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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1010

Filed: 19 May 2020

Onslow County, No. 16 CRS 57444

STATE OF NORTH CAROLINA

v.

PAMELA REGINA MCGREGOR, Defendant.

Appeal by Defendant from judgment entered 19 February 2019 by Judge Charles H. Henry in Onslow County Superior Court. Heard in the Court of Appeals 28 April 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Matthew Baptiste Holloway, for the State.

Charlotte Gail Blake for the Defendant.

INMAN, Judge.

Pamela Regina McGregor (“Defendant”) appeals the trial court’s judgment entering a jury verdict convicting her of larceny from a merchant by removing an anti-theft device. Defendant argues the trial court improperly admitted clothing into evidence amidst prejudicial concerns with their authentication. After careful review, we find no error.

I. Factual and Procedural Background

This case arises from Defendant's alleged theft of approximately \$109.00 in clothing from a Cato clothing store in Jacksonville after removing an anti-theft device from one or more items of clothing. Evidence presented at trial tended to show the following:

On 23 November 2016, Defendant purchased several items from Cato totaling about \$150.00. The clothing hangers and anti-theft devices were removed, and the purchased items were placed in a shopping bag. After paying for these items, Defendant told the store manager that she had not spent as much as she thought and wanted to do some additional shopping. Defendant then walked over to a clothing display near the front of the store and browsed for some time before leaving the store. The anti-theft alarm triggered as Defendant was leaving, and the store manager noticed hangers sticking out of Defendant's bag.

The store manager approached Defendant and grabbed the Cato shopping bag Defendant was carrying out of the store. After a brief struggle, Defendant let go of the bag. The store manager returned to the store and called the police. The store manager compared the items in Defendant's bag at that time to Defendant's purchase receipt and discovered five items that had not been purchased. Anti-theft devices had been removed from at least two of the unpurchased items. The store manager found three anti-theft devices lying on the floor where Defendant had been walking.

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A police officer arrived while Defendant was still at the store. After speaking with the manager and examining the items she had seized from Defendant, the officer determined there was probable cause to arrest Defendant.

The store manager placed the five unpurchased items in a box in the store's office. The box was not locked or otherwise secured and accessible to anyone who entered the office. Before the items were delivered to the district attorney's office for trial, another Cato store employee saw the box of clothing items, assumed they were damaged and taken off the shelves to be donated, and removed the remaining anti-theft devices from the items.

On 12 June 2018, Defendant was indicted on one count each of felony larceny by removal of an anti-theft device, misdemeanor larceny, and simple assault, as well as having attained habitual felon status. Each of these charges came on for trial on 13 February 2019.

During trial, the State presented the five unpurchased items of clothing into evidence, labeled State's Exhibits 4, 5, 6, 7, and 8.¹ Defendant objected to the admission of this evidence, but the trial court overruled Defendant's objection. Witnesses, including the Cato store manager, identified the exhibits as the clothing

¹ The indictment charges that Defendant stole "one faux fur vest, one crochet top and one silver jacket" by removing anti-theft devices. Apart from the store manager's testimony that State's Exhibit 4 was a "sweater jacket" and State's Exhibit 5 was a "holiday sweater," the record does not indicate which trial exhibit number corresponds with each item of clothing described in the indictment. Defendant has not presented any argument that the items presented as evidence did not match the physical descriptions in the indictment.

items seized from Defendant immediately after the store alarm sounded as Defendant was leaving. Defendant presented no evidence.

The trial court instructed the jury on the elements of felony larceny by removal of an anti-theft device, as well as the lesser-included offense of misdemeanor larceny and the separate offense of simple assault. The jury found Defendant guilty of felony larceny. Defendant pled guilty to having attained habitual felon status. The trial court entered judgment on the verdict and the guilty plea, found Defendant to be a Prior Record Level VI, and sentenced her to a prison term of 77 to 105 months. Defendant gave notice of appeal in open court.

II. Analysis

Defendant challenges the trial court's admission of State's Exhibits 4 through 8, arguing that the clothing was admitted without proper authentication. We review a trial court's decision regarding the authenticity of real evidence for an abuse of discretion. *State v. Harbison*, 293 N.C. 474, 484, 238 S.E.2d 449, 454 (1977) (“[T]he trial judge possesses and must exercise a sound discretion in determining the standard of certainty required to show that the object offered is the same as the object involved in the incident giving rise to the trial and that the object is in an unchanged condition.”).

An evidentiary error by the trial court must be prejudicial to warrant reversal. *State v. Alston*, 307 N.C. 321, 339, 298 S.E.2d 631, 644 (1983) (citations omitted).

Error is prejudicial only if “there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises.” *Id.* at 339–40, 298 S.E.2d at 644 (citation and quotation omitted).

Authentication of real evidence is “a condition precedent to admissibility . . . satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” N.C. Gen. Stat. § 8C-1, 901(a) (2015); *Harbison*, 293 N.C. at 483, 238 S.E.2d at 454. Our Supreme Court has long held that “a two-pronged test must be satisfied before real evidence is properly received into evidence.” *State v. Campbell*, 311 N.C. 386, 388, 317 S.E.2d 391, 392 (1984). First, “[s]uch evidence must be identified as the same object involved in the incident in order to be admissible.” *Harbison*, 293 N.C. at 483, 238 S.E.2d at 454 (citation omitted). Second, “[i]t must also be shown that since the incident in which it was involved the object has undergone no material change in its condition.” *Id.* A detailed explanation of the evidence’s chain of custody is necessary “only when the evidence offered is not readily identifiable or is susceptible to alteration and there is reason to believe that it may have been altered.” *Campbell*, 311 N.C. at 389, 317 S.E.2d at 392 (citation omitted). Weak links in a chain of custody affect the weight of the evidence, not its admissibility. *State v. Zuniga*, 320 N.C. 233, 255, 357 S.E.2d 898, 913 (1987) (citations and quotation omitted).

Defendant argues the State failed to prove that the anti-theft devices were removed from the clothing before she removed them from the store, and that the stolen clothes were materially unchanged at the time of trial. We disagree.

The five unpurchased items of clothing were stored in a place where they could have been—and were—altered in some way. But the State presented evidence of the chain of custody for the clothing: after recovering the items from Defendant, the store manager placed each item into a box in the store office until the items could be brought to trial. Though the box was unsecured, other than evidence that another store employee removed all remaining anti-theft devices from the items, no evidence showed the items were misplaced or otherwise unaccounted for at any time between the date the manager retrieved them from Defendant and Defendant’s trial. “Defendant’s showings . . . of potential weak spots in the chain of custody relate then only to the weight to be given this testimony.” *State v. Detter*, 298 N.C. 604, 634, 260 S.E.2d 567, 588 (1979) (citation omitted).

In addition to testifying about the chain of custody, the store manager testified that (1) each of the five exhibits was a clothing item Cato offered in the fall and winter of 2016 and secured with anti-theft devices, (2) she retrieved each of the five items from Defendant; and (3) Defendant had not paid for any of the items. The store manager identified State’s Exhibits 6 and 8 as two clothing items that did not have anti-theft devices on them and that were noticeably damaged in the left underarm

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area when she recovered them from Defendant. The police officer who responded to the store manager's complaint corroborated her description of these exhibits.

We cannot conclude that the trial court abused its discretion or otherwise erred in overruling Defendant's objections to the exhibits.

III. Conclusion

Because the State presented sufficient testimony to authenticate the unpurchased items removed from the store and seized from Defendant, we hold that Defendant has failed to demonstrate any error, much less an abuse of discretion by the trial court.

NO ERROR.

Judges STROUD and COLLINS concur.

Report per Rule 30(e).