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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-535

Filed 7 May 2025

Mecklenburg County, Nos. 19 CRS 247842, 19 CRS 247843, 19 CRS 247844, 19 CRS 247845, 19 CRS 248147

STATE OF NORTH CAROLINA

v.

LUTHER AVERY LAWRENCE, Defendant.

Appeal by Defendant from judgment entered 15 June 2023 by Judge Matt Osman in Mecklenburg County Superior Court. Heard in the Court of Appeals 19 March 2025.

*Attorney General Jeff Jackson, by Assistant Attorney General Phillip H. Liles, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender Anne M. Gomez, for defendant-appellant.*

STADING, Judge.

Luther Avery Lawrence (“Defendant”) appeals from judgment entered upon a jury’s verdicts finding him guilty of three counts of discharging a firearm into an occupied dwelling, one count of assault with a deadly weapon with intent to kill, and one count of possession of a firearm by a felon. Defendant contends the trial court

committed error by denying his motions to dismiss at the close of the State's evidence. After careful review, we discern no error.

## **I. Background**

In December 2019, Sheila Andrews was inside her residence. Defendant previously resided with Sheila but moved out after their relationship had ended. Sheila's stepson, Marshall Andrews, and his wife, Francine Ward, were visiting Sheila at her home on 14 December 2019. Sheila's vehicle was parked on the street in front of the residence, and Marshall's vehicle was parked in Sheila's driveway.

That morning, Sheila left to go to work. As Marshall followed Sheila, Defendant suddenly emerged from the side of the building and began shooting at the residence. Sheila immediately fell to the ground near Marshall's car. Defendant approached Sheila, stood over her, and continued shooting while stomping on her chest and stomach.

Marshall retreated back into the residence and alerted his wife, who remained upstairs throughout the incident. Defendant continued to discharge his firearm after Marshall had re-entered the dwelling. Police determined three bullets fired by Defendant struck the residence at different locations: one bullet penetrated the garage door, hitting a vehicle parked inside; another bullet hit the front door frame above the entrance; and a third bullet penetrated the front door, lodging into a stair riser inside the residence. Investigating officers did not find shell casings at the crime scene.

Defendant was indicted for assault with a deadly weapon with intent to kill, possession of firearm by a felon, and three counts of discharging a firearm into an occupied dwelling. Defendant moved to dismiss the discharging a firearm into an occupied dwelling charges during trial, asserting insufficient evidence of occupancy and insufficient evidence of distinct acts. The trial court denied Defendant's motion to dismiss. The jury found Defendant guilty on all submitted charges. Defendant entered his notice of appeal.

## **II. Jurisdiction**

Jurisdiction lies properly with this Court under N.C. Gen. Stat. §§ 7A-27(b)(1) ("From any final judgment of a superior court . . . .") and 15A-1444(a) (2023) ("A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered.").

## **III. Analysis**

Defendant raises two matters for our consideration. Defendant contends the trial court erred in denying his motion to dismiss one count of discharging a firearm into an occupied dwelling because the State failed to provide substantial evidence he knew or had reasonable grounds to believe the dwelling was occupied. Defendant also argues the trial court committed error by denying his motions to dismiss two counts of discharging a firearm into an occupied dwelling, asserting the evidence

demonstrated only a single, continuous act rather than multiple separate and distinct acts.

### **A. Occupancy**

Defendant contends that the trial court should have dismissed one of the three counts of discharging a firearm into an occupied dwelling because there were not reasonable grounds to believe the residence was occupied at the time one of the shots was fired since both Sheila and Marshall were outside. We disagree.

We review *de novo* whether the State presented substantial evidence of each element of the crime. *State v. Golder*, 374 N.C. 238, 250, 839 S.E.2d 782, 790 (2020) (citations omitted) (“Whether the State presented substantial evidence of each essential element of the offense is a question of law; therefore, we review the denial of a motion to dismiss *de novo*.”). “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, 78–79, 265 S.E. 2d 164, 169 (1980) (citation omitted). “When reviewing a sufficiency of the evidence claim, this Court considers whether the evidence, taken in the light most favorable to the [S]tate and allowing every reasonable inference to be drawn therefrom, constitutes substantial evidence of each element of the crime charged.” *State v. Taylor*, 362 N.C. 514, 538, 669 S.E.2d 239, 261 (2008) (internal quotations omitted).

Our Supreme Court has interpreted discharging a firearm into an occupied dwelling to require evidence tending to show Defendant intentionally fired into a

STATE V. LAWRENCE

*Opinion of the Court*

building knowing it was occupied or having reasonable grounds to believe it might be occupied. *See* N.C. Gen. Stat. § 14-34.1(a)–(b) (2023); *see also State v. James*, 342 N.C. 589, 595–96, 466 S.E.2d 710, 714–15 (1996); *see also State v. Williams*, 284 N.C. 67, 73, 199 S.E.2d 409, 412–13 (1973) (recognizing knowledge or reasonable grounds to believe the building might be occupied). The critical question is whether Defendant knew or had reason to believe someone was inside when discharging his firearm into the dwelling. Viewing the evidence in a light most favorable to the State, sufficient evidence supports Defendant having knowledge or reasonable grounds to believe the dwelling was occupied. *See Taylor*, 362 N.C. at 538, 669 S.E.2d at 261.

First, the record showed Defendant was acquainted with all of the occupants of the residence who were present at the time of the shooting. Although Sheila was outside with Defendant and Marshall had been outside with Defendant, Francine, who is Marshall’s wife, remained inside. Francine testified she met Defendant on at least three prior occasions. A reasonable inference could be drawn that Marshall’s wife accompanied him to stay overnight at his stepmother’s residence and was present inside the residence. *See State v. Lee*, 348 N.C. 474, 488, 501 S.E.2d 334, 343 (1998) (“Ultimately, the question for the court is whether a reasonable inference of defendant’s guilt may be drawn from the circumstances.”).

Second, three vehicles were present at Sheila’s residence at the time of the shooting, but two were parked outside: her truck parked on the street in front of the residence; and a car belonging to Marshall and Francine in the driveway. Shelia

testified Defendant had previously used her vehicles. The presence of the vehicle not owned by Sheila provided reason to believe others were present inside the residence.

Substantial evidence tends to show, from which a rational factfinder could infer, Defendant had knowledge or reasonable grounds to believe that the building might be occupied by one or more persons when he discharged the firearm. *See Taylor*, 362 N.C. at 538, 669 S.E.2d at 261; *see also Williams*, 284 N.C. at 73, 199 S.E.2d at 412–13. The trial court correctly denied Defendant’s motion to dismiss the challenged count of discharging a firearm into an occupied dwelling based on the occupancy element.

### **B. Separate Acts**

Defendant next argues the trial court improperly denied his motion to dismiss two more counts of discharging a firearm into an occupied dwelling, contending the evidence demonstrated only one continuous incident rather than multiple separate and distinct acts. We disagree.

Each count of discharging a firearm into an occupied property must be supported by separate and distinct acts. *See State v. Rambert*, 341 N.C. 173, 176, 459 S.E.2d 510, 512 (1995) (“In this case, the evidence clearly shows that defendant was not charged three times with the same offense for the same act but was charged for three separate and distinct acts.”). For example, in *State v. Rambert*, the defendant fired multiple gunshots at a car, and our Supreme Court upheld three convictions since “[e]ach shot . . . required that defendant employ his thought processes each time

he fired the weapon,” and “[e]ach act was distinct in time, and each bullet hit the vehicle in a different place.” *Id.* at 341 N.C. 176–77, 459 S.E.2d at 513.

In *State v. Kirkwood*, the defendant asserted that he was effectively punished “three times for committing the same offense,” since “four gunshots were fired into the front door area of a house . . . .” 229 N.C. App. 656, 658, 664, 747 S.E.2d 730, 732, 736 (2013). The *Kirkwood* Court applied the logic of *Rambert* and determined that separate convictions under N.C. Gen. Stat. § 14-34.1 do not violate double jeopardy when the evidence shows a “quick succession” of gunshots causing “distinct bullet holes,” and a firearm requiring individual trigger pulls corresponding with each shot. *Id.* at 667–68, 747 S.E.2d at 738. Applying the above principles and viewing the evidence in the light most favorable to the State, there is substantial evidence that Defendant’s three charged crimes for each shot were “separate and distinct” acts. *See Rambert*, 341 N.C. at 176, 459 S.E.2d at 512; *see also Kirkwood*, 229 N.C. App. at 669, 747 S.E.2d at 739; *see also Taylor*, 362 N.C. at 538, 669 S.E.2d at 261.

First, evidence tended to show three bullets hit the residence in three distinct areas: the garage door, the front door, and the frame of the front door. Here, as in *Rambert* and *Kirkwood*, evidence demonstrates the bullets struck different areas of the residence. *See Rambert*, 341 N.C. at 177, 459 S.E.2d at 513 (“Each act was distinct in time, and each bullet hit the vehicle in a different place.”); *see also Kirkwood*, 229 N.C. App. at 667–68, 747 S.E.2d at 738 (“These three bullet holes were, therefore, each in different locations around the front door area of the house . . . .”).

STATE V. LAWRENCE

*Opinion of the Court*

Next, the evidence tends to show Defendant fired multiple shots with separate trigger pulls. Though the gun was not recovered, multiple pieces of evidence point to Defendant's use of a revolver. Sheila knew Defendant had a revolver during their relationship. Marshall reported to police that the weapon appeared to be a revolver. Moreover, the crime scene investigator opined Defendant used a revolver since shell casings were not located at the crime scene. The crime scene investigator added revolvers do not eject shell casings when fired. Like *Rambert* and *Kirkwood*, evidence shows Defendant used a gun requiring separate trigger pulls. *Rambert*, 341 N.C. at 177, 459 S.E.2d at 513; *Kirkwood*, 229 N.C. App. at 668, 747 S.E.2d at 738.

Last, the evidence permits an inference that each act was distinct in time. This concept is not only illustrated by the evidence recounted in the preceding two paragraphs, but also by testimony from witnesses who heard separate, multiple gunshots over a short period. Marshall stated Defendant "started shooting" while Marshall was outside and heard gunshots after going inside. He recalled Defendant might have shot six or eight times. Francine testified she was "in the bed sleeping, and . . . heard what sounded like gunshots. . . ." When inside, Marshall remembered telling Francine "to go upstairs because . . . bullets w[ere] coming into the house." As with the facts in *Rambert* and *Kirkwood*, evidence demonstrates gunshots were fired in quick succession but nonetheless constituted distinct acts. *Rambert*, 341 N.C. at 176, 459 S.E.2d at 512; *Kirkwood*, 229 N.C. App. at 667, 747 S.E.2d at 738.



STATE V. LAWRENCE

*Opinion of the Court*

The record provides substantial evidence tending to show Defendant discharged his firearm three separate times into the occupied residence. The trial court thus correctly denied Defendant's motion to dismiss the two other counts of discharging a firearm into an occupied dwelling. *See State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988) (if the evidence supports a reasonable inference of the defendant's guilt, "a motion to dismiss is properly denied even though the evidence also permits a reasonable inference of the defendant's innocence"); *see also State v. Reese*, 319 N.C. 110, 139, 353 S.E.2d 352, 368 (1987), *overruled on other grounds by State v. Barnes*, 345 N.C. 184, 481 S.E.2d 44 (1997) (holding that substantial evidence is what is not "merely speculative" and does not raise only a suspicion of the fact to be proved).

**IV. Conclusion**

Substantial evidence tends to show Defendant had knowledge or reasonable grounds to believe the dwelling was occupied at the time of the shootings. Furthermore, substantial evidence tends to show Defendant committed three separate and distinct acts when firing each shot. Accordingly, the trial court did not err by denying Defendant's motion to dismiss and submitting three counts of discharging a firearm into an occupied dwelling to the jury. Defendant received a fair trial, free from prejudicial error.

NO ERROR.

STATE V. LAWRENCE

*Opinion of the Court*

Judges TYSON and FREEMAN concur.

Report per Rule 30(e).