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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-804

Filed 4 June 2024

Haywood County, No. 21 CRS 052359

STATE OF NORTH CAROLINA

v.

ANTHONY SHANE TALLEY

Appeal by Defendant from Judgments entered 3 February 2023 by Judge Bradley B. Letts in Haywood County Superior Court. Heard in the Court of Appeals 1 May 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Sean K. Lloyd, for the State.

Jackie Willingham for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Anthony Talley (Defendant) appeals from Judgments entered upon jury verdicts finding him guilty of one count of Misdemeanor Larceny, one count of Misdemeanor Possession of Stolen Goods, and one count of Conspiracy to Commit Misdemeanor Larceny. The Record before us tends to reflect the following:

Brooklyn Reece rented a storage unit in Waynesville, North Carolina. She stored personal belongings, including an armoire, clothing, and jewelry, in an “orderly” manner in the unit. The storage unit was secured with a padlock.

On 26 August 2021, upon arriving at her storage unit, Reece noticed several of the storage units were open and items were all over the ground. She saw the door to her unit was also open, the padlock was cut, and her belongings were in disarray with many scattered across the ground. Reece also observed two men loading her armoire into a truck. The men were later identified as Defendant and John Michal. Reece got out of her car and told them to stop, informed them the armoire belonged to her, and instructed them to put it back.

As soon as they put the armoire on the ground, Defendant began walking away from the scene while Reece called the police. Michal got into his truck to drive away. Reece testified at trial that Defendant walked back and got into the passenger seat of the truck. As Michal was attempting to drive away, Reece stood in front of his car to stop him. Michal then began pushing Reece with his truck. At that point, Defendant got out of the truck and left the scene on foot. Eventually, Michal was able to leave, and Reece testified she saw Michal’s truck turn right out of the storage unit parking lot. Michal then picked up Defendant, and the two drove away together.

After Reece called 911, a description of Michal’s truck was sent to all law enforcement officers in Haywood County. Travis Johnson, an officer with the Canton Police Department, heard the description while off duty and happened to be in his

own car sitting behind Michal's truck. Officer Johnson stopped the truck and began to question Defendant and Michal. Shortly thereafter, deputies with the Haywood County Sheriff's Office arrived and Officer Johnson told them what he had learned before leaving the scene. After the deputies conducted their own questioning and investigation, they arrested Defendant and Michal.

On 28 February 2022, Defendant was indicted for Felony Breaking and Entering, Felony Larceny After Breaking and Entering, and Felony Possession of Stolen Goods. On 11 July 2022, the State filed a superseding indictment charging Defendant with the above charges, as well as felony Conspiracy to Commit Breaking and Entering and Felony Conspiracy to Commit Larceny After Breaking and Entering.

This matter came on for hearing on 2 February 2023. On 3 February 2023, the jury returned verdicts finding Defendant guilty of Misdemeanor Larceny, Misdemeanor Possession of Stolen Goods, and Conspiracy to Commit Misdemeanor Larceny. The jury also returned a verdict finding Defendant not guilty of Breaking and Entering and Conspiracy to Commit Breaking and Entering. The trial court sentenced Defendant to 120 days in the Misdemeanant Confinement Program for the charge of Misdemeanor Larceny. The trial court consolidated the charges of Misdemeanor Possession of Stolen Goods and Conspiracy to Commit Misdemeanor Larceny, and sentenced Defendant to 120 days in the Misdemeanant Confinement Program to run consecutively to the first sentence. The consolidated sentence was

suspended and Defendant was ordered to 18 months of supervised probation. On 9 February 2023, Defendant timely filed Notice of Appeal.

Issues

The issues on appeal are whether the trial court erred by: (I) denying Defendant's Motion to Dismiss each of the charges on which he was convicted; and (II) sentencing Defendant for larceny and possession of stolen goods based on the same stolen items.

Analysis

I. Motion to Dismiss

"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). "Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). "If the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it, the motion [to dismiss] should be allowed." *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455 (citation omitted).

“In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994) (citation omitted). However, “[w]hether the State has offered such substantial evidence is a question of law for the trial court.” *State v. McKinney*, 288 N.C. 113, 119, 215 S.E.2d 578, 583 (1975) (citations omitted).

a. *Misdemeanor Larceny*

“Larceny is a common law crime with the essential elements ‘that the defendant: (1) took the property of another; (2) carried it away; (3) without the owner’s consent; and (4) with the intent to deprive the owner of his property permanently.’ ” *State v. Spera*, 290 N.C. App. 207, 215, 891 S.E.2d 637, 644 (2023) (quoting *State v. Sisk*, 285 N.C. App. 637, 641, 878 S.E.2d 183, 186 (2022) (citations and quotation marks omitted)). “The statutory provision upgrading misdemeanor larceny to felony larceny does not change the nature of the crime; the elements of proof remain the same.” *State v. Smith*, 66 N.C. App. 570, 576, 312 S.E.2d 222, 226 (1984). Here, Defendant argues the State failed to provide substantial evidence Defendant intended to permanently deprive the owner of the property or that Defendant knew neither he nor Michal was entitled to the property.

“Intent is a mental attitude seldom provable by direct evidence.” *State v. Bell*, 285 N.C. 746, 750, 208 S.E.2d 506, 508 (1974), *overruled in part on other grounds by*

State v. Collins, 334 N.C. 54, 431 S.E.2d 188 (1993). “While intent may be shown by direct evidence, it is often proven by circumstantial evidence from which it may be inferred.” *State v. Nettles*, 170 N.C. App. 100, 105, 612 S.E.2d 172, 175-76 (2005) (citation omitted). “The test for sufficiency of the evidence is the same whether the evidence is direct or circumstantial, or both.” *State v. McDaniel*, 372 N.C. 594, 603-04, 831 S.E.2d 283, 290 (2019). Our Supreme Court has long recognized “[s]omething more than the mere act of taking is necessary to be shown before the jury can proceed to inquire into the [defendant’s] intent.” *State v. Foy*, 131 N.C. 804, 804, 42 S.E. 934, 935 (1902).

Viewed in the light most favorable to the State, sufficient evidence supported the inference that Defendant intended to permanently deprive Reece of her property. Here, in addition to Defendant’s taking of the armoire, the State also presented evidence Defendant was attempting to place the armoire into Michal’s truck. The locks to several storage units, including Reece’s, were cut off, and items were spread across the ground. Additionally, the State presented evidence that when Reece attempted to stop Michal and Defendant from driving away after she called the police, Defendant jumped out of the truck and left the scene on foot. Based on the taking, conditions of the storage facility, and Defendant’s actions after being confronted, a reasonably jury could infer Defendant intended to permanently deprive Reece of her property.

“Knowledge is a mental state that may be proved by offering circumstantial

evidence to prove a contemporaneous state of mind.” *State v. Bogle*, 324 N.C. 190, 195, 376 S.E.2d 745, 748 (1989). “Jurors may infer knowledge from all the circumstances presented by the evidence. It may be proved by the conduct and statements of the defendant, by statements made to him by others, . . . and by [other] circumstantial evidence from which an inference of knowledge might reasonably be drawn.” *Id.* (citation and quotation marks omitted).

Here, Reece testified Defendant did not “seem surprised” the armoire belonged to her rather than Michal. Defendant attempted to leave the scene multiple times, including getting out of the truck to leave the scene on foot when Reece stopped Michal from driving away. Viewed in the light most favorable to the State, this evidence is sufficient for a reasonable juror to infer Defendant knew the armoire did not belong to him or to Michal. Therefore, we conclude the trial court did not err in denying Defendant’s Motion to Dismiss as to Misdemeanor Larceny.

b. *Possession of Stolen Goods*

The essential elements of possession of stolen property are “(1) possession of personal property, (2) [with a value], (3) which has been stolen, (4) the possessor knowing or having reasonable grounds to believe the property to have been stolen, and (5) the possessor acting with a dishonest purpose.” *State v. Davis*, 302 N.C. 370, 373, 275 S.E.2d 491, 493 (1981). Here, Defendant contends the State’s evidence was insufficient as to the elements of knowledge and purpose. Because we have addressed the issue of knowledge above, our analysis here is limited to the issue of Defendant’s

purpose.

The element of a dishonest purpose “can be met by a showing that the possessor acted with an intent to aid the thief, receiver, or possessor of stolen property. The fact that the defendant does not intend to profit personally by his action is immaterial.” *State v. Parker*, 316 N.C. 295, 305, 341 S.E.2d 555, 561 (1986). As with the elements of intent and knowledge, the State can prove dishonest purpose by direct or circumstantial evidence. *State v. Withers*, 111 N.C. App. 340, 348, 432 S.E.2d 692, 698 (1993) (citations omitted).

The State presented evidence that the lock to Reece’s storage unit had been cut off and a substantial amount of her personal property was scattered across the common area. Further, a reasonable jury could infer Defendant acted with a dishonest purpose from Defendant leaving the scene after being confronted and rejoining Michal when Michal picked him up in his truck. Taken together and viewed in the light most favorable to the State, this evidence was sufficient to survive Defendant’s Motion to Dismiss. We therefore conclude the trial court did not err in denying Defendant’s Motion as to Possession of Stolen Goods.

c. Conspiracy to Commit Misdemeanor Larceny

“A criminal conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means.” *State v. Bindyke*, 288 N.C. 608, 615, 220 S.E.2d 521, 526 (1975) (citation omitted). Defendant contends the State’s evidence was insufficient because it failed to present

substantial evidence of a conversation between Defendant and Michel regarding the ownership of the armoire or other items in the common area, and Defendant left the scene after learning the armoire belonged to Reece.

“A conspiracy may be shown by express agreement or an implied understanding.” *State v. Choppy*, 141 N.C. App. 32, 39, 539 S.E.2d 44, 49 (2000). A conspiracy may be shown by circumstantial evidence. *Id.* “Direct proof of the charge is not essential, for such is rarely obtainable. It may be, and generally is, established by a number of indefinite acts, each of which, standing alone, might have little weight, but, taken collectively, they point unerringly to the existence of a conspiracy.” *State v. Whiteside*, 204 N.C. 710, 712, 169 S.E.2d 711, 712 (1933) (citation omitted). Further, “[w]hether or not an agreement exists to support a finding of guilt in a conspiracy case is generally inferred from an analysis of the surrounding facts and circumstances, rather than established by direct proof.” *State v. Fleming*, 247 N.C. App. 812, 819, 786 S.E.2d 760, 766 (2016).

In the case *sub judice*, the State presented substantial evidence of an agreement between Defendant and Michal. The State presented evidence showing Defendant and Michal went to the storage unit together and were working together to put the armoire into Michal’s truck. After they were confronted, Defendant and Michal worked in tandem to return the armoire. Defendant initially attempted to leave the scene with Michal in Michal’s truck. Once Reece attempted to stop Michal’s truck to make the pair wait for law enforcement to arrive, Defendant got out of the

truck and began to leave the scene on foot; however, once Michal was able to get away from Reece, he picked up Defendant and they drove away together. Taken together and viewed in the light most favorable to the State, a reasonable juror could conclude an agreement existed between Defendant and Michal. Therefore, the trial court did not err in denying Defendant's Motion to Dismiss on the Conspiracy to Commit Misdemeanor Larceny charge.

II. Sentencing

Defendant contends, and the State concedes, the trial court erred by sentencing him for both Misdemeanor Larceny and Misdemeanor Possession of Stolen Property when the property at issue was the same in both charges. We agree.

Our Supreme Court has established that while a defendant may be indicted and tried on the charges of larceny and possession of stolen property for the same property, he may only be convicted of one of those offenses. *State v. Perry*, 305 N.C. 225, 236-37, 287 S.E.2d 810, 817 (1982), *overruled on other grounds by State v. Mumford*, 364 N.C. 394, 699 S.E.2d 911 (2010). "When the trial court enters judgment on both larceny and the possession of property stolen in the larceny, our remedy is to vacate the conviction for the latter." *State v. Wright*, 273 N.C. App. 188, 194, 848 S.E.2d 252, 256 (2020), *aff'd*, 379 N.C. 93, 863 S.E.2d 410 (2021).

Here, the trial court sentenced Defendant on the charge of Misdemeanor Larceny in one Judgment and consolidated the Misdemeanor Possession of Stolen Property and Misdemeanor Conspiracy to Commit Larceny charges for sentencing in

a second and consecutive Judgment. Because these latter charges were consolidated, the trial court entered the consecutive sentence based on the more serious of the two charges—Possession of Stolen Goods.

Thus, Defendant was improperly sentenced for both Misdemeanor Larceny and Misdemeanor Possession of Stolen Goods. Therefore, the Judgment entered against Defendant on the convictions for Misdemeanor Possession of Stolen Goods and Conspiracy to Commit Misdemeanor Larceny must be vacated. Consequently, we vacate the Judgment against Defendant on the conviction for Misdemeanor Possession of Stolen Goods and remand this matter to the trial court to arrest judgment on the conviction of Misdemeanor Possession of Stolen Goods and for resentencing on the remaining charge of Conspiracy to Commit Misdemeanor Larceny. *Id.*

Conclusion

Accordingly, for the foregoing reasons we conclude there was no error in Defendant's trial. However, we vacate the Judgment entered against Defendant on the convictions for Misdemeanor Possession of Stolen Goods and Conspiracy to Commit Misdemeanor Larceny, and remand this case to the trial court with instructions to arrest judgment on Defendant's conviction for Misdemeanor Possession of Stolen Goods and for resentencing on the conviction for Conspiracy to Commit Misdemeanor Larceny.

STATE V. TALLEY

Opinion of the Court

NO ERROR IN PART; VACATED IN PART AND REMANDED.

Judges GORE and FLOOD concur.

Report per Rule 30(e).