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NO. COA06-280

NORTH CAROLINA COURT OF APPEALS

Filed: 3 October 2006

STATE OF NORTH CAROLINA

v.

Alamance County
No. 04 CRS 054963

SONIA PINNIX DUBOIS

Appeal by defendant from judgment entered 13 October 2005 by Judge J.B. Allen, Jr., in Alamance County Superior Court. Heard in the Court of Appeals 2 October 2006.

Attorney General Roy Cooper, by Assistant Attorney General Christopher H. Wilson, for the State.

Michael J. Reece, for defendant-appellant.

TYSON, Judge.

Sonia Pinnix Dubois ("defendant") appeals from judgment entered after a jury found her to be guilty of non-felonious larceny. We find no error.

I. Background

A. State's Evidence

The State's evidence tended to show defendant and Thomas Harris ("Harris") dated for three to four years prior to moving in together into a rented house on 1 March 2004. Harris was the tenant on the lease and the name of defendant's daughter was listed as the customer on the power utility account. Among other

household items, Harris owned and brought into the house a living room suite, brass-colored wall hangings consisting of elephants, candle holders, and three ships. Defendant's and Harris's relationship deteriorated and Harris moved out of the house on or about 15 April 2004. Harris stayed with his mother until defendant moved out of the house. During the time Harris was staying with his mother, he returned to the house two or three times per week. Harris returned every Tuesday to specifically pick up a check from the mailbox. During one of his return trips to the house, Harris discovered some of his personal property he had left in the house was missing. Harris went to the Burlington Police Department on 27 May 2004 to report that various items of his personal property had been stolen from his residence and named defendant as a suspect.

Harris called the Burlington Police again on 3 June 2004 and, in response, Officer Robin Harlukowicz ("Officer Harlukowicz") responded to the house. Harris informed Officer Harlukowicz that he noticed additional personal property belonging to him was missing from the house. Officer Harlukowicz found no evidence of forced entry.

Harris stated he had learned from a neighbor that some of his personal property was located at the house of a neighbor, Mr. and Mrs. Fuller. Officer Harlukowicz and Harris went into the Fuller residence, where Harris's brass-colored elephants and candle holders were found hanging on a wall. Mrs. Fuller testified that she bought the brass-colored items from defendant at the end of May or in early June. Harris testified that he never gave defendant

authority to sell any of his property.

After Officer Harlukowicz left the house, Harris waited for the mailman to bring his check. While he waited, defendant and three men approached the house, riding in a pick-up truck and towing a trailer. Harris told them to leave and called Officer Harlukowicz who returned to the house. Harris reported to Officer Harlukowicz that he had determined that more items were missing than originally reported.

The Burlington Police took defendant into custody and questioned her at the police station on 4 June 2004. While in custody, defendant admitted that she knew some of the items she had taken from the house belonged to Harris and that she sold the brass-colored elephant and candle holders to Mrs. Fuller. Defendant also admitted giving the living room suite to her daughter for payment of the outstanding power bill for the house. Harris testified that he never gave defendant or her daughter permission to sell or remove any of his household items.

B. Defendant's Evidence

Defendant testified that she and Harris moved in together in March 2004 and she understood that Harris would add her name to the lease. Defendant testified that she owned all personal property in the house with the exception of the living room suite, Harris's clothes, a refrigerator, and the brass-colored wall hangings. Defendant admitted selling the brass-colored items to Mrs. Fuller after Harris moved out. Defendant testified that she had passed by the house in a truck only because she had caught a ride and was en

route to another destination.

Defendant's daughter testified that when her mother and Harris moved in together, she agreed for the electrical power account to be placed in her name, as long as Harris agreed to pay the bill. When Harris became delinquent in paying the power bill, defendant's daughter told Harris that she would take possession of his living room suite to satisfy the bill. Defendant's daughter stated that defendant neither objected nor consent to the agreement. Defendant's daughter testified that defendant allowed her to take possession of Harris's living room suite.

On 28 March 2005, defendant was indicted for felony larceny and obtaining property by false pretenses. At trial, defendant moved to dismiss the charges against her at the close of the State's evidence. The trial court dismissed the charge of obtaining property by false pretenses. Defendant renewed her motion to dismiss the larceny charge at the close of all evidence. The trial court denied the motion and instructed the jury on both felonious and non-felonious larceny. A jury found defendant guilty of non-felonious larceny. The trial court determined defendant was a prior level III with six points and sentenced her to an active term of 120 days. Defendant appeals.

II. Issue

Defendant argues the trial court erred in denying her motions to dismiss the felony larceny charge.

III. Motion to Dismiss

To withstand a motion to dismiss, the State must present

substantial evidence of each essential element of the offense and of the defendant's identity as the perpetrator. *State v. Riddle*, 300 N.C. 744, 746, 268 S.E.2d 80, 81-82 (1980). Substantial evidence is relevant evidence which "a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). In ruling on a motion to dismiss, the trial court must consider all of the evidence in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence. *State v. Davis*, 130 N.C. App. 675, 679, 505 S.E.2d 138, 141 (1998). "Any contradictions or discrepancies arising from the evidence are properly left for the jury to resolve and do not warrant dismissal." *State v. King*, 343 N.C. 29, 36, 468 S.E.2d 232, 237 (1996).

Here, defendant was convicted of misdemeanor larceny. "The essential elements of larceny are: (1) the taking of the property of another; (2) carrying it away; (3) without the owner's consent; and (4) with the intent to permanently deprive the owner of the property." *State v. Barbour*, 153 N.C. App. 500, 502, 570 S.E.2d 126, 127 (2002). If the property has a value of not more than \$1,000.00, the offense is a Class 1 misdemeanor. N.C. Gen. Stat. § 14-72(a) (2005).

Defendant argues that the State failed to offer any evidence that a taking of Harris's property occurred. Defendant asserts that she was in lawful possession of Harris's property because Harris "failed to take his property with him when he moved" out of

their shared residence. We disagree.

Here, the uncontroverted evidence showed: (1) Harris brought the brass-colored wall hangings into the rented house; (2) Harris owned the brass-colored wall hangings; and (3) defendant sold the brass-colored wall hangings to Mrs. Fuller without Harris's permission. The State's evidence also tended to show that defendant's daughter took Harris's living room suite and that Harris did not give her permission to do so. We hold based upon this evidence, considered in the light most favorable to the State, a jury could reasonably infer defendant committed non-felonious larceny. This assignment of error is overruled.

IV. Conclusion

The trial court properly denied defendant's motions to dismiss. Defendant received a fair trial free from prejudicial errors she preserved, assigned, and argued.

No Error.

Judges BRYANT and LEVINSON concur.

Report per Rule 30(e).