

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-155

NORTH CAROLINA COURT OF APPEALS

Filed: 5 December 2006

STATE OF NORTH CAROLINA

v.

Robeson County
No. 95 CRS 15736

JAMES DAVID BLAKE, JR.,
Defendant.

Appeal by defendant from a judgment dated 22 October 1996 by Judge Wiley F. Bowen in Robeson County Superior Court. Heard in the Court of Appeals 30 October 2006.

Attorney General Roy Cooper, by Assistant Attorney General David D. Lennon, for the State.

Sue Genrich Berry for defendant-appellant.

BRYANT, Judge.

James David Blake, Jr. (defendant) was found guilty on 22 October 1996 of felonious conversion by a bailee. He was sentenced to imprisonment for a minimum term of six months and a maximum term of eight months. The sentence was suspended and defendant was placed on supervised probation for twenty-four months. Notice of appeal was timely given and the transcript was delivered on 21 April 1997. The appeal was dismissed by Judge Robert F. Floyd, Jr. on 25 May 2004 due to defendant's failure to perfect the appeal. In an order dated 19 July 2005, Judge Floyd set aside his prior order dismissing the appeal.

The State presented evidence tending to show that on 11 March 1995, defendant and Stephen Maynor entered into a written agreement whereby defendant would operate a pizza restaurant business owned by Maynor and would make payments towards the purchase of the business and its equipment. The agreement contained the following provision:

Upon Blake's successful compliance with the terms and conditions herein contained, on August 31, 1996, Blake shall become the record owner of the personal property, described on that certain document, attached hereto identified as Exhibit A, incorporated herein by reference, and Maynor will relinquish all right, title and interest in same.

Said personal property, during the pendency of this contract, shall remain on said premises for the use of Blake and are acknowledged to be the property of Maynor.

Blake agrees to maintain and to repair as needed, said property, reasonable wear and tear excepted.

Among the items listed in Exhibit A was an "Anets Dough Sheeter." The agreement also provided that if defendant failed to honor the terms and conditions of the agreement or if he failed to pay any sums due within a grace period of thirty days, then defendant "shall be deemed to have defaulted."

Defendant fell in arrears on his payments, and on 3 June 1995 Maynor entered the restaurant premises to resume possession. Two employees of the restaurant, but not defendant, were present. The property listed in Exhibit A was inventoried and the Anets Dough Sheeter was not located. Maynor attempted to locate the dough sheeter and asked defendant about it. Defendant admitted

that he removed the dough sheeter from the restaurant and placed it in storage. Defendant never returned the dough sheeter to Maynor. Defendant never made any payments toward the purchase of the restaurant equipment. Maynor estimated the value of the dough sheeter as approximately \$2800.00.

Defendant did not present any evidence.

By his sole assignment of error, defendant contends the court erred in denying his motion to dismiss for insufficient evidence. Upon a motion to dismiss the court determines whether there is substantial evidence to establish each element of the offense charged and to identify the defendant as the perpetrator. *State v. Earnhardt*, 307 N.C. 62, 65-66, 296 S.E.2d 649, 651 (1982). The court considers the evidence in the light most favorable to the State, giving it the benefit of every reasonable inference that may be drawn from the evidence. *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984). The State's evidence is to be considered as true and conflicts and discrepancies in the evidence are to be disregarded. *State v. Mize*, 315 N.C. 285, 290, 337 S.E.2d 562, 565 (1985). All of the evidence that is actually admitted and favorable to the State, whether competent or incompetent, is to be considered. *State v. McKinney*, 288 N.C. 113, 117, 215 S.E.2d 578, 581-82 (1975).

At the time of the alleged commission of the charged offense, N.C. Gen. Stat. § 14-168.1 defined the following criminal offense:

Every person entrusted with any property as bailee, lessee, tenant or lodger, or with any power of attorney

for the sale or transfer thereof, who fraudulently converts the same, or the proceeds thereof, to his own use, or secretes it with a fraudulent intent to convert it to his own use, shall be guilty of a Class 1 misdemeanor.

If, however, the value of the property converted or secreted, or the proceeds thereof, is in excess of four hundred dollars (\$400.00), every person so converting or secreting it is guilty of a Class H felony. In all cases of doubt the jury shall, in the verdict, fix the value of the property converted or secreted.

N.C. Gen. Stat. § 14-168.1 (1999). This Court has previously held that felonious conversion by a bailee,

like larceny and embezzlement, occurs when a defendant offends the ownership rights of another. The statute applies to certain specified relationships involving an owner of property and a non-owner, e.g., bailee, lessee, and tenant. Moreover, an essential component of the crime is the intent to convert or the act of conversion, which by definition requires proof that someone other than a defendant owned the relevant property.

State v. Woody, 132 N.C. App. 788, 789-90, 513 S.E.2d 801, 803 (1999).

Defendant contends the evidence is insufficient to establish: (1) the owner of the dough sheeter entrusted defendant with the property as a bailee; and (2) defendant converted the property to his own use with the intent to defraud the owner.

A "bailment" has traditionally been defined as

[a] delivery of goods or personal property, by one person (bailor) to another (bailee), in trust for the execution of a special object upon or in relation to such goods, beneficial either to the bailor or bailee or both, and upon a contract, express or implied, to perform the trust and carry out such object, and thereupon either to redeliver the goods to the bailor or otherwise dispose of the same in conformity with the purpose of the trust. The

bailee is responsible for exercising due care toward the goods.

Black's Law Dictionary 141-42 (6th ed. 1991) (emphasis added). Defendant quotes this definition in his brief and argues that he did not receive property pursuant to an agreement by which he was to return the property to Maynor at the completion of the agreed terms of the agreement. He also argues there is no evidence of intent to defraud because Maynor testified that defendant told him the dough sheeter was in storage.

We are not persuaded by defendant's arguments. We are satisfied that a jury may find from the evidence presented that Maynor, as the owner of the dough sheeter, entrusted defendant with the item until such time as defendant became the owner of the property following full compliance with all of the terms and conditions of the agreement, including payment of all sums due in a timely manner. Defendant defaulted on the agreement by failing to make the required payments. Defendant also failed to keep all of the identified personal property on the premises as required by the express terms of the agreement and defendant failed to deliver the missing entrusted property to Maynor upon demand.

Intent to defraud "may be shown by direct evidence, or by evidence of facts and circumstances from which it may reasonably be inferred.'" *State v. Morris*, 156 N.C. App. 335, 340, 576 S.E.2d 391, 395 (2003) (quoting *State v. McLean*, 209 N.C. 38, 40, 182 S.E. 700, 702 (1935)). Maynor testified that defendant admitted he had removed the dough sheeter from the restaurant. At one time defendant told him that he placed it in a storage area above the

restaurant and another time defendant told him that he had it stored at his parents' home. Maynor made numerous unsuccessful efforts to talk to defendant after Maynor resumed operation of the business. Maynor also enlisted the help of defendant's parents in an unsuccessful effort to persuade defendant to talk with Maynor. Defendant failed to pay any money toward the purchase of the equipment and failed to appear for an interview with a police detective regarding this matter. The police detective subsequently located defendant in Richmond, Virginia. We conclude an intent to defraud may be found based upon the evidence of defendant's inconsistent stories, his unwillingness to talk to Maynor and the police detective, and his flight to another state while the investigation was pending.

No error.

Judges TYSON and LEVINSON concur.

Report per Rule 30(e).