

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA05-1169

NORTH CAROLINA COURT OF APPEALS

Filed: 20 June 2006

STATE OF NORTH CAROLINA

v.

Guilford County
No. 03 CRS 99261-62, 64

MONIQUE MARYANN SPENCER

Appeal by defendant from judgment entered 9 November 2004 by Judge Henry E. Frye, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 8 May 2006.

Attorney General Roy Cooper, by Assistant Attorney General Robert K. Smith, for the State.

Lynne Ann Rupp, for defendant-appellant.

LEVINSON, Judge.

Defendant appeals judgment entered upon her convictions for larceny by anti-inventory device and misdemeanor conspiracy to shoplift. We find no error.

The pertinent facts may be summarized as follows: On 27 September 2003, Evelyn Blue was head of the shoe department at Goody's Family Clothing (Goody's) located in the Oak Hollow Mall in High Point, North Carolina. Blue noticed defendant and a man later identified as Robert Sawyer in the Girl's Department. Blue noticed that "the guy was rolling up something and he stuck it in a bag [and she] heard the bag rattle." Blue also noticed a large Goody's bag on the floor which was filled with clothes. Blue called

Beverly Jo Head, an associate at Goody's, and told her that "we have people here stealing." Blue pointed out Sawyer, who was carrying the Goody's bag, to security officers. When prompted to stop, Sawyer evaded security and exited the store. Blue further testified that defendant walked out of the store prior to the incident with security, and that she did not observe defendant carrying anything with her when she exited the store.

Blue also explained that Goody's has an inventory control system. Goody's attaches "logos" to their clothing, and a sensor attached to the item of clothing triggers an alarm when an individual carrying an item of clothing exits the store if the logo has not been removed. Blue could not recall whether the alarm sounded when Sawyer exited Goody's on 27 September 2003.

Head testified that she was also working at Goody's on the night in question, and that she received a call from Blue saying that Blue thought some customers were stealing. After Head called security, she found Sawyer with a "big bag of clothes" and asked him to stop, but that he refused and quickly exited Goody's. Head testified that she could not recall if the security sensors were triggered when Sawyer exited the door. Head also testified that she observed Sawyer run towards a vehicle with occupants and enter the vehicle before it "sped off."

Dino Mezziouso, a former High Point police officer who was on patrol 27 September 2003, testified that he received a dispatch call to the Oak Hollow Mall to investigate potential shoplifting. Mezziouso proceeded to the Target store. When Mezziouso arrived,

the defendant and another female, Hargrave, were standing near a dark older model vehicle. Mezziouso spoke with the females, who denied involvement in the Goody's shoplifting incident. The females informed Mezziouso that the person involved was Robert Sawyer and that Sawyer had left before Mezziouso arrived. Mezziouso testified that he noticed a Goody's bag with clothing on the ground near the passenger side of the vehicle. The females denied any knowledge regarding the clothing contained in this Goody's bag. While Mezziouso continued his investigation, Shannon Malphurs, an undercover loss prevention investigator from Target, arrived and told Mezziouso that Sawyer was inside Target. Mezziouso subsequently arrested Sawyer.

Malphurs informed Mezziouso and Officer Charlton that he had a videotape showing defendant and Hargrave moving two bags in the parking lot where law enforcement made initial contact with the females. The videotape, which was played for the jury, showed defendant and Hargrave walking together towards the shopping bags. Hargrave subsequently picked up the two bags and walked away with them. The defendant stood by while Hargrave moved the bags another 20 or 30 feet further away. Hargrave then returned to the location where the defendant was standing and both females walked away. Based upon the information provided in the videotape, Mezziouso and Charlton located a Goody's bag and a black trash bag, each containing several items of clothing, approximately 30 feet from where Mezziouso initially made contact with the females. The clothing in the bags had aluminum foil wrapped over the inventory

protection devices. Mezziouso testified that aluminum foil placed over the inventory logos blocks the signal that would ordinarily be triggered when someone exits the store with clothing that has the logos.

Defendant was convicted of misdemeanor conspiracy to shoplift, misdemeanor larceny, and felonious larceny by anti-inventory device. The trial court arrested judgment on the misdemeanor larceny conviction and sentenced the defendant on the remaining charges. From these convictions and judgment defendant now appeals, contending that the trial court lacked jurisdiction because the indictments for felonious larceny by anti-inventory device and conspiracy to shoplift were fatally flawed. Specifically, defendant argues that the indictments failed to allege that Goody's was a corporation or other legal entity capable of owning property which, defendant contends, is an essential element of these offenses. We disagree.

N.C. Gen. Stat. § 15A-924 (2005) sets forth the requirements for an indictment:

A criminal pleading must contain . . . [a] plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation.

"It is generally held that the language in a statutorily prescribed form of criminal pleading is sufficient if the act or omission is clearly set forth so that a person of common

understanding may know what is intended." *State v. Coker*, 312 N.C. 432, 435, 323 S.E.2d 343, 346 (1984) (citing 41 Am. Jur. 2d, *Indictments and Informations* § 68 (1968)). "An indictment charging a statutory offense must allege all of the essential elements of the offense." *State v. Snyder*, 343 N.C. 61, 65, 468 S.E.2d 221, 224 (1996). The "failure of a criminal pleading to charge the essential elements of the stated offense is an error of law which may be corrected upon appellate review even though no corresponding objection, exception or motion was made in the trial division." *State v. Sturdivant*, 304 N.C. 293, 308, 283 S.E.2d 719, 729 (1981).

N.C. Gen. Stat. § 14-72.1 (2005), provides in pertinent part that:

(a) Whoever, without authority, willfully conceals the goods or merchandise of any store, not theretofore purchased by such person, while still upon the premises of such store, shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided in subsection (e). Such goods or merchandise found concealed upon or about the person and which have not theretofore been purchased by such person shall be prima facie evidence of a willful concealment.

. . . .

(d)(1) Notwithstanding subsection (e) of this section, any person who violates subsection (a) of this section by using a lead-lined or aluminum-lined bag, a lead-lined or aluminum-lined article of clothing, or a similar device to prevent the activation of any antishoplifting or inventory control device is guilty of a Class H felony.

The indictment charging defendant with felonious larceny by anti-inventory device in violation of G.S. § 14-72.1(d)(1) states that:

The jurors for the State upon their oath present that on or about the date of offense and in the county named above the defendant named above unlawfully, willfully and feloniously did without authority conceal various items of merchandise, Assorted Men's and Children's Clothing, the goods and merchandise of a store, Goody's Family Clothing, located at Oak Hollow Mall, 921 Eastchester Drive, High Point, NC, while still upon the premises of the store and not having theretofore purchased the goods and merchandise. The defendant committed this offense by using Tin-Foil to prevent the activation of any anti-shoplifting of inventory control device.

An indictment charging the common law offense of larceny "must allege the ownership of the property either in a natural person or a legal entity capable of owning property." *State v. Wooten*, 18 N.C. App. 652, 655, 197 S.E.2d 614, 615 (1973). Consequently, "[i]f the property alleged to have been stolen . . . is the property of a corporation, the name of the corporation should be given, and the fact that it is a corporation stated, unless the name itself imports a corporation." *State v. Thornton*, 251 N.C. 658, 662, 111 S.E.2d 901, 903 (1960). The terms "corporation," "incorporated," "limited," and "company," are sufficient to import a corporation in an indictment. See *id.* at 662, 111 S.E.2d at 903-04.

In addressing the sufficiency of an indictment charging larceny by anti-inventory device, this Court observed:

We held in *Wooten* that the trial court did not err where the warrant alleged merchandise had been concealed on the premises of "Kings Dept. Store." The Court reasoned that, under the shoplifting statute, the only victim could be a store, and that the statute did not "cover property in a residence, bank, school or

church. . . ." Because the victim could only be a 'store,' this Court concluded that the shoplifting statute did not require the State to include the victim's corporate status in the warrant.

State v. Woody, 132 N.C. App. 788, 791, 513 S.E.2d 801, 804 (1999) (quoting *Wooten*, 18 N.C. App. at 655, 197 S.E.2d at 615).

In the instant case, the indictment for a violation of felony larceny by anti-inventory device, G.S. § 14-72.1(d)(1), need not have alleged that Goody's was a corporation or other legal entity capable of owning property because "the victim could only be a 'store.'" *Woody*, 132 N.C. App. at 791, 513 S.E.2d at 804.

Similarly, the defendant argues that the indictment for misdemeanor conspiracy to shoplift was flawed because it failed to allege that Goody's was a corporation or other legal entity capable of owning property. We disagree.

A criminal conspiracy consists of "'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. Jackson*, 103 N.C. App. 239, 244, 405 S.E.2d 354, 357 (1991) (quoting *State v. Lipford*, 81 N.C. App. 464, 465, 344 S.E.2d 307, 308 (1986)). Therefore, in order to conspire to shoplift in violation of G.S. § 14-72.1(a), one must agree with at least one other person to "willfully conceal the goods or merchandise of any store, . . . not theretofore purchased by such person, . . . while still upon the premises of the store[.]" See *Wooten*, 18 N.C. App. at 655, 197 S.E.2d at 615; see also G.S. § 14-72.1(a).

The indictment charging defendant with conspiracy to shoplift provides that:

The jurors for the State upon their oath present that on or about the date of offense and in the county named above the defendant named above unlawfully and willfully did conspire, combine, confederate and agree with Robert James Sawyer and Carlotta Larae Hargrave to unlawfully commit the misdemeanor, to wit: Shoplifting against Goody's Family Clothing.

Here, the indictment alleged a conspiracy to shoplift from Goody's, the same entity named in the indictment for felonious larceny by anti-inventory device. The trial court had jurisdiction even though the indictment failed to allege that Goody's is a corporation or other legal entity capable of owning property because Goody's can only be some type of mercantile establishment. See *Wooten*, 18 N.C. App. at 655, 197 S.E.2d at 615. This assignment of error is overruled.

No error.

Chief Judge MARTIN and Judge JACKSON concur.

Report per rule 30(e).