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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-258

Filed: 7 January 2020

Wayne County, No. 18 JB 104

In the Matter of A.D.S.

Appeal by Juvenile from adjudication and disposition orders entered 5 December 2018 by Judge Beth Heath in Wayne County District Court. Heard in the Court of Appeals 17 September 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Melissa K. Walker, for the State-Appellee.

Richard Croutharmel for Juvenile-Appellant.

COLLINS, Judge.

Juvenile A.D.S. (“Amy”)¹ appeals from an adjudication order finding her delinquent for committing the offense of injury to real property and a subsequent disposition order entered thereupon. Amy contends that the trial court erred by denying her motion to dismiss the juvenile petition because the State failed to provide sufficient evidence of each element of the offense. We discern no error.

¹ We use a pseudonym to protect the identity of the juvenile. See N.C. R. App. P. 3.1(b).

I. Factual and Procedural History

The Wayne County Department of Juvenile Justice and Delinquency Prevention filed a juvenile petition on 6 November 2018 alleging that 15-year-old Amy injured real property, in violation of N.C. Gen. Stat. § 14-127. The petition specifically alleged that Amy “damaged the door knob to her residence by forcefully pulling and pushing on it and also put two small dents in the door by hitting it with her fist repeatedly.” The Wayne County Sheriff’s Office served Amy and her mother with the juvenile petition and summons on 15 November 2018. A contested adjudication hearing was held on 5 December 2018.

At the hearing, Amy’s mother testified that when she woke Amy for school on the morning of 3 October 2018, Amy refused to go to school and instead argued with her. At around 2:00 p.m. that day, when Amy’s mother discussed Amy’s upcoming treatment and counselor with her, Amy argued with her mother again. Amy then walked out the front door; her mother locked the door behind her. For about an hour, Amy “beat on the door,” banging, kicking, and jarring it. Amy “basically shook it loose.” Amy’s mother called Amy’s counselor to report that her daughter would be outside until they came to pick her up. Amy’s mother watched Amy through the peep hole in the door and told Amy that she would not be allowed inside because the counselor was on the way to the residence to pick Amy up for treatment.

The next day, Amy's mother discovered that the doorknob was "disconnected and loose" when she went out the door to lock it, and her key "got stuck in it and the whole locking mechanism . . . came out." Amy's mother used a screwdriver to retrieve her key and put the doorknob back together, in order to avoid paying a repair fee to the maintenance department.

Amy's mother testified that, because there had been times when their arguments had "gone until [they] actually had an altercation[.]" Amy's mother "just locked the door on [Amy] and called her counselor." Amy is diagnosed as bipolar. When Amy gets upset, "she gets violent and angry and starts destroying property." When Amy behaves this way in anger, her mother feels that she must "be the adult and diffuse the situation," and that it is best for them to be apart.

After the State presented its evidence, Amy made a motion to dismiss the petition for insufficient evidence. The trial court denied the motion.

At the conclusion of the adjudication phase of the hearing, the trial court adjudicated Amy delinquent. The trial court then conducted a disposition hearing, after which it entered a Level I disposition order placing Amy on 12 months of juvenile probation. Amy filed written notice of appeal that day.

II. Discussion

On appeal, Amy contends that the trial court erred by denying her motion to dismiss the petition. Amy argues that the State's evidence was insufficient to

establish the elements of the offense of injury to real property in four ways: (1) the State failed to present evidence that Amy pushed or pulled the doorknob; (2) the State failed to prove the condition of the doorknob prior to the damage; (3) the State failed to show that damage to the doorknob was a natural and foreseeable consequence of Amy's actions; and (4) the State failed to show that Amy acted willfully or wantonly.

This Court reviews a trial court's denial of a juvenile's motion to dismiss for insufficient evidence de novo. *In re S.M.S.*, 196 N.C. App. 170, 171, 675 S.E.2d 44, 45 (2009). Denial of a juvenile's motion to dismiss is proper if there is substantial evidence of each essential element of the offense and that the juvenile was the perpetrator. *In re Heil*, 145 N.C. App. 24, 28, 550 S.E.2d 815, 819 (2001). "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). When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State. *State v. Fritsch*, 351 N.C. 373, 378-79, 526 S.E.2d 451, 455 (2000).

Under N.C. Gen. Stat. § 14-127, "[i]f any person shall willfully and wantonly damage, injure or destroy any real property whatsoever, either of a public or private nature, he shall be guilty of a Class 1 misdemeanor." N.C. Gen. Stat. § 14-127 (2018).

Amy's arguments on appeal involve the sufficiency of the evidence of (1) damage to real property (the "damage element") and (2) a willful and wanton state of mind (the "intent element").

A. The damage element

Amy contends that the State did not provide sufficient evidence of the damage element of the offense.

Under N.C. Gen. Stat § 14-127, the State must show damage, injury, or destruction of real property. A door attached to a building and the door's component parts are real property. *See State v. Zigler*, 42 N.C. App. 148, 152, 256 S.E.2d 479, 482 (1979) (holding that defendant damaged real property by firing a shotgun at the glass door of a police station, shattering the glass). A charge of damage to real property must give the defendant "reasonable notice of the charge against him, including the specific parcel of real property he is accused of injuring, so that he may prepare his defense" *State v. Spivey*, 368 N.C. 739, 744, 782 S.E.2d 872, 875 (2016).

As a preliminary matter, we address the State's contention that this argument is not properly before us because Amy presented a different argument at trial than she now raises on appeal.

"In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific

grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C. R. App. P. 10(a)(1). Moreover, “the law does not permit parties to swap horses between courts in order to get a better mount before an appellate court.” *Geoscience Grp., Inc. v. Waters Constr. Co.*, 234 N.C. App. 680, 691, 759 S.E.2d 696, 703 (2014) (internal quotation marks and citation omitted). “Consequently, when a defendant presents one argument in support of her motion to dismiss at trial, she may not assert an entirely different ground as the basis of the motion to dismiss before this Court.” *State v. Chapman*, 244 N.C. App. 699, 714, 781 S.E.2d 320, 330 (2016) (citation omitted).

In this case, at the close of the State’s evidence, Amy moved to dismiss the charge based on the argument that there was no evidence that that the doorknob was damaged, stating:

Judge, at this point on behalf of [Amy] we move to dismiss the petition against her. Petition alleges that she injured real property, that being the door knob and the door itself. Testimony in evidence establishes that we’re not even certain that the dents were caused by [Amy] or dents in the door before the incident. We’re not certain any dents were specifically caused by [sic] in this. And, Judge, additionally as to the door knob, the door knob wasn’t broken. There is a statute for injury to real property requires [sic] that if any person shall willfully and wantonly damage, injure or destroy any real property whatsoever - Judge, what we’re talking about here - there is no specific definition of damage under the general statutes that I was able to find but the dictionary definition is physical harm causes [sic] something in a way to impair its value, usefulness or normal function. There was nothing damaged on this door.

She screwed them back together with a screw driver, that was the end of the problem. That is not impairing its value. That is not impairing its use from normal function. That is not impair - impede [sic] its normal function. It is not damaged.

The definition of injure from the dictionary, Judge, is to do physical harm or damage to something. Again, no physical harm or damage. No component of the door knob was broken. It still works. It just had to be tightened back up. Judge, also with this, there's that first element.

Amy does not raise the argument on appeal that there was no evidence that the doorknob was damaged. Instead, she now argues that the trial court erred by denying her motion to dismiss because (1) there was a variance between the charges alleged in the petition ("damaged the door knob to her residence by forcefully pulling and pushing on it") and the evidence presented at trial (evidence presented that she beat on the door, not that she pulled and pushed on the doorknob); (2) the State failed to prove the condition of the doorknob prior to the damage; and (3) the State failed to show that damage to the doorknob was a natural and foreseeable consequence of Amy's actions. Because Amy may not present one argument in support of her motion to dismiss at trial, and then assert entirely different grounds as the bases of her argument regarding the denial of the motion to dismiss before this Court, *Chapman*, 244 N.C. App. at 714, 781 S.E.2d at 330, Amy has failed to preserve the arguments she now makes on appeal. We thus decline to reach the merits of her arguments. *Id.* at 714, 781 S.E.2d at 330-331.

B. The intent element

Amy next argues that the State did not provide sufficient evidence to establish the intent element of the offense. Specifically, she argues that (1) she did not act willfully or wantonly, as she was banging on the door only to try to get back inside her residence; and (2) the State failed to show that damage to the doorknob was a natural and foreseeable consequence of Amy's actions.

The State must show that the defendant "willfully and wantonly" damaged or destroyed real property. N.C. Gen. Stat. § 14-127.

The words "willful" and "wanton" have substantially the same meaning when used in reference to the requisite state of mind for a violation of a criminal statute. "Willful" as used in criminal statutes means the wrongful doing of an act without justification or excuse, or the commission of an act purposely and deliberately in violation of the law. "Willfulness" is a state of mind which is seldom capable of direct proof, but which must be inferred from the circumstances of the particular case.

State v. Davis, 86 N.C. App. 25, 30, 356 S.E.2d 607, 610 (1987) (citations omitted) (holding that the evidence, when viewed in the light most favorable to the State, was sufficient to allow the jury to infer that defendant put paper towels in toilet intending to create serious water problem). "Further, a person is presumed to intend the natural and foreseeable consequences of his unlawful acts." *Id.* at 30-31, 356 S.E.2d at 610 (affirming conviction for damage to real property because damage to toilet and water damage to floor of museum "were natural and foreseeable consequences of

clogging the constantly-running toilet”). Thus, willful intent must be inferred from the circumstances and is presumed when the consequences of one’s actions are natural and foreseeable. *See id.*

This Court examined the sufficiency of the evidence of willful damage to real property in *In re Pineault*, 152 N.C. App. 196, 566 S.E.2d 854 (2002), wherein a juvenile refused an instruction to go to the principal’s office, and the principal attempted to carry the student there by holding him with his arms pinned down. *Id.* at 197, 566 S.E.2d at 856. On the way down the hall the student kicked a door, and the force of his kick pushed the doorstop through the wall. *Id.* The Court inferred willful intent from the circumstances surrounding the juvenile’s actions and presumed willful intent because the damage to the property was a natural and foreseeable consequence of the juvenile’s actions, concluding:

Here, the State presented evidence that respondent “was being very belligerent, uncooperative,” and “disruptive.” Respondent kicked “indiscriminately” down the hall while being restrained. He kicked the door with such force as to cause the doorstop to punch a hole in the wall. Damage to the wall was a natural and foreseeable consequence of respondent kicking wildly down the hall. In viewing the evidence in the light most favorable to the State, we find there was sufficient evidence that respondent willfully and wantonly kicked the door which caused the damage.

Id. at 197-98, 566 S.E.2d at 856-57.

As in *Pineault*, Amy’s willful intent can be inferred from the circumstances surrounding her actions and presumed because the damage to the property was a

natural and foreseeable consequence of her actions. *See id.* at 198, 566 S.E.2d at 856-57.

The circumstances include the following: Amy refused to go to school; argued with her mother; resisted discussion of her ongoing therapy; exited her residence in apparent defiance; and finally banged, kicked, and jarred the door for an hour, despite being told that she would not be let back in the apartment and that the counselor was on the way to pick her up. Additionally, Amy had destroyed property on prior occasions while being angry at her mother. We infer from these circumstances that Amy committed a “wrongful doing of an act without justification or excuse[.]” *Id.* *See also Davis*, 86 N.C. App. at 30-31, 356 S.E.2d at 610.

We also presume that Amy intended the natural and foreseeable consequences of her unlawful acts. Similar to *Pineault*, where damage was foreseeable when the juvenile kicked the door with enough force to cause the doorstep to punch a hole in the wall, in this case, the damage Amy caused was foreseeable when Amy banged and kicked the door to her apartment for an hour with enough force to “sh[ake] it loose” and break the doorknob. Because the damage to the door and its component parts was a natural and foreseeable consequence of Amy’s conduct, we presume Amy intended the consequences of her actions and thus acted in a willful and wanton manner. *See Pineault*, 152 N.C. App. at 198, 566 S.E.2d at 856-57; *Davis*, 86 N.C. App. at 30, 356 S.E.2d at 610. Viewing the evidence in the light most favorable to the

State, there was sufficient evidence that Amy willfully and wantonly beat the door, which caused the damage.

III. Conclusion

Because we conclude that the State presented sufficient evidence of each element of the offense of injury to property, we find no error by the trial court in denying Amy's motion to dismiss the petition.

AFFIRMED.

Judges BRYANT and YOUNG concur.

Report per Rule 30(e).