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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-606

Filed 21 May 2025

Avery County, Nos. 21CRS050567-050, 22CRS000103-050

STATE OF NORTH CAROLINA

v.

JAKE MICHAEL OLLIS

Appeal by defendant from judgment entered 24 October 2023 by Judge Gary M. Gavenus in Avery County Superior Court. Heard in the Court of Appeals 13 January 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Hilary Ventura, for the State.

Sarah Holladay for defendant.

FREEMAN, Judge.

Defendant appeals the trial court's denial of his motions to dismiss larceny of a firearm and breaking and entering a motor vehicle charges. Defendant argues the trial court erred in finding substantial evidence to support the element of intent required to commit larceny. Because larceny was the felony underlying defendant's

breaking and entering a motor vehicle charge, defendant likewise argues such charge was unsupported by substantial evidence. We disagree.

I. Factual and Procedural Background

The evidence presented at trial tends to show: on the night of 6 December 2021, defendant broke into his stepfather's home. Herman Benfield, defendant's stepfather, and his aide, Sherry Edwards, were asleep when Edwards woke up to a loud noise defendant made while breaking into the back door of the home. Edwards tried to stop defendant because she did not know who he was, however, defendant told Edwards, "this is my house and you need to get out." Edwards "hollered" for Benfield to wake up, threatened to call 911—and after Benfield woke up and told Edwards defendant was his stepson—Edwards called Benfield's daughter, Reba Jimenez-Herrera, to tell her defendant broke into Benfield's home. Jimenez-Herrera, who lived in Florida, immediately began driving to North Carolina.

Defendant stayed the night on Benfield's couch and left sometime the following day. Later that same day, Benfield and Jimenez-Herrera discovered the gun Benfield usually stored in the center console of his truck was missing. Further, Benfield did not give anyone permission to take the gun. Benfield filed a report with the Avery County Sheriff's office alleging that defendant had stolen the gun.

Later that evening, Jimenez-Herrera arrived at a Dollar General store located approximately 300 yards from Benfield's home and spotted defendant in the parking

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lot. When she confronted defendant about the missing gun, defendant said he needed it for protection and he would return the gun to her. However, instead of handing Jimenez-Herrera the gun, defendant yelled that he was going to “take care of her,” gestured to the waist band of his pants where the gun was stored, and flashed gang signs at her. Jimenez-Herrera drove back to Benfield’s home and called 911.

At the same time, Chief Ellenburg of the Elk Park Police Department was on a routine patrol in the area when one of Benfield’s neighbors approached him and stated that she believed defendant was at the Dollar General beside them and that he was armed. Chief Ellenburg—familiar with defendant based on previous encounters—saw defendant walking by, which prompted Chief Ellenburg to exit his vehicle and command defendant to stop. Defendant ignored Chief Ellenburg and took off running. Officer Aldrige of the Avery County Sherriff’s Office, who had already been dispatched after receiving a call that an armed man was walking in the area, began pursuing defendant with Chief Ellenburg.

As defendant began rapidly walking uphill towards Benfield’s home, Officer Aldrige repeatedly asked defendant to stop and talk to them, however, defendant ignored them and continued. Defendant arrived at Benfield’s home where Jimenez-Herrera was standing on the porch and told defendant not to come onto the property. Subsequently, defendant opened his jacket and attempted to get Jimenez-Herrera to take the gun from him. After Jimenez-Herrera refused, defendant walked to the side of Benfield’s home, opened the front driver’s side door of Benfield’s truck, and

discarded the gun inside the truck.

Immediately after defendant discarded the gun, Chief Ellenburg and Officer Aldridge drew their weapons on defendant, ordered him to the ground, and checked him for weapons. Officer Aldridge questioned defendant, who stated he did not have Benfield's gun but he did possess a gun earlier that day. Defendant eventually admitted that the gun may be somewhere inside Benfield's truck. During this time, Chief Ellenburg found the gun on the seat inside Benfield's truck.

On 2 May 2022, defendant was indicted for breaking and entering a motor vehicle, larceny of a firearm, possession of a firearm by a felon, and obtaining the status of a habitual felon. Defendant's matter came on for trial on 23 October 2023 in Avery County Superior Court. Defendant's oral motions to dismiss all charges at the close of the State's evidence and later at the close of all evidence, were denied. On 24 October 2023, the jury found defendant guilty of all charges, and the trial court imposed a total sentence of 251–338 months imprisonment. Defendant gave oral notice of appeal in open court.

II. Jurisdiction

This Court has jurisdiction to review “any final judgment of a superior court, other than one based on a plea of guilty or nolo contendere[.]” N.C.G.S. § 7A-27(b)(1) (2023). As defendant's judgment is not based on a plea of guilty or nolo contendere, we have jurisdiction to review defendant's appeal.

III. Standard of Review

“Whether the State presented substantial evidence of each essential element of the offense is a question of law; therefore, we review the denial of a motion to dismiss de novo.” *State v. Crockett*, 368 N.C. 717, 720 (2016). “Under a de novo review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Clapp*, 235 N.C. App. 351, 359–60 (2014) (cleaned up).

IV. Analysis

Defendant asserts the trial court erred in denying his motions to dismiss the charges of larceny of a firearm and breaking and entering a motor vehicle. Specifically, defendant contends: (1) the State failed to present substantial evidence that he had the intent necessary to support the larceny conviction, and (2) without the larceny conviction, his conviction for breaking and entering a motor vehicle lacks the necessary underlying felony.¹ We disagree and address each argument in turn.

A. Larceny of a Firearm

Defendant claims the trial court erred in denying his motion to dismiss the larceny of a firearm charge. Specifically, defendant argues the State failed to present substantial evidence to prove the intent element of larceny of a firearm because he

¹ Defendant also asks this Court to invoke Rule 2 to review his unpreserved arguments regarding the constitutionality of N.C.G.S. § 14-415.1(a) (2011). “Rule 2 relates to the residual power of our appellate courts to consider, *in exceptional circumstances*, significant issues of importance in the public interest or to prevent injustice which appears manifest to the Court *and only in such instances*.” *State v. Campbell*, 369 N.C. 599, 602 (2017) (cleaned up). Because defendant has failed to demonstrate the exceptional circumstances necessary to invoke Rule 2, we decline to do so.

returned Benfield's gun the same day it was taken. We disagree.

“In ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator.” *State v. Blagg*, 377 N.C. 482, 487 (2021) (cleaned up). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate evidence to support a conclusion,” *State v. Blake*, 319 N.C. 599, 604 (2005) (cleaned up), and only requires “more than a scintilla of evidence,” *State v. Earnhardt*, 307 N.C. 62, 66 (1982). When this Court evaluates whether substantial evidence supports a criminal conviction, “the evidence must be considered in the light most favorable to the State,” and the State is entitled to “every reasonable intendment and every reasonable inference to be drawn.” *Blagg*, 377 N.C. at 487–88. “Any contradictions or conflicts in the evidence are resolved in favor of the State.” *State v. Miller*, 363 N.C. 96, 98 (2009).

“The crime of larceny is a felony, without regard to the value of the property in question, if the larceny is . . . [o]f any firearm.” N.C.G.S. § 14-72(b)(4) (2023). “The essential elements of larceny of a firearm are: (1) taking the firearm of another; (2) carrying it away; (3) without the owner's consent; and (4) *with the intent to deprive the owner of the firearm permanently*.” *State v. Rogers*, 255 N.C. App. 413, 415 (2017) (cleaned up and emphasis added).

“[T]he intent to permanently deprive an owner of his property [can] be inferred where there [is] no evidence that the defendant ever intended to return the property,

but instead showed a complete lack of concern as to whether the owner ever recovered the property.” *State v. Barts*, 316 N.C. 666, 690 (1986). Intent to permanently deprive an owner of his property also may be inferred where the defendant takes another’s property “without any color of right” and appeared to keep the property “as his own” until he was apprehended. *State v. Smith*, 268 N.C. 167, 173 (1966). In *State v. Rogers*, this Court specifically held there was substantial evidence to support the inference that the defendant intended to permanently deprive the victim of their firearm when the defendant claimed to take a gun in self-defense, concealed the gun from law enforcement, and feigned ignorance of the gun when he was apprehended. 255 N.C. App. 413, 416 (2017).

Here, the State presented evidence that defendant “showed a complete lack of concern as to whether the owner ever recovered the property[.]” *Barts* 316 N.C. at 690. At trial, the State’s evidence showed that defendant: broke into Benfield’s home, took Benfield’s gun without his permission, transported Benfield’s gun with him to Dollar General, threatened Jimenez-Herrera with Benfield’s gun rather than returning it, fled from police after Benfield’s gun was reported stolen, and discarded Benfield’s gun moments before his apprehension. Further, defendant claimed to take Benfield’s gun in self-defense, resisted disclosing the location of the firearm to Officer Aldridge and Chief Ellenburg, and feigned ignorance of the gun’s location when he was initially apprehended. This evidence is sufficient to support the inference that defendant intended to permanently deprive Benfield of his gun. *Rogers*, 255 N.C.

App. at 416. Therefore, a jury could reasonably infer from this evidence that defendant showed a complete lack of concern as to whether Benfield ever recovered his gun.

Defendant's evidence that he attempted to "return" Benfield's gun to the same place he took it does not impact our analysis of whether the State presented substantial evidence to survive defendant's motion to dismiss because this Court resolves any contradictory evidence in favor of the State. *Miller*, 363 N.C. at 98. Here, the Record before us shows defendant took Benfield's gun "without any color or right" and kept the gun "as his own" until just seconds before he was apprehended by law enforcement. *Smith*, 268 N.C. at 173. Accordingly, we conclude the State presented substantial evidence of defendant's intent to permanently deprive Benfield of the gun and the trial court did not err in denying defendant's motion to dismiss the larceny of a firearm charge.

B. Breaking and Entering a Motor Vehicle

Finally, defendant contends the trial court erred in denying his motion to dismiss the charge of breaking and entering a motor vehicle. Specifically, defendant argues that because the State failed to present substantial evidence of the requisite underlying felony—larceny of a firearm—his conviction for breaking and entering a motor vehicle cannot stand.

"The elements of breaking or entering into a motor vehicle are (1) there was a breaking or entering by the defendant; (2) without consent; (3) into a motor vehicle;

(4) containing goods, wares, freight, or anything of value; and (5) *with the intent to commit any felony or larceny therein.*” *State v. Covington*, 248 N.C. App. 698, 702 (2016) (cleaned up and emphasis added); *see also* N.C.G.S. § 14-56 (2023).

Defendant argues because he did not have the required intent for the underlying larceny charge, “there was no intended larceny,” and therefore, “the trial court also erred in failing to dismiss the charge of breaking and entering a motor vehicle.” However, because we have concluded the trial court did not err in denying defendant’s motion to dismiss the larceny of a firearm charge, defendant’s argument is without merit. Here, the State presented evidence that defendant took Benfield’s gun without his permission, fled from police after Benfield’s gun was reported stolen, and discarded Benfield’s gun moments before his apprehension. This is substantial evidence of defendant’s intent to commit larceny. Therefore, the trial court did not err in denying defendant’s motion to dismiss the breaking and entering a motor vehicle charge.

V. Conclusion

The trial court did not err in denying defendant’s motions to dismiss the larceny of a firearm and breaking and entering a motor vehicle charges. Because the State presented substantial evidence that defendant intended to permanently deprive Benfield of his gun, the trial court properly denied defendant’s motion to dismiss the charge of larceny of a firearm and, by extension, properly denied defendant’s motion to dismiss the charge of breaking and entering a motor vehicle.

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NO ERROR

Judges HAMPSON and GORE concur.

Report per Rule 30(e).