and an accomplice went there to get the money. After Defendant left Mr. Sanders's residence, he met Ms. Mesker at a motel and gave her $100. Taken in the light most favorable to the State, the evidence supports an inference that Ms. Mesker needed help immediately, and Defendant offered to help her by getting her money back from Mr. Sanders that night. There is no dispute that Defendant broke into Mr. Sanders's home during the nighttime, took money from Mr. Sanders, and delivered $100 to Ms. Mesker, several hours after her call. Even if Ms. Mesker did not ask Defendant to get the money back from Mr. Sanders at a specific time, she called him at night and needed help right away. The timing of their communications and actions before and after the events at Mr. Sanders's home indicates that they gave "sufficient thought to the matter, however briefly or even impulsively, to be able mentally to appreciate or articulate the object of the conspiracy, the objective to be achieved or the act to be committed" and that Ms. Mesker understood that Defendant "also achieve[d] that conceptualization and agree[d] to cooperate in the achievement of that objective or the commission of the act." *Id.* at 146, 701 S.E.2d at 383. The trial court did not err in denying Defendant's motion to dismiss as the question of a conspiracy to burglarize Mr. Sanders's home that same night, during the night, was for the jury to decide. *See Id.* ("'Ordinarily, the existence of a conspiracy is a jury question,' and where reasonable minds could conclude that a meeting of the minds exists, the trial court

does not err in denying a motion to dismiss for insufficiency of the evidence.").

III. Conclusion

¶ 11 For the foregoing reasons, the trial court did not err by denying Defendant's motion to dismiss.

NO ERROR.

Judges DIETZ and ZACHARY concur.

Report per Rule 30(e).