NO. COA10-364

NORTH CAROLINA COURT OF APPEALS

Filed: 7 December 2010

STATE OF NORTH CAROLINA

v.

ERIC MIDDLETON,
Defendant.

Sampson County
Nos. 09 CRS 51888
09 CRS 51889

Appeal by defendant from judgment entered 17 November 2009 by Judge Gary E. Trawick in Sampson County Superior Court. Heard in the Court of Appeals 30 September 2010.

Roy Cooper, Attorney General, by Floyd M. Lewis, Assistant Attorney General, for the State.

Lucas & Ellis, PLLC, by Anna S. Lucas, for defendant-appellant.

THIGPEN, Judge.

On 17 November 2009, a jury found Eric Middleton ("defendant") guilty of felonious breaking and entering, felonious larceny, felonious breaking and entering of a motor vehicle, and misdemeanor larceny. Defendant pled guilty to attaining the status of an habitual felon following the jury verdict, and the trial court sentenced defendant to a minimum term of 101 months and a maximum term of 131 months in the North Carolina Department of Correction. Defendant thereafter filed a timely notice of appeal to this Court.

Defendant raises two issues on appeal concerning the adequacy of the State's evidence. Defendant argues that the trial court

erred by denying his motion to dismiss the felony charges against him; because the State failed to produce evidence of every element of the charges alleged, and the confession he gave police following his arrest did not address those elements. After review, we conclude that the trial court did not err by submitting the felony charges to the jury. Accordingly, we find no error in the judgment.

BACKGROUND

At trial, the State offered the following evidence. On 17 June 2009, Deputy Jessica Kittrell of the Sampson County Sheriff's Department received a call alleging that a breaking and entering and a larceny had occurred at a trailer and vehicle located in Tart's Mobile Home Park. Deputy Kittrell arrived at the scene at approximately 8:15 p.m., and she observed two Hispanic males standing outside the trailer. The trailer showed no signs of forced entry, however, the black truck located in the driveway was missing its stereo system. No other sign of forced entry was apparent from Deputy Kittrell's inspection of the truck. While at the trailer Deputy Kittrell took two reports that were not introduced into evidence at trial.

After speaking with the residents outside the trailer, Deputy Kittrell then interviewed Frank Emmanuel, the next door neighbor. At trial, Mr. Emmanuel offered the following testimony of events he had observed earlier in the day:

> [PROSECUTOR:] [D]id you notice anything else out of [the] ordinary during the day?

THE WITNESS: Yeah. I mean, I seen my man here (pointing to the defendant) at the trailer where the truck was at. Like I said, I seen him there, he peeped around the corner of the house, and then he disappeared. So I didn't see him with anything so I don't know nothing about what he got, if he got anything.

. . . .

[PROSECUTOR]: Is it -- I'm sorry; you said he did something around the corner of the trailer?

THE WITNESS: I seen him walk in front of the trailer where the Mexican stays. Then he came back around the trailer and he peeped like he were looking toward my house. And then he disappeared back in front of the trailer, and that was the last I seen of him.

Q. And where were you during that time?

A. Sitting on my couch where I can see everything that go on in the trailer park.

. . . .

Q. Did you see any of the Hispanic folks around at that time?

A. No.

Q. Did you see them whenever they returned home?

A. Yes.

. . . .

Q. Did anyone else come and talk to you that day after you had talked to your neighbors?

A. An officer. A deputy came out and talked to me. I think it was -- I guess it was the same day.

Q. And what did you tell that deputy when she came?

> A. Exactly what I told you about him coming around the corner, that was it.

Mr. Emmanuel further testified that a majority of the Hispanic residents were gone most of the day picking blueberries.

On 18 June 2009, Detective Eligio Sanchez visited defendant's trailer, located in Tart's Mobile Home Park. At trial, Detective Sanchez recalled his interaction with defendant:

> A. When [defendant] came out of the bedroom, he had no shirt. I believe he just had a pair of shorts on and he was yelling that he didn't do anything, that people just said it was him because he was the only black person in the trailer park.
>
> Q. And what did you do, if anything, in response to that?
>
> A. I explained to [defendant] that I was there investigating a break-in at a trailer. After a few minutes, he voluntarily went with me to the sheriff's office for an interview.
>
> Q. So when he was yelling he didn't do anything, that was before you told him why you were there?
>
> A. Yes, sir.

Upon arriving at the police station, Detective Sanchez informed defendant that he was not under arrest, and the detective had defendant initial a form confirming that defendant understood his *Miranda* rights. After defendant agreed to talk to Detective Sanchez without an attorney present, defendant provided the following which was summarized by Detective Sanchez at trial:

> Q. What, if anything, did he tell you?
>
> A. [Defendant] stated that he hangs out with the subject known as Pedro at that trailer and that he was out there yesterday. [Defendant] stated that Pedro and them left

the house to wash clothes and that he came back to [the] house later that night.

. . . .

Q. And what, if anything else, did he say?

A. [Defendant] stated that he stole the property, that the property was at his cousin's house who stays in Way Cross. [Defendant] stated that his cousin's name is Travis but that he didn't know what his full name [was] or the address where he stayed at.

Q. And what, if anything else, did he say?

A. [Defendant] stated he wanted to call his cousin and tell him to bring the stuff back to his house.

Q. Did you make arrangements for him to make such a call?

A. I let him use my cell phone. [Defendant] called his mother and advised her to call Travis and have the stuff -- have him bring the stuff back to the house.

Q. Were you in the room when this call was made?

A. Yes, sir; I was.

Q. Were you able to hear what the defendant was saying into the phone?

A. Yes, sir.

. . . .

Q. What, if anything else, did he say to you?

A. [Defendant] stated he broke into Pedro's truck, that he knows Pedro, that they smoke weed together. [Defendant] stated that Pedro drives the black truck. [Defendant] stated that he didn't do any damage on the truck when he took the radio out. And [defendant] stated that the trailer that he

> went into, that the door was not locked. [Defendant] stated that the computer that he took from the trailer was a laptop and that he also took a Play Station game system. And [defendant] stated that he sold these items to his cousin but that he did not get any money for them because he owed money to his cousin.
>
> . . . .
>
> A. [Defendant] stated that he broke into the people's house because he needed some money, and that his unemployment had run out.
>
> Q. Now are those the words that [defendant] used to describe what he did?
>
> A. Yes, sir; they are.

Based on defendant's confession, Detective Sanchez prepared a written summary. Defendant declined to sign the written summary stating that he did not wish to incriminate himself. Detective Sanchez then placed defendant under arrest, and after the stolen items listed by defendant were returned to defendant's residence, Detective Sanchez drove to the trailer to retrieve them.

On 5 October 2009, a grand jury indicted defendant for the charges of felonious breaking and entering, felonious larceny, felonious possession of stolen goods, felonious breaking and entering of a motor vehicle, misdemeanor larceny, and misdemeanor possession of stolen goods. The grand jury also indicted defendant as an habitual felon. Trial commenced on 16 November 2009 and the State presented all of its evidence the same day. On 17 November 2009, the trial court partially granted defendant's motion to dismiss, and the misdemeanor and felonious possession of stolen goods charges were dismissed. The remaining charges were submitted to the jury, and the jury found defendant guilty of each charge.

Defendant pled guilty to being an habitual felon, and after being sentenced, defendant filed a timely notice of appeal to this Court.

Defendant raises two issues for our review: 3(I) whether the trial court erred by submitting the charges of felonious breaking and entering and felonious breaking and entering of a motor vehicle to the jury, because the State failed to present evidence regarding the consent element of the crimes and his confession did not address consent; and (II) whether the trial court erred by submitting the charge of felonious larceny to the jury, because the State did not present evidence concerning the ownership element of the offense and his confession was silent on the issue of ownership.

ANALYSIS

Standard of Review

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "The question is whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). "'Substantial evidence' is relevant evidence that a reasonable person might accept as adequate, or would consider necessary to support a particular conclusion." *State v. McNeil*, 359 N.C. 800, 804, 617 S.E.2d 271, 274 (2005) (citation and internal quotation marks omitted). In ruling on a motion to dismiss for insufficient evidence, the trial court must view the evidence in the light most

favorable to the State. *State v. Thompson*, 157 N.C. App. 638, 642, 580 S.E.2d 9, 12 (2003). "Contradictions or discrepancies in the evidence must be resolved by the jury, and the State should be given the benefit of any reasonable inference." *Id.*

I.

Defendant argues that the State did not meet its burden concerning the charges of felonious breaking and entering and felonious breaking and entering of a motor vehicle, because his confession did not address the consent element of the crimes. Defendant also contends that the charge of felonious larceny should have been dismissed, since the larceny was classified as a felony as a result of the breaking and entering charges under N.C. Gen. Stat. § 14-72(b)(2) (2009). We disagree.

"'To support a conviction for felonious breaking and entering under [N.C. Gen. Stat.] § 14-54(a), there must exist substantial evidence of each of the following elements: (1) the breaking or entering, (2) of any building, (3) with the intent to commit any felony or larceny therein.'" *State v. Jones*, 188 N.C. App. 562, 564-65, 655 S.E.2d 915, 917 (2008) (quoting *State v. Walton*, 90 N.C. App. 532, 533, 369 S.E.2d 101, 102 (1988)). "In order for an entry to be unlawful under N.C. Gen. Stat. § 14-54(a), the entry must be without the owner's consent." *State v. Rawlinson*, __ N.C. App. __, __, 679 S.E.2d 878, 882 (2009). Even though consent may initially be given to a person to enter a premises, "the subsequent conduct of the entrant may render the consent to enter void *ab*

initio." *State v. Brooks*, 178 N.C. App. 211, 214, 631 S.E.2d 54, 57 (2006).

The essential elements of breaking and entering a motor vehicle are "(1) breaking or entering a motor vehicle, [and] (2) with the intent to commit larceny therein." *State v. Baskin*, 190 N.C. App. 102, 108, 660 S.E.2d 566, 572, *disc. review denied*, 362 N.C. 475, 666 S.E.2d 648-49 (2008). Lack of consent is also an essential element of the crime of felonious breaking and entering a motor vehicle. *State v. Jackson*, 162 N.C. App. 695, 698, 592 S.E.2d 575, 577 (2004).

"It has long been established in North Carolina that the State may not rely solely on the extrajudicial confession of a defendant to prove his or her guilt; other corroborating evidence is needed to convict for a criminal offense." *State v. Smith*, 362 N.C. 583, 592, 669 S.E.2d 299, 305 (2008). In establishing the quantum of corroborating evidence necessary to support a defendant's confession, our Supreme Court announced the following in *State v. Parker*:

> We adopt a rule in non-capital cases that when the State relies upon the defendant's confession to obtain a conviction, it is no longer necessary that there be independent proof tending to establish the *corpus delicti* of the crime charged if the accused's confession is supported by substantial independent evidence tending to establish its trustworthiness, including facts that tend to show the defendant had the opportunity to commit the crime.
>
> We wish to emphasize, however, that when independent proof of loss or injury is lacking, there must be *strong* corroboration of *essential* facts and circumstances embraced in

> the defendant's confession. Corroboration of insignificant facts or those unrelated to the commission of the crime will not suffice. We emphasize this point because although we have relaxed our corroboration rule somewhat, we remain advertent to the reason for its existence, that is, to protect against convictions for crimes that have not in fact occurred.

315 N.C. 222, 236, 337 S.E.2d 487, 495 (1985).

Here, defendant's confession was adequately supported by corroborating evidence. Mr. Emmanuel testified that defendant was in the area of the victims' trailer and truck during the day, and Mr. Emmanuel did not observe any lawful owners in the vicinity when defendant "peeped" around the trailer. After Detective Sanchez listened to defendant's confession, and defendant had instructed a third party to bring the missing items back to his home, Detective Sanchez retrieved the stolen property described by defendant. Since this evidence offered by the State showed that defendant's confession was trustworthy and that defendant had the opportunity to commit the crime, the State's reliance on defendant's confession in this case was proper. *Parker*, 315 N.C. at 236, 337 S.E.2d at 495.

Contrary to defendant's claim that his confession lacked any indication that he did not have permission to enter the trailer or the truck, Detective Sanchez testified without objection that defendant claimed that he "broke into" the trailer and the truck. Viewing this evidence in the light most favorable to the State under our standard of review, it is apparent that defendant's confession provided the jury with adequate grounds to conclude that

he entered the trailer and the truck without consent. Thus, the trial court did not err in submitting the charges of felonious breaking and entering and felonious breaking and entering of a motor vehicle to the jury.

Moreover, based on this conclusion, we also hold that the felonious breaking and entering charge properly supported defendant's felonious larceny conviction. Section 14-72 of our General Statutes provides that the crime of larceny is a felony when the larceny is committed during the commission of a breaking and entering pursuant to section 14-54. N.C.G.S. § 14-72(b)(2). Given that the breaking and entering charge was properly submitted to the jury, we conclude that it satisfied the requirements of N.C.G.S. § 14-72(b)(2). These arguments are overruled.

II.

Defendant argues that the charge of felonious larceny should have been dismissed where the State did not offer evidence regarding the ownership element, and his confession did not address this essential element. We disagree.

"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). The crime of larceny is a felony when committed in the course of a breaking and entering. N.C.G.S. § 14-72(b)(2). It is well-established that "the indictment in a larceny case must allege a person who has a property interest in the

property stolen and that the State must prove that that person has ownership, meaning title to the property or some special property interest." *State v. Greene*, 289 N.C. 578, 584, 223 S.E.2d 365, 369 (1976). "If the person alleged in the indictment to have a property interest in the stolen property is not the owner or special owner of it, there is a fatal variance entitling defendant to a nonsuit." *Id.* at 585, 223 S.E.2d at 370.

Defendant cites several cases in his brief in which this Court and our Supreme Court have reversed convictions of felonious larceny when the evidence offered at trial showed that someone other than the person listed in the indictment had a recognized interest in the subject property. *See*, *e.g.*, *State v. Craycraft*, 152 N.C. App. 211, 567 S.E.2d 206 (2002) (felonious larceny conviction reversed where evidence showed that landlord had no property interest and landlord was named in the indictment). However, defendant's reliance on these cases is misplaced, because the evidence adduced by the State in this case unequivocally supports the indictment on the issue of ownership.

The indictment alleged that the stolen property belonged to Geronimo Hernandez Romez, Bruno Garcia, and Pedro Garcia Villegaz. Detective Sanchez's testimony, in recalling what defendant said at the police station, established that Pedro owned the truck missing the stereo system. Detective Sanchez also testified that he returned the stolen property to Bruno Garcia and Pedro Garcia Villegaz after he established that they were the proper owners. Doris Tart, the owner of Tart's Mobile Home Park, testified that

the trailer defendant entered was rented to Geronimo Hernandez Romez.

This evidence, in the light most favorable to the State, clearly supports the indictment alleging that Geronimo Hernandez Romez, Bruno Garcia, and Pedro Garcia Villegaz were the owners of the stolen property. Thus, there exists no fatal variance in the record between the indictment and the evidence offered at trial, and the State presented sufficient evidence concerning the element of ownership on the charge of felonious larceny. This argument is overruled.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not err in submitting the charges of felonious breaking and entering, felonious larceny, and felonious breaking and entering of a motor vehicle to the jury. Therefore, we hold that there was no error in the jury's verdict.

No error.

Judges ELMORE and JACKSON concur.

Report per Rule 30(e).