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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-383

Filed 19 February 2025

Cleveland County, Nos. 22 CRS 260238, 22 CRS 1088

STATE OF NORTH CAROLINA

v.

MICHAEL CHRISTOPHER GRIER

Appeal by Defendant from judgment entered 30 August 2023 by Judge Justin N. Davis in Cleveland County Superior Court. Heard in the Court of Appeals 28 January 2025.

Attorney General Jeff Jackson, by Special Deputy Attorney General Joshua D. Abram, for the State.

Blackrose Law, by Gina Balamucki, for the Defendant.

WOOD, Judge.

Michael Christopher Grier (“Defendant”) appeals from a jury verdict finding him guilty of obtaining property by false pretenses, financial card theft, and habitual felon status. On appeal, Defendant argues the trial court erred in denying his motion to dismiss the charges of obtaining property by false pretenses and financial card theft. We hold because the State presented sufficient evidence of both charges, the

trial court properly denied Defendant's motion to dismiss, thereby allowing the questions to reach the jury.

I. Factual and Procedural Background

Linda Willis moved in with her daughter, Rebecca Ray, in 2021. Willis is confined to a wheelchair and has limited mobility. Ray assisted her mother with daily activities, including bathing, washing clothes, housekeeping, running errands, and cooking. At the time Willis moved into her daughter's home, Ray was on probation for possession of methamphetamine. Following additional convictions in May of 2022 for possession of methamphetamine and cocaine, Ray was sentenced to another term of probation.

Ray and Defendant had two children together and Defendant would spend time at their home. Defendant did not live there but would "come and go [at] different times" and sometimes stay overnight. Willis referred to Defendant as "a friend of my daughter[]."

In June 2022, Willis ordered a Fidelity Bank debit card. Fidelity Bank issued and mailed it on 14 July 2022 to her residence. After waiting a few weeks for the card, Willis checked her bank account and noticed several transactions that she had not made. Specifically, the card had been used at Walmart on 25 July 2022 to make a \$203.90 purchase. Willis immediately contacted Fidelity to cancel the card and informed the Bank that she never received the card. Willis also reported the

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unauthorized transaction to Detective Turner, an officer in the financial crimes division of the Shelby Police Department.

On 28 July 2022, Detective Turner contacted Paul Lessard, the asset protection investigator at the respective Walmart. Lessard provided the video footage and receipt from the 25 July 2022 transaction. The footage showed Ray, Defendant, and their child approaching the cashier at Walmart. Defendant placed two Walmart gift cards on the conveyer belt then walked to the side to tend to their child. Ray remained at the register, assisted in processing the transaction, and placed the debit card on a side table near the card terminal. Ray then walked away to tend to their child. Defendant returned to the register, picked the debit card up from the table, inserted the card in the terminal, and completed the transaction. The cashier then handed Defendant the gift cards and receipt, and Defendant walked away with the debit card.

After viewing the footage, Detective Turner obtained the debit card number from Fidelity Bank and matched Willis' debit card number to the receipt that Lessard provided. Subsequently, on 4 August 2022, Detective Turner obtained arrest warrants for Ray and Defendant. Defendant was indicted for obtaining property by false pretense, financial card theft, and for being a habitual felon. His case came on for trial from 28 to 30 August 2023.

At trial, the State called Willis, Lessard, Detective Turner, and the manager at Fidelity Bank to testify. Willis testified that she never received the debit card and never gave permission to anyone to use her debit card. Specifically, she did not

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authorize Ray or Defendant to use her debit card at any time. Willis conceded that Ray had previously used her debit card to run errands for her, but Ray did not have permission to use her new debit card.

Additionally, the State introduced the receipt from the unauthorized purchase and a screenshot of Willis' bank statement. This evidence showed that the debit card number on the receipt matched Willis' account information, as shown on the bank statement and the receipt for the \$203.90 Walmart purchase. Lastly, relevant clips of the Walmart surveillance footage were shown to the jury. Detective Turner positively identified Ray and Defendant as the individuals in the footage, and Defendant as the individual completing the transaction with the debit card.

At the close of the State's evidence, Defendant moved to dismiss the charges of obtaining property by false pretenses and financial card theft, arguing that the State failed to present sufficient evidence of each element of the crimes charged. The trial court denied Defendant's motion. Defendant renewed his motion to dismiss at the close of all evidence, which the trial court again denied.

On 29 August 2023, the jury found Defendant guilty of obtaining property by false pretense and financial card theft. The following day, he was found guilty of being a habitual felon. Defendant was sentenced to a term of 64 to 89 months of imprisonment. Following sentencing, Defendant gave oral notice of appeal.

II. Analysis

Defendant argues the trial court erred in denying his motion to dismiss

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because the State failed to present sufficient evidence to support the obtaining property by false pretenses and financial card theft convictions. We address each in turn.

It is well-established that a trial court properly denies a motion to dismiss when “there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator.” *State v. Golder*, 374 N.C. 238, 249, 839 S.E.2d 782, 790 (2020) (citations omitted). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Boykin*, 275 N.C. App. 187, 190, 853 S.E.2d 781, 784 (2020) (citation omitted). The evidence is considered in the light most favorable to the State and all reasonable inferences are drawn in favor of the State. *Id.* Stated differently, “if the record developed at trial contains substantial evidence, whether direct or circumstantial, or a combination, to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied.” *State v. Blagg*, 377 N.C. 482, 488, 858 S.E.2d 268, 273 (2021) (citation omitted). “The trial court in considering such motions is concerned only with the sufficiency of the evidence to carry the case to the jury and not with its weight.” *State v. Sanders*, 208 N.C. App. 142, 145, 701 S.E.2d 380, 383 (2010) (citation omitted).

This Court reviews the trial court’s denial of a motion to dismiss *de novo*. *State v. Miles*, 267 N.C. App. 78, 82, 833 S.E.2d 27, 30 (2019) (citation omitted). “This

Court, under a *de novo* standard of review, considers the matter anew and freely substitutes its own judgment for that of the trial court.” *State v. Faucette*, 285 N.C. App. 501, 504, 877 S.E.2d 782, 785 (2022) (citations omitted). Thus, we now consider whether the State presented substantial evidence of each essential element of Defendant’s convictions for obtaining property by false pretenses and financial card theft.

A. Obtaining Property by False Pretenses

The crime of obtaining property by false pretenses is one deeply rooted in our jurisprudence: “[i]f a person by his acts or conduct induces another person to believe that a fact is really in existence, when it is not, and thereby obtains money or property, he comes within the scope of the statutes against false pretenses.” *State v. Matthews*, 121 N.C. 604, 28 S.E. 469, 469 (1897) (citation omitted). N.C. Gen. Stat. § 14-100, defines the elements of obtaining property by false pretenses as: “(1) a false representation of a subsisting fact or a future fulfillment or event, (2) which is calculated and intended to deceive, (3) which does in fact deceive, and (4) by which one person obtains or attempts to obtain value from another.” *State v. White*, 289 N.C. App. 93, 98, 887 S.E.2d 902, 906 (2023) (citation omitted). “The gist of the offense is the attempt to obtain something of value from the owner thereof by false pretense.” *State v. Walston*, 140 N.C. App. 327, 333, 536 S.E.2d 630, 634 (2000) (citation omitted).

Defendant argues the State failed to present sufficient evidence of the second

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element, an intent to deceive. “[A] key element of the offense is that the representation be intentionally false and deceptive.” *State v. Braswell*, 225 N.C. App. 734, 739–40, 738 S.E.2d 229, 233 (2013) (citations omitted). Intent is defined as “act[ing] knowingly with the intent to cheat or defraud.” *State v. Parker*, 354 N.C. 268, 284, 553 S.E.2d 885, 897 (2001) (citation omitted). Intent is “frequently [] established through the use of circumstantial evidence[,]” meaning, “the jury may consider the acts and conduct of the defendant and the general circumstances existing at the time of the alleged commission of the offense charged.” *Braswell*, 225 N.C. App. at 740, 738 S.E.2d at 233 (cleaned up). In other words, intent may be proven by “conduct alone” and it “does not necessarily depend upon the utterance of false or misleading words.” *State v. Perkins*, 181 N.C. App. 209, 216, 638 S.E.2d 591, 596 (2007) (citation omitted).

Defendant contends that because Ray possessed and proffered the debit card to the cashier, his act of merely completing the transaction was insufficient to establish intent. Defendant cites to this Court’s decisions in, *Perkins* and *Jones* in support of this notion. In *Perkins*, the defendant obtained another individual’s credit card and made several unauthorized purchases at a Food Lion. *State v. Perkins*, 181 N.C. App. at 216, 638 S.E.2d at 596. At trial, the State introduced the following evidence: video footage of the defendant making the purchases at Food Lion; store receipts from the respective transactions, which showed that the defendant used this individual’s card to make the purchases; and that the defendant misspelled the

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individual's name on the signature line on the receipt. This Court held in light of this evidence, "a jury could reasonably infer that defendant, through her actions, falsely represented to Food Lion her authority to use [the individual's] credit cards and that her intent was to deceive Food Lion." *Id.* Therefore, because the evidence was sufficient, the trial court properly denied the defendant's motion to dismiss. *Id.* at 217, 638 S.E.2d at 596.

In *Jones*, the defendant gathered credit card information from several individuals without authorization. *State v. Jones*, 223 N.C. App. 487, 493, 734 S.E.2d 617, 622 (2012). Each time the defendant made a purchase, he represented himself under a different name. The credit card transactions defendant was alleged to have made included a paint job, new tires, and other products for a Hyundai Accent; charges to Cricket Communications; and charges to Duke-Energy. At trial, the evidence tended to show that the defendant was the owner of the Hyundai Accent, possessed a cell phone from Cricket Communications, and had a utility account with Duke-Energy. This Court held this evidence "would support a reasonable inference by the jury that Defendant fraudulently used credit card numbers belonging to other people without authorization to make purchases and payments on his own behalf." *Id.* Accordingly, the trial court properly denied the defendant's motion to dismiss.

Defendant distinguishes the present case from *Perkins* and *Jones*, arguing that in those cases, the defendants were in sole possession of the cards and were the only ones carrying out the transactions. Whereas here, Defendant argues Ray conducted

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the vast majority of the financial transaction because she brought Willis' card to the register and set it on the side table prior to payment. Defendant argues that he simply completed a task to assist Ray after she walked away from the register to tend to their child.

We disagree.

Contrary to Defendant's position, our case law does not require one to be in sole possession of the card or be the only individual carrying out the transaction for intent to be established. *See Jones*, 223 N.C. App. at 493, 734 S.E.2d at 622 ("In keeping with our State's case law . . . when one presents a credit card . . . as payment, he is representing himself to be the cardholder or an authorized user thereof. Accordingly, where one is not the cardholder or an authorized user, this representation is fraudulent."). Rather, all that is required is that the State presents sufficient evidence of the defendant's intent to defraud, which is generally proven through the acts and conduct of the defendant, and the circumstances surrounding the offense. *State v. Parker*, 354 N.C. at 284, 553 S.E.2d at 897.

At trial, the State introduced video footage which showed Defendant picking up Willis' card, putting it in the card reader, completing the payment, and leaving the register with the gift cards, receipt, and card in hand. Further, the State introduced a copy of Willis' bank statement and the receipt, confirming the \$203.90 purchase at Walmart was made using her card. Like *Perkins*, from this evidence, a jury could reasonably infer that Defendant, through his actions, falsely represented

his authority to use Willis' card to Walmart and that his intent was to deceive Walmart. *Perkins*, 181 N.C. App. at 216, 638 S.E.2d at 596. Moreover, because the trial court is concerned only with the *sufficiency* of the evidence, rather than the *weight* of the evidence when ruling on a motion to dismiss, it properly denied Defendant's motion and allowed the jury to determine his guilt.

B. Financial Transaction Card Theft

Defendant argues the State presented insufficient evidence of financial card theft, and the trial court erroneously denied Defendant's motion to dismiss as to this offense. N.C. Gen. Stat. § 14-113.9(a)(1) states, in relevant part:

(a) A person is guilty of financial transaction card theft when the person does any of the following:

(1) Takes, obtains, or withholds a financial transaction card from the person, possession, custody, or control of another without the cardholder's consent and with the intent to use it[.] . . .

Accordingly, a person violates the statute when he (1) takes, obtains, or withholds a financial transaction card from the person, possession, custody or control of another; (2) without the cardholder's consent; and (3) with the intent to use it. *State v. Brunson*, 51 N.C. App. 413, 415, 276 S.E.2d 455, 457 (1981). For purposes of this offense, a financial transaction card is defined as, "any instrument or device whether known as a credit card . . . banking card, . . . debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder" to purchase anything of value. N.C. Gen. Stat. § 14-113.8(4).

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In *Mann*, our Supreme Court held that the State presented sufficient evidence of each element of financial transaction card theft when the following evidence was admitted: surveillance footage of the defendant at the location where the unauthorized purchase was made; a receipt for the purchase; and testimony that the signature on the receipt was not the signature of the cardholder. *State v. Mann*, 355 N.C. 294, 302, 560 S.E.2d 776, 781-82 (2002). The Court in *Mann* held that the defendant's motion to dismiss was properly denied. In *Fraley*, the cardholder had possession of his Visa and MasterCard on January 17th; however, on the 19th, his Visa was used by someone other than himself. *State v. Fraley*, 182 N.C. App. 683, 689, 643 S.E.2d 39, 43 (2007). The Mastercard was found in the defendant's possession on the 22nd. At trial, the State presented surveillance footage from Walmart, showing that the defendant made a credit card purchase at the time of the unauthorized charge on the Visa. The State further presented the Walmart receipts, showing that the purchases made with the Visa corresponded to the time of the defendant's purchases. The Visa was never found. On appeal, the defendant argued that the trial court erred in denying his motion to dismiss, as insufficient evidence was presented of financial card theft. This Court first held, "[a]lthough evidence was not presented that defendant himself stole the cards, evidence was presented that indicated defendant obtained both cards without consent and must have obtained them from either [the cardholder] directly or an intermediary." *Id.* Additionally, the evidence tended to show that the defendant used the Visa, and he further admitted at trial that he

planned to use the Mastercard. Accordingly, the Court in *Fraleley* held that the motion to dismiss was properly denied.

The present case is analogous to *Mann* and *Fraleley*. Here, Willis's new card was mailed to the address of the home she shared with Ray. At some point after it was delivered, and before Willis had the opportunity to physically possess the card, Ray and Defendant purchased \$203.90 worth of prepaid gift cards. At trial, the State introduced Walmart surveillance footage, the receipt from the purchase, and Willis' bank statement. Further, Willis testified that she did not give consent to anyone to use her card.

As in *Fraleley*, although the State did not present evidence that Defendant took the card from Willis, or Willis' mailbox, the evidence presented tended to show that Defendant had the card in his possession without her consent and either obtained it from Willis' mail or from Ray. As to the second and third elements, Willis did not give her consent to Ray or Defendant to use her card, and Defendant's conduct demonstrated intent to use it without authorization. Accordingly, because the State presented sufficient evidence of each element of financial card theft, the trial court properly denied Defendant's motion to dismiss the offense.

III. Conclusion

When viewed in the light most favorable to the State, sufficient evidence was presented of each essential element of Defendant's charges of obtaining property by false pretenses and financial card theft. Therefore, the trial court did not err in its

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denial of Defendant's motion to dismiss the charges for obtaining property by false pretenses and for financial card theft. Defendant received a fair trial free from error.

NO ERROR.

Judges COLLINS and GRIFFIN concur.

Report per Rule 30(e).