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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-856-2

Filed: 18 February 2020

McDowell County, No. 14 CRS 50509, 50512

STATE OF NORTH CAROLINA

v.

MOLLIE ELIZABETH McDANIEL, Defendant.

Appeal by Defendant from judgments entered 24 January 2017 by Judge J. Thomas Davis in Superior Court, McDowell County. Originally heard in the Court of Appeals 22 January 2018 and opinions filed 15 May 2018. Remanded to the Court of Appeals by the Supreme Court for further consideration by opinion filed 16 August 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Deborah M. Greene, for the State.

Gilda C. Rodriguez for Defendant.

McGEE, Chief Judge.

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Mollie Elizabeth B. McDaniel (“Defendant”) appeals her convictions for felonious breaking and entering and larceny after breaking and entering. For the reasons discussed below, we find no error in Defendant’s convictions.

I. Factual and Procedural Background

This case arises out of an alleged larceny following a breaking and entering. The following facts are limited to those necessary to understand the issues in this appeal. A complete recitation of the facts in this case are set out in our Supreme Court’s opinion in *State v. McDaniel*, 372 N.C. 594, 831 S.E.2d 283 (2019).

Defendant was charged by separate indictments on 21 July 2014 with (1) one count of felony breaking and entering and one count of larceny after breaking and entering, on or about 20 March 2014, in connection with a lawnmower, aluminum ladder, monitor heater, kerosene, electrical wiring, flooring, and cuckoo clock found at 24 Ridge Street on 2 April 2014; and (2) one count of felony breaking and entering and one count of larceny after breaking and entering, on 4 April 2014, in connection with an Atari game system, heirloom china, and antique radio found in Defendant’s truck on that date. The charges were joined for trial.

Daniel Sheline (“Mr. Sheline”) testified at trial that he visited a house owned by him at 30 Woody Street in Marion, North Carolina (“the property”), on 20 March 2014. Mr. Sheline observed a number of items of personal property in the house

during the visit, including an aluminum ladder and push lawnmower, both in the basement; an unrestored cuckoo clock; miscellaneous furniture; aluminum pots and pans; heirloom china; an Atari electronic gaming system; and a monitor heater located behind the front door of the house, which was wired and plumbed through copper tubing to a kerosene oil tank outside the house.

When Mr. Sheline left the house that day, he locked the front door's knob lock. Mr. Sheline did not have a key to the deadbolt lock, which could only be locked from the inside, so he left the deadbolt unlocked. The door to the basement of the house was pulled shut and secured from the inside with a padlock that "had a screwdriver through it [so that] nobody could open it from the outside." Mr. Sheline testified "[t]he only way . . . [to] open [the basement door] would be to crawl through a window or have a key and go down the [interior] steps and open it [from inside the house]." The house also had a side door that was nailed shut. Mr. Sheline posted a "no trespassing" sign on the front door of the house, and testified that, as of 20 March 2014, "[n]o one [else] had permission to go into the house at all."

When Mr. Sheline next returned to the property on 1 April 2014, the deadbolt to the front door was locked and the doorknob lock was unlocked. The basement door and a window next to the basement door were both open, and the padlock to the basement door was missing. As Mr. Sheline walked up the stairs from the basement into the house, he smelled a strong odor of kerosene. He "found the whole living room

floor was full of kerosene and the monitor heater was missing.” The piping from the heater to the outside oil tank had been cut and the copper tubing was missing. Mr. Sheline noticed that other items were missing from the house, including the aluminum ladder, lawnmower, and cuckoo clock. The house’s electrical wiring had been ripped from the electric box and removed, and various plumbing fixtures were also missing. Mr. Sheline’s wife called the police to report the stolen property.

Lieutenant Detective Andy Manis (“Lt. Det. Manis”) of the McDowell County Sheriff’s Office (“Sheriff’s Office”) received information on 2 April 2014 that the property missing from the house at 30 Woody Street was located at a house at 24 Ridge Street. Lt. Det. Manis went to investigate and found a monitor heater, lawnmower, aluminum ladder, pipes, and wiring outside the residence at 24 Ridge Street. He knocked on the door, and a woman inside explained that a person driving a white pickup truck had unloaded the property at 24 Ridge Street earlier that day. Mr. Sheline later identified the items found at 24 Ridge Street as the property missing from 30 Woody Street.

Detective Jason Grindstaff (“Det. Grindstaff”) of the Sheriff’s Office received a report on 4 April 2014 that someone had again entered the property, left in a white pickup truck, and turned down Ridge Street. Det. Grindstaff went to Ridge Street and found a white Chevrolet pickup truck parked directly across the street from the house at 24 Ridge Street. Defendant was sitting in the driver’s seat. Det. Grindstaff

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asked Defendant for identification and permission to search the vehicle. With Defendant's permission, Det. Grindstaff searched the truck's interior cabin and outer truck bed. He found an Atari gaming system, glassware, china, and an antique clock in the bed of the truck. Det. Grindstaff arrested Defendant. Mr. Sheline later confirmed the items found in the truck were property from 30 Woody Street. Mr. Sheline testified the property found in the white pickup truck on 4 April 2014 "might have been" in the house at 30 Woody Street when he was there on 1 April 2014.

At the close of the State's evidence, Defendant moved to dismiss the charges based on insufficiency of the evidence. The trial court dismissed one count of breaking and entering, but denied the motion to dismiss one count of breaking and entering and two counts of larceny after breaking and entering.

The jury found Defendant guilty of one count of felony breaking and entering and two counts of larceny after breaking and entering on 24 January 2017. The trial court arrested judgment on the 4 April 2014 larceny conviction. Defendant was sentenced to an active sentence of four months' imprisonment, to be followed by 60 months of supervised probation. Defendant appeals.

II. Analysis

This case is before this Court for a second time. In our prior opinion, this Court vacated Defendant's convictions, holding that the State failed to prove beyond a reasonable doubt the second element of the doctrine of recent possession, that

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Defendant had exclusive possession and control of the stolen goods. *State v. McDaniel*, ___ N.C. App. ___, ___, 817 S.E.2d 6, 15 (2018). The Supreme Court reversed and remanded, instructing this Court on remand to “consider[] [1] defendant’s argument regarding the third prong of the doctrine of recent possession[,]the sufficiency of the recency of [D]efendant’s possession of the property at issue[,]as well as [2] defendant’s argument that the trial court erred in imposing upon her an extended term of probation.” *McDaniel*, 372 N.C. at 606, 831 S.E.2d at 291.

A. Recency of Possession

We first consider Defendant’s argument that the trial court erred in denying her motion to dismiss because the State failed to present substantial evidence that Defendant was found in possession of the stolen goods within a sufficiently recent time after the larceny occurred. We disagree.

“This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted). We review to determine whether, in the light most favorable to the State, “there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense.” *State v. Lynch*, 327 N.C. 210, 215–16, 393 S.E.2d 811, 814 (1990). Where “a reasonable inference of defendant’s guilt may be drawn from the circumstances,” the offense should be submitted for the jury to

decide. *State v. Thomas*, 296 N.C. 236, 244, 250 S.E.2d 204, 209 (1978) (quoting *State v. Rowland*, 263 N.C. 353, 358, 139 S.E.2d 661, 665 (1965)).

Defendant was convicted for felonious breaking and entering and larceny after breaking and entering that allegedly occurred on or about 20 March 2014. The State based its case against Defendant for each crime on the doctrine of recent possession. The doctrine states that, “upon an indictment for larceny, possession of recently stolen property raises a presumption of the possessor’s guilt of the larceny of such property.” *State v. Maines*, 301 N.C. 669, 673–74, 273 S.E.2d 289, 293 (1981) (citations omitted). “Furthermore, when there is sufficient evidence that a building has been broken into and entered and thereby the property in question has been stolen, the possession of such stolen property recently after the larceny raises presumptions that the possessor is guilty of the larceny and also of the breaking and entering.” *Id.* “For the doctrine of recent possession to apply, the State must show: (1) the property was stolen, (2) [the] defendant had possession of the property, subject to [her] control and disposition to the exclusion of others, and (3) the possession was sufficiently recent after the property was stolen[.]” *State v. McQueen*, 165 N.C. App. 454, 460, 598 S.E.2d 672, 676–77 (2004) (citations omitted).

With respect to the third element, “[t]he possession must be so recent after the breaking or entering and larceny as to show that the possessor could not have reasonably come by it, except by stealing it [her]self or by [her] concurrence.” *State*

v. Hamlet, 316 N.C. 41, 43, 340 S.E.2d 418, 420 (1986) (citations omitted). Whether the doctrine applies to the time elapsed in a case “depends upon the facts and circumstances of [that] case[.]” particularly the nature of the stolen goods involved. *State v. Blackmon*, 6 N.C. App. 66, 76, 169 S.E.2d 472, 479 (1969). If the stolen goods are of a type “normally and frequently traded in lawful channels,” the doctrine applies only for a short time before it may be assumed that possession could have changed due to the “intervening agency of others[.]” *Id.* Otherwise, if the stolen goods are “of a type not normally or frequently traded through lawful channels, the inference of guilt will survive a longer time interval, since, under those circumstances, it is more likely that the defendant acquired the property by [her] own acts and to the exclusion of the intervening agency of others.” *State v. Callahan*, 83 N.C. App. 323, 326, 350 S.E.2d 128, 130 (1986). Recency is ordinarily a question for the jury:

There is no hard and fast definition of the term “recent possession,” but the trend of the decisions is to the effect that the time that must elapse after the theft of goods before their possession by the accused should cease to be considered as tending to show guilt is ordinarily a question of fact for the jury.

State v. White, 196 N.C. 1, 3, 144 S.E. 299, 300 (1928).

In this case, a maximum of 12 days elapsed from when the stolen goods were last secured at Mr. Sheline’s property on 20 March 2014 to when Defendant first admitted the goods were in her possession on 2 April 2014. In *Callahan*, the defendant was found in possession of commercial restaurant equipment

approximately 11 to 12 days after the equipment was stolen. *Callahan*, 83 N.C. App. at 326, 350 S.E.2d at 130. This Court held that the period of 11 to 12 days was short enough for the doctrine of recent possession to apply because the commercial equipment was not of a type to have been “usually or frequently traded through lawful retail channels” within that time. *Id.* Conversely, in *State v. Holbrook*, our Supreme Court found that too much time had elapsed for the doctrine to apply when the defendant was found in possession of normal automobile tires just 11 days after the tires were stolen. *State v. Holbrook*, 223 N.C. 622, 624–25, 27 S.E.2d 725, 727 (1943). The doctrine could not conclusively apply because tires were an item normally traded in lawful retail transactions, and the defendant was discovered in possession of only two of the four tires that were originally stolen as he had already sold two tires to a third party. *Id.*

In this case, unlike in *Holbrook*, all of the goods stolen from the property were discovered still in Defendant’s possession, either in her pickup truck or at the house on 24 Ridge Street. Some of the goods were of the type typically sold through lawful retail: an Atari gaming system, glassware, china, antique clock, monitor heater, ladder, and lawnmower; while the remainder, particularly in their used and worn conditions, were of a type far less frequently sold in lawful retail: copper wiring, tubing, flooring, and pipes. Specifically, copper wiring and pipes are frequently sold as scrap metal to a scrap yard, as a single, final buyer, and are unlikely to be

frequently sold in a matter of 12 days. Evidence at trial showed that Defendant was in the business of selling scrap metal to scrapyards, had not yet sold any of the scrap goods stolen from Mr. Sheline's property, and was still in possession of the other items identified as goods stolen from the property. It is unlikely that Defendant would have purchased each of the usual retail goods in combination with an assortment of scrap goods. Though the goods were a mixture of those often found in retail and those not frequently sold, there was sufficient evidence to show that it was unlikely that any of the goods had changed hands since they were stolen from Mr. Sheline's property. We hold that the evidence was sufficient to submit charges against Defendant to the jury under the doctrine of recent possession.

B. Extension of Probation

Defendant also contends that the trial court erred in extending her probation past the maximum time permitted under N.C. Gen. Stat. § 15A-1343.2(d) without making proper findings that an extension was necessary. We disagree.

Under N.C. Gen. Stat. § 15A-1343.2(d), the maximum probationary term that may be assigned to a defendant convicted of a felony resulting in intermediate punishment is 36 months, unless the court makes specific findings that a longer period of probation is necessary. N.C. Gen. Stat. § 15A-1343.2(d) (2017). If the requisite findings are made, the court may extend the probation period to a maximum of 60 months. *Id.* "[T]he statute merely requires a finding that a longer term is

needed; it does not require detailed rationale.” *State v. Wilkerson*, 223 N.C. App. 195, 200, 733 S.E.2d 181, 184 (2012). Only when the court makes no such finding *at all* must the case be remanded for re-sentencing. *See State v. Mac Cardwell*, 133 N.C. App. 496, 509, 516 S.E.2d 388, 397 (1999); *see also State v. Mucci*, 163 N.C. App. 615, 625, 594 S.E.2d 411, 418 (2004).

In this case, Defendant was convicted of two Class H felonies and had a Prior Record Level I, authorizing the court to sentence her at the intermediate level. *See* N.C. Gen. Stat. § 15A-1340.17 (2017). The trial court sentenced Defendant to 60 months of probation, resulting in a probationary period longer than regularly authorized by N.C. Gen. Stat. § 15A-1343.2(d). Each of the judgments entered against Defendant included a finding that “[t]he Court finds that a longer period of probation is necessary than that which is specified in G.S. 15A-1343.2(d).” These findings were sufficient to show the trial court’s determination that a longer probationary period was needed, and further findings are not necessary. *Wilkerson*, 223 N.C. App. at 200, 733 S.E.2d at 184.

III. Conclusion

The trial court did not err in denying Defendant’s motion to dismiss her charges because the evidence was sufficient to show that she possessed the stolen goods within a sufficiently recent time to invoke the doctrine of recent possession. Further, the trial court did not err in sentencing Defendant to an extended

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probationary period because it made the requisite finding that such an extension was necessary.

NO ERROR.

Judges TYSON and YOUNG concur.

Report per Rule 30(e).