NO. COA07-1512

NORTH CAROLINA COURT OF APPEALS

Filed: 5 August 2008

STATE OF NORTH CAROLINA,
Plaintiff,

v. Wake County
No. 06CRS089568

STIX PRESTON VINCENT,
Defendant.

Appeal by defendant from judgment entered on or about 15 March 2007 by Judge Ripley E. Rand in Wake County Superior Court. Heard in the Court of Appeals 21 July 2008.

Attorney General Roy A. Cooper, III, by Assistant Attorney General Jason T. Campbell, for the State.

Kimberly P. Hoppin for defendant-appellant.

STROUD, Judge.

Stix Preston Vincent ("defendant") appeals from the judgment entered 15 March 2007 following his conviction for motor vehicle rental fraud. For the reasons stated below, we find no error.

On 8 January 2007, the Wake County grand jury indicted defendant on a charge of rental vehicle fraud. Defendant filed a motion on 9 March 2007 to suppress statements which he made to a police officer at the time of his arrest, and the trial court heard the motion prior to jury selection. Counsel for defendant and the

State agreed on the facts contained in the officer's report, which were as follows:

> On November 2nd, Officer Leconey initiated a traffic stop . . . . The driver pulled over immediately in a parking lot . . . . As he approached the car, the driver opened the door and surrendered. He put his hands in the air and said I know, I know. I asked him his name as I was handcuffing him. He said he was Stix Vincent and he knew why he was being placed under arrest. I told him to tell me why he thought he was -- being arrested. He said because I never brought this car back.

After hearing argument from both counsel, the trial court concluded there was "[n]o promise of reward or inducement . . . , no threats, suggested violence or show of violence to persuade the Defendant to make such a statement, that his statements were made freely and voluntarily and understandingly . . . ." Upon concluding "that while the Defendant was in custody as being in handcuffs, . . . there was not quote interrogation unquote under the constitutional and statutory interpretation in the case law[,]" the trial court denied the motion to suppress.

At trial, the State presented evidence tending to show the following: Sam Kingsbury, a location manager for Triangle Rent-A-Car, testified about the procedures involved in renting a vehicle. When Mr. Kingsbury identified a document as the standard agreement used when the business rented vehicles to individuals, defendant objected on the bases of lack of foundation and lack of authentication. After the trial court overruled the objection, Mr. Kingsbury testified the agreement indicated that defendant rented a 2007 Dodge Caliber on 25 September 2006 and that the return date

was 2 October 2006. In addition to paying $336.31 initially to rent the vehicle, defendant called later on 25 September and obtained an oral extension of time for an additional amount of $168.71. Defendant used a credit card to secure payment for the vehicle's rental.

On the second day that the vehicle's return was overdue, Mr. Kingsbury asked an employee to call defendant to find out the reasons or to obtain any funds that they could in order for defendant to keep the vehicle. He also attempted to contact defendant himself, but the telephone number was disconnected. Mr. Kingsbury tried to charge another day's rental after the second day that the vehicle was overdue, but it was declined. He testified he tried many times to charge other days to defendant's credit card and was unable to get funds. Mr. Kingsbury knew that law enforcement had been contacted, and he indicated that law enforcement would not have been contacted had he been able to charge defendant's credit card for the days that the vehicle was out. He received the vehicle back on 3 November, and the total rental bill was $2,110.46. Although defendant's two initial payments totaling $505.02 were authorized on 25 September, subsequent efforts by the business to charge additional days to the credit card after the vehicle was due were declined.

Detective P.A. Dupree testified that a uniformed officer took an initial report from someone at Triangle Rent-A-Car on 18 October. After receiving the report, Detective Dupree went to Triangle Rent-A-Car on 26 October and spoke with employee Lisa

Money. With the information he gathered from Ms. Money, Detective Dupree obtained a warrant for defendant and entered the rental vehicle into a national database as being stolen.

Officer G.C. Leconey testified that he was a patrol officer on 2 November 2006 when he saw a man driving a silver Dodge Caliber at 3:00 a.m. The man looked a little nervous when he saw the patrol car, and he turned his wheel sharply to the right after stopping in the intersection "as if he wanted to make a right turn after he saw [the] patrol car." Officer Leconey noticed the car was driven away at a high rate of speed. After turning to follow the vehicle, Officer Leconey recalled that a silver 2007 Dodge Caliber had been entered into N.C.I.C. as a rental vehicle fraud. He confirmed that the vehicle was still entered, and the entry showed an active warrant for Stix Vincent in relation to that rental vehicle fraud.

Officer Leconey initiated a traffic stop by turning on his blue lights, and the man immediately pulled into a parking lot. When Officer Leconey stepped out of his patrol car, the man stepped out of the vehicle. He immediately put his hands in the air and said, "I know, I know." As Officer Leconey approached him, the man turned around and placed his hands behind his back in a handcuffing position. Officer Leconey began placing handcuffs on his wrists and asked the man what his name was. The man identified himself as Stix Vincent and said "I know what I'm being arrested for." Officer Leconey then asked him "what do you think you're being arrested for?" Defendant replied that he "never brought this car

back." Officer Leconey identified defendant in open court as the man whom he had arrested.

At the close of the State's evidence, defendant moved to dismiss the charges for lack of evidence. After hearing argument from defense counsel and the State, the trial court denied the motion to dismiss. Defendant's sister then testified on his behalf. She said she had spoken with a collection agency and had agreed she would pay all the monies back that defendant owed.

Defendant renewed his motion to dismiss at the close of all the evidence, and the trial court again denied the motion. After receiving the trial court's instructions, the jury deliberated and found defendant guilty as charged. The trial court imposed a sentence of six to eight months imprisonment, then suspended the sentence and placed him on supervised probation for twenty-four months. From the trial court's judgment, defendant appeals.

In his first argument, defendant contends the trial court erred by denying his motion to suppress his statement. He argues that Officer Leconey's response was more than a simple request to clarify a volunteered statement and that the officer should have known it would elicit an incriminating response. We disagree.

In reviewing a motion to suppress, the scope of appellate review is limited to whether the trial court's findings of fact are supported by competent evidence and whether those findings in turn support the conclusions of law which are reviewable on appeal. *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982). Because counsel agreed on the facts found in Officer Leconey's

report, the facts are not in dispute here. The issue is whether defendant's statement, which was given after he was in custody and before he was advised of his constitutional rights, was in response to an interrogation by Officer Leconey and therefore within the exclusionary rule established by *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed. 2d 694 (1966).

"'Interrogation' involves a procedure designed to elicit a statement from the individual at whom it is directed. An officer's request in the heat of an emotional situation that the accused explain or clarify a volunteered statement is not a procedure designed to elicit an inculpatory response." *State v. Porter*, 303 N.C. 680, 692-93, 281 S.E.2d 377, 386 (1981). Defendant here opened the door of his vehicle and surrendered as Officer Leconey approached after the traffic stop. In addition to putting his hands in the air and saying, "I know, I know[,]" defendant volunteered that he knew why he was being arrested. Officer Leconey's request for defendant to explain his volunteered statement occurred before Officer Leconey "had the opportunity to form a design or motivation to elicit incriminating statements from" defendant. *Id.* at 693, 281 S.E.2d at 386. Because Officer Leconey's request was not an interrogation, defendant's subsequent statement was admissible and the trial court properly denied his motion to suppress.

Defendant in his second argument contends the trial court erred by denying his motion to dismiss the charge for insufficiency

of the evidence. He argues there was not substantial evidence of his intent to defraud Triangle Rent-A-Car. We disagree.

In ruling on a motion to dismiss, the trial court must determine whether there is substantial evidence of each element of the offense. *State v. Vines*, 317 N.C. 242, 253, 345 S.E.2d 169, 175 (1986). In doing so the trial court is to consider the evidence in the light most favorable to the State and to give the State the benefit of every reasonable inference to be drawn from that evidence. *State v. Robbins*, 309 N.C. 771, 775, 309 S.E.2d 188, 190 (1983). "Substantial evidence is such relevant evidence as 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). "[I]f the State has offered substantial evidence against defendant of every essential element of the crime charged[,]" defendant's motion to dismiss must be denied. *Porter*, 303 N.C. at 685, 281 S.E.2d at 381.

Rental vehicle fraud is defined in N.C. Gen. Stat. § 20-106.1 (2005) as:

> Any person with the intent to defraud the owner of any motor vehicle . . . , who obtains possession of said vehicle by agreeing in writing to pay a rental for the use of said vehicle, and further agreeing in writing that the said vehicle shall be returned to a certain place, or at a certain time, and who willfully fails and refuses to return the same to the place and at the time specified . . . shall be guilty of a Class I felony.

"Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred." *State v. Bell*, 285 N.C. 746, 750, 208 S.E.2d 506, 508

(1974). In determining whether the requisite intent was present, the jury may consider a defendant's acts and conduct along with the general circumstances at the time when the charged offense was allegedly committed. *State v. Bennett*, 84 N.C. App. 689, 691, 353 S.E.2d 690, 692 (1987).

When viewed in the light most favorable to the State, defendant rented a vehicle from Triangle Rent-A-Car on 25 September 2006 with a return date of 2 October 2006. Employees attempted to contact defendant at the telephone number which he had given them after he failed to return the vehicle by the due date, but the number had been disconnected. Those employees also made multiple attempts to charge additional rental fees to the credit card which defendant had given them, but the charges were declined. The vehicle was not returned to Triangle Rent-A-Car until after defendant was arrested on 2 November 2006 while driving the vehicle. After noticing the officer, defendant appeared nervous and changed his direction of travel and drove away at a high rate of speed. Defendant's comments to the arresting officer both prior to and after being taken into custody illustrate an awareness on his part that he had failed to abide by the terms of the rental agreement. From his sister's testimony, it appears defendant still owed a balance of $1,605.44 for the additional time which he had the rental vehicle as of the date of his trial. The State having offered substantial evidence of the challenged element of intent, the trial court did not err by denying defendant's motion to dismiss the charge.

In his third argument, defendant contends the trial court erred by admitting the alleged rental agreement between himself and Triangle Rent-A-Car. He argues that the document was hearsay and inadmissible. Defendant's argument is not persuasive.

"In order to preserve a question for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling the party desired the court to make . . . ." N.C.R. App. P. 10(b)(1). Defendant objected to the admission of the rental agreement at trial on the bases of lack of foundation and lack of authentication, not on the basis of inadmissible hearsay. "[W]here a theory argued on appeal was not raised before the trial court, 'the law does not permit parties to swap horses between courts in order to get a better mount . . . .'" *State v. Sharpe*, 344 N.C. 190, 194, 473 S.E.2d 3, 5 (1996) (quoting *Weil v. Herring*, 207 N.C. 6, 10, 175 S.E. 836, 838 (1934)). The issue of whether the rental agreement constituted inadmissible hearsay is therefore not properly before this Court, *see State v. Johnson*, 340 N.C. 32, 47, 455 S.E.2d 644, 651-52 (1995), and defendant's assignment of error is dismissed.

No error.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).