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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1216

Filed: 21 February 2017

Pitt County, No. 14 CRS 51675

STATE OF NORTH CAROLINA

v.

DANA ALTON LASSITER

Appeal by defendant from judgment entered 13 May 2015 by Judge W. Russell Duke, Jr. in Pitt County Superior Court. Heard in the Court of Appeals 12 April 2016.

*Attorney General Joshua H. Stein, by Assistant Attorney General Hugh A. Harris, for the State.*

*Foster Fitzpatrick Attorneys, P.A., by Jeffery B. Foster, for defendant.*

DIETZ, Judge.

Defendant Dana Alton Lassiter appeals his conviction for embezzlement based on several unauthorized charges to his employer's credit card. As explained below, although the State's case was quite weak, the owner of the business testified that Lassiter was the only employee with access to the business credit card, that the charges were not for business purposes, and that Lassiter was not authorized to use the business credit card for any other purposes without first obtaining approval from the owner. This testimony provides sufficient evidence from which a reasonable juror

could conclude that the State satisfied all elements of the charged offense. Accordingly, we find no error in the trial court's judgment.

### **Facts and Procedural History**

In 2011, Dr. Jennifer Ferguson, the owner of Carolina Women's Physicians, hired Defendant Dana Alton Lassiter as the office manager for her business. As office manager, Lassiter was responsible for monitoring the business's finances and accounts and paying bills. Lassiter had access to all business accounts and was the only employee with access to and control of the business checkbook, credit card, and cash deposits.

The State indicted Lassiter on several counts of embezzlement and obtaining property by false pretenses arising out of the alleged misappropriation of office funds. At the close of the State's evidence, Lassiter moved to dismiss all charges. The trial court allowed Lassiter's motion for all charges except one count of embezzlement.

The remaining embezzlement count arose from charges on the office credit card during June 2013. These included two flower arrangements given as gifts to other employees; payment of a U.S. Cellular phone bill not connected to the business; and payments to Suddenlink and Greenville Utilities, two service providers, in amounts not traceable to any services provided to the business. The jury found Lassiter guilty and the trial court sentenced him to a 6 to 17 month term of imprisonment, suspended

the sentence, and placed him on 36 months unsupervised probation. Lassiter timely appealed.

### **Analysis**

On appeal, Lassiter contends that the trial court erred by denying his motion to dismiss the charge of embezzlement for insufficient evidence. For the reasons discussed below, we find no error in the trial court's ruling.

"In reviewing a motion to dismiss based on the sufficiency of the evidence, the scope of the court's review is to determine whether there is substantial evidence of each element of the charged offense." *State v. Hardison*, \_\_ N.C. App. \_\_, \_\_, 779 S.E.2d 505, 507 (2015). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* "The evidence must be considered in the light most favorable to the State as the State is entitled to every reasonable inference that might be drawn therefrom." *Id.*

The essential elements of embezzlement are:

(1) the defendant, older than 16, acted as an agent or fiduciary for his principal, (2) he received money or valuable property of his principal in the course of his employment and through his fiduciary relationship, and (3) he fraudulently or knowingly and willfully misapplied or converted to his own use the money of his principal which he had received in a fiduciary capacity.

*State v. Britt*, 87 N.C. App. 152, 153, 360 S.E.2d 291, 292 (1987).

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Lassiter first argues that the State failed to show that he purchased the flowers for his own use or misapplied the funds with fraudulent intent. Lassiter contends that he was authorized to use the card and did not personally benefit from the transaction.

There is no dispute that Lassiter gave the flowers to other employees, and nothing suggests that he had an improper motive for doing so. However, the State is under no obligation to prove that Lassiter used the embezzled money in a way that enriched him personally. If, like a modern-day Robin Hood, an office manager knowingly and willfully siphoned funds from a business and gave the money away to random strangers without any personal gain, that is still embezzlement. *See State v. Parker*, 233 N.C. App. 577, 580, 756 S.E.2d 122, 124–25 (2014); *State v. Renkosiak*, 226 N.C. App. 377, 378–79, 740 S.E.2d 920, 922 (2013). As this Court explained in *Renkosiak*, embezzlement requires only the defendant’s “misapplication of her employer’s funds by paying bills she knew to be not for [her employer’s] benefit and specifically not authorized by her employer.” 226 N.C. App. at 378–79, 740 S.E.2d at 922.

Here, Dr. Ferguson, the owner of the business, testified that there are a limited set of authorized expenses for which Lassiter was permitted to spend the business’s money; that this fact was part of Lassiter’s job description; and that flowers for other employees were not among those authorized expenses unless Lassiter first obtained

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approval from the owner. She also testified that Lassiter did not obtain approval before buying the flowers. That testimony is sufficient for a reasonable juror to infer all the elements of embezzlement and thus to send this charge to the jury.

Next, Lassiter challenges the U.S. Cellular payment, arguing that there is no evidence that he “misappropriated any funds or used them for his own benefit or that he conducted the transaction with any fraudulent intent.”

Again, the State is not obligated to show that Lassiter personally benefitted from the payment of the cellular account or that he had a fraudulent intent when he did so. To be sure, the State never presented any evidence of *whose* cellphone bill Lassiter paid—and notably, did not show that it was Lassiter’s cellphone bill. But proving that was not part of the State’s burden. Dr. Ferguson testified that the business did not have any accounts with U.S. Cellular and that this payment to U.S. Cellular was not used to pay any expenses of the business. She also testified that Lassiter was the only employee who had access to the business’s credit card. This evidence is sufficient for a reasonable juror to infer that Lassiter knowingly and willfully misapplied business funds for use other than an authorized business purpose.

Finally, with respect to the Suddenlink and Greenville Utilities payments, Lassiter again argues that the State failed to show a misappropriation of funds, a use for his benefit, or any fraudulent intent. But again, Dr. Ferguson testified that the

business's cable and utility payments were made by check, not by credit card, and that the credit card charges at issue, which did not correspond to any bills sent to the business, were not for business expenses. And, as explained above, Dr. Ferguson testified that Lassiter was the only employee with access to the business credit card and that he was not permitted to make any payments not for business expenses without first obtaining approval from her. From this testimony, a reasonable juror could conclude that Lassiter knowingly and willfully misapplied business funds for an unauthorized use.

Accordingly, the trial court did not err in denying Lassiter's motion to dismiss because the State presented substantial evidence from which a reasonable juror could conclude that Lassiter committed the charged offense.

### **Conclusion**

We find no error in the trial court's judgment.

NO ERROR.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).