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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-552

Filed 19 December 2023

Randolph County, No. 18CRS055178

STATE OF NORTH CAROLINA

v.

AARON HERSON STEELE, Defendant.

Appeal by defendant from judgment entered 16 September 2022 by Judge Lee Galvin in Randolph County Superior Court. Heard in the Court of Appeals 28 November 2023.

*Attorney General Joshua H. Stein, by Assistant Attorney General Kunal J. Choksi, for the State.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender David S. Hallen, for appellant-defendant.*

FLOOD, Judge.

Aaron Herson Steele (“Defendant”) appeals from the trial court’s denial of his motion to dismiss a charge of embezzlement, arguing the State failed to present

substantial evidence that he (A) converted any funds to his personal use, or (B) acted with fraudulent intent. After careful review, we find no error.

### **I. Factual and Procedural Background**

Prior to his termination, Defendant served as one of eight assistant store managers at a Walmart Store in Randleman, North Carolina. On 25 October 2018, this particular Walmart conducted a monthly audit of its “cash recycler” and discovered there was an \$8,500 shortage of one-hundred-dollar bills. At this Walmart, a cash recycler functions as an ATM for cashiers, which allows them to retrieve cash and change when needed. Cashiers, however, have limited access to the cash recycler, where they may retrieve cash but not access the “internal” workings of the cash recycler where cartridges containing cash are stored. Only salaried managers and “front customer service managers” have internal access, which allows them to retrieve the cartridges, each of which contains bills of a particular value. For a manager to access the cash recycler’s internal cartridges, their hand must be scanned, and then they must use a set of keys to remove the internal cartridges. The cash recycler keeps a record of every instance when the machine has been opened by use of a handprint, and of which cartridges of bills have been pulled out. After the cash recycler is accessed, it prints a ticket.

The cash recycler also keeps a record of how many bills it estimates are in the cartridges, based on the number of bills deposited and withdrawn. During an audit,

as part of standard procedure, a manager counts the cartridges one at a time and then feeds the bills back into the cash recycler so it can count them. The cash recycler then edits its record of the number of bills, if there are any discrepancies.

The most recent audit conducted prior to the one at issue was conducted at the end of September 2018. During the subsequent 25 October audit, Walmart management discovered there were eighty-five one-hundred-dollar bills, two twenty-dollar bills, and three one-dollar bills missing from the cash recycler cartridges. Per store policy, a loss prevention specialist, Paul Miller (“Miller”), was notified of this discrepancy so that he could begin an investigation.

After checking the cash recycler’s internal logs, Miller discovered that Defendant was one of only four employees who had accessed the one-hundred-dollar bill cartridge since September, and that he had accessed the cartridge on 19, 20, and 23 October—three dates that followed Defendant returning on 13 October from an unpaid leave of seven-to-eight months.

None of the transactions involving the other three employees concerned access to the cartridges within the cash recycler, and Miller saw no evidence of missing money related to their accessing the cartridges. Miller therefore ascertained that, among the four employees, Defendant was the only individual who had accessed the cartridges during the time period covered by the October audit.

After Miller’s investigation, Defendant’s supervisor, Bonnie, spoke with Defendant about the missing money. Bonnie asked Defendant whether he was

having financial problems, and while Defendant answered no, he admitted he had been “kicked out” of his home. Walmart subsequently terminated Defendant’s employment, and Bonnie reported Defendant to the Randleman Police Department.

Defendant was charged with one count of embezzlement pursuant to N.C. Gen. Stat. § 14-90 and one count of possession of stolen goods pursuant to N.C. Gen. Stat. § 14-71.1. At trial, Defendant testified as to his accessing the one-hundred-dollar and twenty-dollar cartridges on 19, 20, and 23 October, and asserted that his only purpose in accessing the cartridges was to conduct an audit. The following facts are derived from Defendant’s testimony.

On 19 October, Defendant three times attempted to withdraw the one-hundred-dollar cartridge. During the first two attempts, he was called away by another employee. On the third attempt, Defendant counted all of the one-hundred-dollar bills, but was called away by another employee before, according to Defendant, he was able to complete the audit. Defendant then went to a back room, which contained a safe, to put his cash recycler keys into the safe.

On 20 October, Defendant again accessed the one-hundred-dollar cartridge. He removed both the one-hundred-dollar and twenty-dollar cartridges and counted them next to a stack of paper on which Defendant asserted he was recording information from the audit. Defendant was then approached by another employee and left the room. Defendant then returned to the back room to return his keys and place his paperwork in the safe.

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On 23 October, Defendant for the final time accessed the one-hundred-dollar cartridge. Defendant prepared the cash recycler for what Defendant claimed to be the audit and went to the safe room to retrieve the keys and several bags of money to fill the machine. Defendant again counted the one-hundred-dollar bills next to several pieces of paper, and he was again called to the floor by an employee. Defendant later returned to the safe room with the bags of money and his paperwork.

Miller testified at trial as to his review of the security footage. While Miller's account of the events aligned with Defendant's, Miller's testimony provided additional salient details, and he noted several instances where Defendant engaged in "odd" behavior that ran afoul of the standard audit procedure. Miller testified that it was unusual for Defendant to lock the door behind him each time he went into the cash recycler room. Further, as opposed to the usual practice of placing the money from the cartridges right in front of the computer monitor, Defendant placed the money near the corner of the room and counted it there. Finally, while he was counting the money, Defendant brought a stack of paper into the room with him and counted the money beside the stack, which, according to Miller, was "not needed for the audit[.]" The State introduced as evidence one piece of paper from the stack, and on the paper was written one number: "17900."

After the State presented its evidence, Defendant moved to dismiss the embezzlement charge on the ground of insufficient evidence. The trial court denied Defendant's motion, and the jury found Defendant guilty of embezzlement and not

guilty of possession of stolen goods. The trial court sentenced Defendant to 5 months' imprisonment, and suspended the sentence for 24 months' supervised probation. Defendant filed a timely notice of appeal.

## **II. Jurisdiction**

This Court has jurisdiction to review a final judgment of a superior court. N.C. Gen. Stat. §§ 7A-27(b)(1) (2021) and 15A-1444(a) (2021).

## **III. Analysis**

Defendant, in his only assignment of error, asserts the trial court improperly denied Defendant's motion to dismiss the charge of embezzlement. Defendant argues that the State did not present substantial evidence tending to show Defendant (A) misapplied or converted the funds missing from the cash recycler, or (B) acted with fraudulent intent. We disagree.

A trial court's decision concerning a motion to dismiss is reviewed by this Court to determine "whether there is substantial evidence of each element of the crime and that the defendant is the perpetrator." *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015) (citation and internal quotation marks omitted). Evidence is considered substantial if it sufficient to "persuade a rational juror to accept a conclusion." *State v. Mann*, 355 N.C. 294, 301, 560 S.E.2d 776, 781 (2002) (citation omitted). A reviewing court must examine the evidence in the light most favorable to the State, "drawing all reasonable inferences from the evidence in the State's case." *Id.* at 301, 560 S.E.2d at 781 (citation omitted). A trial court is therefore not required

to determine whether the relevant evidence “excludes every reasonable hypothesis of innocence[.]” *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991) (citations omitted).

So long as the record contains actual evidence, either direct or circumstantial, that supports a reasonable inference of the defendant’s guilt, a motion to dismiss should be denied. *See State v. Golder*, 374 N.C. 238, 250, 839 S.E.2d 782, 790 (2020) (clarifying that substantial evidence may be justified by direct or circumstantial evidence); *State v. Powell*, 299 N.C. 95, 99, 261 S.E.2d 114, 117 (1980) (citations omitted) (stating that evidence need only allow a reasonable inference of the defendant’s guilt).

To justify a charge of embezzlement pursuant to N.C. Gen. Stat § 14-90, the State must prove:

- (1) [T]hat the defendant, being more than 16 years of age, acted as an agent or fiduciary for his principal, (2) that he received money or valuable property of his principal in the course of his employment and by virtue of his fiduciary relationship, and (3) that he fraudulently or knowingly misapplied or converted to his own use such money or valuable property of his principal which he had received in his fiduciary capacity.

*State v. Rupe*, 109 N.C. App. 601, 608, 428 S.E.2d 480, 485 (1993) (citations omitted); *see* N.C. Gen. Stat. § 14-90(a)–(b) (2021).

### **A. Conversion of Money**

In his sole allegation of error, Defendant first argues there is insubstantial

evidence that he misapplied or converted the funds missing from the cash recycler.

In *State v. Morris*, this Court affirmed the conviction of an office clerk charged with committing larceny against her employer, a utility company. 156 N.C. App. 335, 336, 576 S.E.2d 391, 392–93 (2003). The defendant’s job responsibilities included receiving payments made to her employer, balancing payment summaries, and depositing the funds into her employer’s bank account. *Id.* at 336, 576 S.E.2d at 393. On fourteen separate occasions, there were discrepancies between the payments received and the total cash deposited in the employer’s bank account, and on each of these respective days, the defendant was the sole employee responsible for depositing the money and preparing the payment summaries. *Id.* at 337, 576 S.E.2d at 393. On appeal, this Court held the trial court properly denied the defendant’s motion to dismiss, finding there was sufficient evidence to allow a reasonable mind to conclude the defendant intended to manipulate her employer’s records and convert her employer’s property for her own personal use. *Id.* at 340, 576 S.E.2d at 395.

Here, like in *Morris*, there is sufficient evidence that Defendant misapplied or converted the missing funds to survive a motion to dismiss. The facts in the Record tend to show that Defendant was the only individual who had direct access to the one-hundred-dollar bill cartridge since the September audit. Per Miller’s testimony, Defendant’s behavior, such as locking the door to the recycler room and counting the money in the corner of the room next to the stack of papers, was inconsistent with normal audit procedures. Taken in the light most favorable to the State, a reasonable

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juror could have inferred that Defendant misapplied or converted the money for his own personal use. *See id.* at 340, 572 S.E.2d at 395; *see Mann*, 355 N.C. at 301, 560 S.E.2d at 781; *see Rupe*, 109 N.C. App. at 608, 428 S.E.2d at 485.

Unlike the defendant in *Morris*, however, Defendant was not the sole employee responsible for the audit, but he was the only person who physically accessed the part of the cash recycler necessary to retrieve the cartridges and the bills therein. 156 N.C. App. at 336, 576 S.E.2d at 393. Moreover, the State presented actual evidence that, following Defendant's three instances of access to the cash recycler, there was a discrepancy in the cash recycler's funds. Accordingly, the evidence here—both direct and circumstantial—was such that a rational juror could be persuaded of Defendant's guilt. *See Golder*, 374 N.C. at 250, 839 S.E.2d at 790.

While performing an audit was within Defendant's duties as an assistant manager, the evidence tends to show he alone had access to the cash recycler during the relevant time period. To this point, Defendant directs our attention to Miller's testimony that only establishes the previous audit occurred in late September, arguing the lack of a specific date creates an "undefined period in September when the cash could have gone missing that was never investigated." It is not, however, necessary for the State to establish Defendant's control and possession of the property to the exclusion of all others. *See State v. Barbour*, 43 N.C. App. 143, 147–48, 258 S.E.2d 475, 478–79 (1979). This alleged evidentiary deficiency was more appropriately considered by the jury at trial. As we look only to see whether the

Record contains direct or circumstantial evidence that a reasonable jury could take to conclude Defendant converted his employer's property—and the Record does contain such evidence—Defendant's motion was appropriately denied. *See Golder*, 374 N.C. at 250, 839 S.E.2d at 790. The trial court, therefore, did not err.

### **B. Fraudulent Intent**

Defendant also argues that, even if he misapplied or converted the funds missing from the cash recycler, there is not substantial evidence to show he did so with fraudulent intent.

To demonstrate fraudulent intent, the State must show substantial evidence of a defendant's "intent to willfully or corruptly use or misapply the property of another for purposes other than those for which the agent or fiduciary received it in the course of . . . employment." *Rupe*, 109 N.C. App. at 609, 428 S.E.2d at 486 (citation omitted). It is not necessary for the State to show direct proof of fraudulent intent if it can present facts and circumstances that would otherwise supply a reasonable inference that such intent existed. *Id.* at 609, 428 S.E.2d at 486. Evidence that a defendant was experiencing personal financial problems is a type of circumstantial evidence supporting fraudulent intent. *See Barbour*, 43 N.C. App. at 150, 258 S.E.2d at 480.

Here, Defendant behaved in a way that could allow a reasonable juror to infer the existence of fraudulent intent. *See Rupe*, 109 N.C. App. at 609, 428 S.E.2d at 486. On three separate days, Defendant began what he claimed to be an audit of the cash

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recycler and accessed the one-hundred-dollar cartridge, and on three separate days, Defendant failed to record the number of bills in the machine and complete the audit. Further, Miller testified to several behavioral oddities exhibited by Defendant, noting that it was unusual for him to lock the door to the recycler room and count the money in the corner of the room next to the stack of papers.

Defendant attempts to distinguish the current case from cases where we found there was substantial evidence of fraudulent intent. In *Barbour*, the defendant had financial problems and was convicted of embezzlement following substantial discrepancies between a master receipt book and the total bank deposits. 43 N.C. App. at 149, 258 S.E.2d at 479. In *State v. Sutton*, the defendant misused a cash register in a way that allowed him to embezzle funds by not reporting cash surpluses. 53 N.C. App. 281, 286, 280 S.E.2d 751, 754 (1981). Defendant argues that the instant case is distinguishable from *Barbour* and *Sutton*, but regardless of whether those cases are analogous or distinguishable, the Record *sub judice* contains enough evidence to survive a motion to dismiss. While Defendant did not admit to facing financial hardships, such as those experienced by the defendant in *Barbour*, he had recently returned from a seven-to-eight-month period of unpaid leave and been “kicked out” from his home. *See Barbour*, 43 N.C. App. at 149, 258 S.E.2d at 479. Further, like the defendant in *Sutton*, who misused cash register funds and embezzled cash by not reporting surpluses, Defendant interacted with the cash recycler in a fashion that gave him the opportunity to embezzle funds. *See Sutton*,

53 N.C. App. at 286, 280 S.E.2d at 754. For instance, Defendant repeatedly accessed the cartridges for audit attempts, but as he never finished the audit, none of the bills were recounted the same day.

The facts detailed above are such that a reasonable juror could have inferred Defendant used the funds for purposes other than which they were authorized to be used, and accordingly, the trial court did not err. *See Rupe*, 109 N.C. App. at 609, 428 S.E.2d at 486; *see Golder*, 374 N.C. at 250, 839 S.E.2d at 790.

#### **IV. Conclusion**

For the reasons aforesaid, we conclude there is substantial evidence to support the trial court's denial of Defendant's motion to dismiss. We therefore affirm the order of the trial court.

NO ERROR.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).