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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-66

Filed 4 June 2024

Pitt County, No. 22 CRS 53523

STATE OF NORTH CAROLINA

v.

ARMOND JESUS BANNISTER

Appeal by defendant from judgment entered 28 February 2023 by Judge Marvin K. Blount III in Superior Court, Pitt County. Heard in the Court of Appeals 15 May 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Rana M. Badwan, for the State.

Ryan Legal Services, PLLC, by John E. Ryan III, for defendant-appellant.

ARROWOOD, Judge.

Armond Jesus Bannister (“defendant”) appeals from the trial court’s judgment entered 28 February 2023. For the following reasons, we find that defendant received a fair trial free from prejudicial error.

I. Background

Defendant was indicted for felony stalking and indecent exposure on

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8 August 2022. Defendant's case came on for trial at the 27 February 2023 Criminal Session of Superior Court, Pitt County. The State's evidence tended to show that Ms. Christine Trompak ("Ms. Trompak") had lived next door to defendant in Greenville, North Carolina. Between approximately February and June 2021, Ms. Trompak testified that she observed defendant "yelling, screaming, [and] watching" her from various vantage points multiple times a day. Defendant pled guilty to misdemeanor stalking in November 2021, and a no-contact order was issued. However, according to Ms. Trompak, defendant continued watching her at least two to three times a week.

On 21 June 2022, Ms. Trompak returned home for lunch and to walk her dog. Ms. Trompak took her dog to a wooded area behind her house. Upon returning, Ms. Trompak testified, "[Defendant] was . . . in the back corner of his house close to where his yard would then become my yard[,] and he was more towards my yard than he was his house." Ms. Trompak further testified, "He had an oversized T-shirt on and sunglasses. He did not have pants on[,] and he was masturbating." Specifically, Ms. Trompak stated defendant was "stroking his penis back and forth while watching [her]," after which she quickly ran inside her home and called the police. According to Ms. Trompak, no one else saw defendant masturbating, and defendant was not visible to the street or other yards. But Ms. Trompak testified that "if there had been somebody out in the neighborhood or out behind the houses[,]" they would have seen him.

At the close of the State's evidence, defendant moved to dismiss the indecent

exposure charge, contending there was insufficient evidence to prove that defendant was in a public place. The trial court denied defendant's motion. At the close of all evidence, defendant renewed his motion to dismiss, which the trial court denied. Defendant was found guilty of misdemeanor stalking and misdemeanor indecent exposure. Defendant gave written notice of appeal on 28 February 2023.

II. Discussion

Defendant contends that the trial court committed prejudicial error by denying his motion to dismiss because there was insufficient evidence to prove that defendant was in a public place as required by N.C.G.S. § 14-190.9 (2023). We disagree.

We review the “trial court’s denial of a motion to dismiss de novo.” *State v. Smith*, 186 N.C. App. 57, 62 (2007) (citation omitted). “When ruling on a defendant’s motion to dismiss, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense charged, and (2) that the defendant is the perpetrator of the offense.” *Id.* (citation omitted). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* (cleaned up). “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 (1994) (citation omitted).

Section 14-190.9 of the North Carolina General Statutes provides that “any

person who shall willfully expose the private parts of his or her person in *any public place* and in the presence of any other person or persons . . . shall be guilty of a Class 2 misdemeanor.” N.C.G.S. § 14-190.9(a) (emphasis added). Our Supreme Court has defined “public place . . . as distinguished from private” as “a place which is accessible to the public and visited by many persons.” *State v. King*, 268 N.C. 711, 711 (1966) (per curiam) (citation omitted). Although public access is required, a public place may “not necessarily [be] devoted solely to the uses of the public.” *Id.* Such definition “connotes that use of the property, as opposed to its ownership, is the key criterion.” *State v. Fusco*, 136 N.C. App. 268, 270–71 (1999) (upholding a jury instruction defining a public place as one “viewable from any location open to the view of the public at large.”).

For example, in *State v. Pugh*, the defendant’s next-door neighbors witnessed him masturbating in front of his open garage. 244 N.C. App. 326, 226–27 (2015). The defendant’s property shared a driveway with his neighbors’ property, and defendant’s garage was in full view from their house. *Id.* at 227. Although defendant was standing on his own property, this Court explained that “his exposure was in a ‘public place’ because he was easily visible from the public road, from the shared driveway, and from his neighbor’s home.” *Id.*

Here, according to Ms. Trompak’s testimony, defendant was standing in his yard. But like in *Pugh*, defendant’s yard was open, shared a property line with Ms. Trompak’s property, and was in full view from Ms. Trompak’s yard. In addition,

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defendant was standing in an area of his yard that was closer to Ms. Trompak's yard than his house. While this is a close case, Ms. Trompak saw defendant as she was leaving the wooded area behind her home, and a reasonable probability existed that members of the public, while walking out behind the houses or in vicinity of the wooded area, would have seen defendant masturbating. Accordingly, taking the evidence "in the light most favorable to the State and giving the State the benefit of every reasonable inference," the back corner of defendant's property constituted a public place for purposes of N.C.G.S. § 14-190.9, and the trial court did not err in denying defendant's motion to dismiss. *See Rose*, 339 N.C. at 192.

III. Conclusion

For the foregoing reasons, we find defendant received a fair trial free from prejudicial error.

NO ERROR.

Chief Judge DILLON and Judge ZACHARY concur.

Report per Rule 30(e).