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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-31

Filed 19 September 2023

Forsyth County, Nos. 17CRS190, 18CRS111

STATE OF NORTH CAROLINA

v.

DAVID LEE COX, Defendant.

Appeal by defendant from judgment entered 18 September 2019 by Judge Angela B. Puckett in Forsyth County Superior Court. Heard in the Court of Appeals 23 August 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Christine M. Ryan, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender John F. Carella.*

DILLON, Judge.

On 6 April 2016, Defendant David Lee Cox was found guilty of possession of a firearm by a convicted felon in connection with his entering of a home with a firearm.

I. Background

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The evidence at trial tended to show the following: On 6 April 2016, Defendant and an accomplice entered a home and pistol-whipped James Young in the back of the head. A woman who was coming to see Mr. Young saw Defendant and his accomplice running into the home, yelling something like, “He’s about to get it.” At trial, a witness identified Samuel and Defendant going into the home. Defendant admitted to going to the home on the evening of the incident.

The jury found Defendant guilty of possession of a firearm by a convicted felon and not guilty of assault with a deadly weapon and assault by pointing a gun. Defendant pleaded guilty to being a habitual felon, and the trial court sentenced Defendant to 77-105 months of imprisonment. He appeals.

### II. Analysis

On appeal, Defendant argues the trial court erred by denying his motion to dismiss the charge of possession of a firearm by a convicted felon because the State failed to present sufficient evidence that he possessed a firearm. We disagree.

In evaluating the correctness of a motion to dismiss for insufficiency of the evidence, we “need only determine whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator,” with “substantial evidence” consisting of “that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion.” *State v. Elder*, 383 N.C. 578, 586, 881 S.E.2d 227, 234 (2022) (internal citations omitted). “In resolving this question, the trial court must examine the evidence in the light most advantageous to the State,

drawing all reasonable inferences from the evidence in favor of the State's case." *State v. Mann*, 355 N.C. 294, 301, 560 S.E.2d 776, 781 (2002). "[W]e review the denial of a motion to dismiss de novo." *Elder*, 383 N.C. at 586, 881 S.E.2d at 234.

To support a conviction for possession of a firearm by a felon, "the State need only prove two elements: (1) [the] defendant was previously convicted of a felony and (2) thereafter possessed a firearm." *State v. Wood*, 185 N.C. App. 227, 235, 647 S.E.2d 679, 686 (2007).

In this case, the first element was met, as the parties stipulated that Defendant had previously been convicted of a felony. Thus, the only element Defendant challenges is whether he possessed a firearm during the attack of Mr. Young.

We hold that the evidence, when viewed in the light most favorable to the State, was sufficient evidence to show that Defendant possessed a handgun when he and his accomplice went to confront Mr. Young. Mr. Young reported that Defendant brought a gun to the altercation. And a woman at the scene testified that she saw Defendant at the scene with a handgun. We conclude that from this evidence, a jury could reasonably conclude that Defendant, a convicted felon, possessed a firearm in violation of N.C. Gen. Stat. § 14-415.1. Accordingly, we conclude Defendant received a fair trial, free of reversible error.

NO ERROR.

Judges ZACHARY and WOOD concur.

Report per Rule 30(e).