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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1119

Filed 16 July 2024

Buncombe County, No. 21CRS712052

STATE OF NORTH CAROLINA

v.

LOUISE ELAINE METCALF

Appeal by Defendant from judgement entered 13 January 2023 by Judge Jacqueline Grant in Buncombe County Superior Court. Heard in the Court of Appeals 29 May 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Lexus Sanders-Njie, for the State.*

*Shawn R. Evans, Appointed Appellate Defender, for Appellant-Defendant.*

PER CURIAM.

Louise Metcalf (“Defendant”) was found guilty by a jury and convicted for Injury to Personal Property, Hit and Run Leaving the Scene, and No Liability Insurance. Defendant appeals the trial court’s denial of her motions to dismiss all charges. We discern no error.

**I. Background**

Each charge arises from a vehicle collision caused by Defendant on 21 November 2021. Defendant fled the scene shortly after causing the collision before police could arrive. The trial court denied her motions to dismiss all charges.

## **II. Standard of Review**

“This Court reviews a trial court’s denial of a motion to dismiss de novo.” *State v. Smith*, 165 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). The denial of a motion to dismiss is appropriate when “there is substantial evidence (1) of each essential element of the offense charged . . . and (2) [substantial evidence] of the defendant being the perpetrator.” *State v. Fritsch*, 351 N.C. 373, 378, 529 S.E.2d 541, 455 (2000). “Substantial evidence is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’ ” *State v. Blake*, 319 N.C. 599, 604, 356 S.E.2d 352, 355 (1987) (quoting *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980)).

## **III. Analysis**

### **A. Injury to Personal Property**

“An individual is guilty of injury to personal property if: (1) personal property was injured; (2) the personal property was that ‘of another’; (3) the injury was inflicted ‘wantonly and willfully’; and (4) the injury was inflicted by the person or persons accused.” *State v. Ellis*, 368 N.C. 342, 344, 776 S.E.2d 675, 677 (2015) (quoting N.C. Gen. Stat. § 14-160 (2013)).

Defendant alleges this charge should be dismissed due to the question of

whether the damage to victim's car was pre-existing and not caused by the collision. She argues the pre-existing damage to victim's vehicle and inconsistencies in testimony about the specific location of the new damage raises only a suspicion of whether she is guilty.

This Court has held evidence raising only suspicion and conjecture of an injury is insufficient and motions to dismiss on such grounds should be granted. *See State v. Malloy*, 309 N.C. 176, 179, 305 S.E.2d 718, 720 (1983). Solving such inconsistencies in evidence, however, is a task left for a jury to decide. “[I]t is for the jury to decide whether the facts, taken singly or in combination, satisfy them beyond a reasonable doubt that the defendant is actually guilty.” *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)). Here, despite inconsistencies in testimonies, the State offered sufficient evidence tending to show and to allow a reasonable mind and reasonable jury to accept Defendant had caused harm to the victim's vehicle. The trial court's denial of Defendant's motion to dismiss the charge of Injury to Personal Property is affirmed.

### **B. Hit and Run Leaving the Scene**

N.C. Gen. Stat. § 20-166(c) implicates drivers who “know[] or reasonably should know” their vehicle has caused damage to another, and N.C. Gen. Stat. § 20-166(c1) requires such drivers to provide their information to the individuals whose property was damaged. Defendant argues these statutes are not triggered because this event was a minor accident where no damage was inflicted. However, the

evidence presented at trial tended to show Defendant did cause damage to the victim's vehicle when she collided with it twice and subsequently fled the scene. We conclude the State presented substantial and sufficient evidence and affirm the trial court's denial of Defendant's motion to dismiss the Hit and Run charge.

### **C. No Liability Insurance**

Defendant makes two separate arguments concerning the charge of No Liability Insurance. Defendant first argues the State failed to carry its burden in presenting substantial evidence to show she did not possess liability insurance at the time of the collision. Second, Defendant argues the trial court erred by providing outdated jury instructions.

Defendant did not object to the jury instructions while at the trial court and only now attempts to introduce the issue on appeal. This issue is not properly preserved and only reviewable under plain error. *See State v. Oliver*, 309 N.C. 326, 335, 307 S.E.2d 304, 312 (1983). "To have an alleged error reviewed under the plain error standard, the defendant must 'specifically and distinctly' contend that the alleged error constitutes plain error." *State v. Lawrence*, 365 N.C. 506, 516, 723 S.E.2d 326, 333 (2012). Under plain error review, the defendant must show the error was so fundamental as to prejudice the defendant and would result in a "miscarriage of justice." *Id.* at 517, 723 S.E.2d at 334. In determining whether plain error was committed, this Court examines the entire record and decides whether "the instructional error had a probable impact on the jury's finding of guilt." *State v.*

*Odom*, 307 N.C. 655, 661, 300 S.E.2d 375, 379 (1983).

In reviewing the record, we conclude no error was committed with the jury instructions. Additionally, the State has carried its burden in providing substantial evidence tending to show Defendant did not have insurance at the time of the collision. The trial court's denial of Defendant's motion to dismiss the charge of No Liability Insurance is affirmed.

#### **IV. Conclusion**

Defendant has failed to show any prejudicial error regarding the trial court's denial of Defendant's three motions to dismiss. The State carried its burden in providing substantial and sufficient evidence tending to show Defendant's guilt on all three charges, and no error was committed by the trial court under a plain error analysis. *It is so ordered.*

NO ERROR.

Panel consisting of Judges TYSON, MURPHY, and CARPENTER.

Report per Rule 30(e).