IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1028

Filed: 6 August 2019

Forsyth County, Nos. 16 CRS 4707, 57967

STATE OF NORTH CAROLINA

v.

DWUAN RASHAWN BYRD, Defendant.

Appeal by defendant from judgment entered 10 October 2017 by Judge Richard L. Doughton in Forsyth County Superior Court. Heard in the Court of Appeals 22 July 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Jessica V. Sutton, for the State.

Irons & Irons, P.A., by Ben G. Irons II, for defendant-appellant.

BERGER, Judge.

Dwuan Rashawn Byrd ("Defendant") appeals from judgment entered upon his convictions for obtaining property by false pretenses, misdemeanor possession of stolen property, and attaining the status of an habitual felon. Because the State presented sufficient evidence that employees of Cash America Pawn were actually deceived by Defendant's misrepresentation, we find no error.

Factual and Procedural Background

On the morning of August 20, 2016, Zachary Brown ("Brown") discovered that his mountain bike had been stolen. The night before, he had stored the bike in the back of a friend's car parked in an open lot. When he came back in the morning, the car windows were broken, and the bike was missing. Brown had recently purchased the bike for more than $1,200.00, and had retained the receipt, which included the bike's serial number. Brown called law enforcement. Investigating officers with the Winston-Salem Police Department entered the bike's serial number into CJLEADS.

That same day, Defendant brought a mountain bike to a Cash America Pawn store in Winston-Salem, North Carolina. Defendant pawned the bike for $400. A pawn ticket was created for the loan, listing Dwuan Byrd as the customer, and was signed by "D. Byrd." The ticket recorded the serial number of the bike, as well as Defendant's address, state ID number, gender, race, date of birth, and height. The general terms and conditions of the pawn ticket explicitly stated: "The pledger of this item attests that it is not stolen, has no liens or encumbrances, and is the pledgor's to sell or pawn . . . ."

On August 29, 2016, Corporal M. D. Griffith ("Corporal Griffith") of the Winston-Salem Police Department received an alert through CJLEADS that a bike with a serial number matching that of Brown's bike had recently been pawned at

Cash America Pawn. Corporal Griffith went to the pawnshop, took pictures of the bike, and confirmed by the serial number that it was Brown's bike.

Video of the August 20, 2016 transaction confirmed that Defendant had pawned the bike. Corporal Griffith took a picture of the video screen showing Defendant at the counter with the bike at his side. Corporal Griffith recovered the bike from the pawn shop and returned it to Brown. Defendant was arrested and subsequently indicted for obtaining property by false pretenses, felonious possession of stolen goods, and attaining habitual felon status.

Defendant was tried on October 9, 2017 in Forsyth County Superior Court. At the close of the State's evidence, the trial court denied Defendant's motion to dismiss. The jury found Defendant guilty of obtaining property by false pretenses, misdemeanor possession of stolen property, and attaining the status of an habitual felon. The trial court consolidated Defendant's convictions into a single judgment and sentenced him as an habitual felon to 72 to 99 months in prison.

Defendant appeals, arguing that the trial court erred in denying his motion to dismiss the charge of obtaining property by false pretenses. Specifically, Defendant contends there was no evidence to show that employees of Cash America Pawn were actually deceived. We disagree.

Standard of Review

This Court reviews denials of motions to dismiss *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). A motion to dismiss for insufficient evidence should be denied if there is "substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455, *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000) (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Smith*, 186 N.C. App. at 62, 650 S.E.2d at 33 (citation omitted). Moreover, we view all evidence admitted in the light most favorable to the State, giving the State the benefit of all reasonable inferences. *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992).

Analysis

The essential elements of the crime of obtaining property by false pretenses are: "(1) a false representation of a subsisting fact or a future fulfillment or event, (2) which is calculated and intended to deceive, (3) which does in fact deceive, and (4) by which one person obtains or attempts to obtain value from another." *State v. Cronin*, 299 N.C. 229, 242, 262 S.E.2d 277, 286 (1980) (citation omitted); *see also* N.C. Gen. Stat. § 14-100(a) (2017). Because Defendant only challenges the third element, we will solely address the issue of whether employees of Cash America Pawn were in fact deceived by Defendant's misrepresentation.

Defendant contends that there was no evidence to show that employees of Cash America Pawn were actually deceived, and that the State's evidence only proves a misrepresentation. In support of that contention, Defendant argues that the offer of $400 for a bike valued at $1,800 by the pawn shop manager demonstrates that the manager believed the bike was stolen. Additionally, Defendant contends, the fact that the manager failed to proactively alert the police shows that he was not actually deceived by Defendant. Defendant also asserts that, because the manager had every reason to suspect the bike was not owned by Defendant but did not alert the police, the manager "made a business decision to accept the bike for a meager sum in the hope that he could make a profit and not be detected," and "reverted to cooperation with police" only when confronted by Corporal Griffith.

The relatively low offer for the bike does not reasonably lead to the conclusion that the pawnshop manager knew the bike was stolen. Defendant provides no evidence to support the argument that the manager made an offer that is disproportionate to the bike's estimated value *because* he knew it was a stolen property. In fact, the manager testified that he offered $400 for the bike "to see what kind of reaction [he] would get." The testimony, when viewed in the light most favorable to the State, permits a reasonable inference that the manager set the initial offer at $400 as a business strategy to allow more room for bargaining. Therefore, Defendant's argument is without merit.

Defendant also cites to this Court's opinion in *State v. Simpson*, 159 N.C. App. 435, 583 S.E.2d 714, *aff'd per curiam*, 357 N.C. 652, 588 S.E.2d 466 (2003), to support his contention that the manager would have informed the police had he actually been deceived. In *Simpson*, the pawnshop owner suspected that items he received from the defendant were stolen property and called the Sheriff's Department to confirm his suspicions. *Id.* at 439, 583 S.E.2d at 716-17. A panel of this Court held the owner's actions were evidence that he had in fact been deceived. *Id.*

Defendant argues that because a pawnshop owner's call to police indicating suspicion is evidence of deceit, inaction by the manager in this case indicates his knowledge that the bike was stolen. However, the Court in *Simpson* did not hold that a proactive alert to police was a necessary condition for a finding of deception. Rather, *Simpson* stands for the proposition that "evidence that a victim is suspicious of a seller's representation as to ownership does not preclude the charge from surviving a motion to dismiss." *State v. Hallum*, 246 N.C. App. 658, 666, 783 S.E.2d 294, 300, *disc. rev. denied*, 368 N.C. 919, 787 S.E.2d 24 (2016).

Moreover, our Supreme Court has held that the completed transaction is itself evidence that a defendant's misrepresentation deceived employees of the pawnshop. *See Cronin*, 299 N.C. at 238, 262 S.E.2d at 283 ("If the false pretense caused the victim to give up his property, it logically follows that the property was given up because the victim was in fact deceived by the false pretense."). This Court followed

Cronin in *State v. Hallum*. In *Hallum*, the defendant sold stolen scrap metal to the victim company, during which he misrepresented himself as the lawful owner of the metal he was selling. *Hallum*, 246 N.C. App. at 660, 665, 783 S.E.2d at 297, 299. On appeal, the defendant argued that actual deception did not occur, because even if he signed the transaction form that pledged rightful ownership, there was no proof that the company employees believed his representation. *Id*. at 664-65, 783 S.E.2d at 299. The Court reasoned that defendant's false representation caused the company to pay for the metal. *Id*. at 666, 783 S.E.2d at 300. The Court thus held that a reasonable inference of deception could be drawn from the circumstances. *Id*.

Here, Defendant signed a pawn ticket misrepresenting that he was the rightful owner of the bike. By signing the ticket, Defendant stated that the item pawned was not stolen and was legally owned by the pledgor. Employees of Cash America Pawn then gave defendant $400 for the bike, completing the transaction. Viewing the evidence in the light most favorable to the State, we conclude that, as in *Hallum*, it can be reasonably inferred from these circumstances that Defendant's misrepresentation induced employees of Cash America Pawn to give him $400, in reliance upon the assertion of Defendant that he had the right to pawn or sell the bike. Thus, the employees of Cash America Pawn were actually deceived.

Defendant further asserts that there was no convincing evidence that he was the person who brought the bike into the pawnshop, which falls within the sphere of

the second *Fritsch* factor. Defendant concedes, however, that the pawn ticket identified him as the pledgor of the bike and that Corporal Griffith identified him as the person in the video of the transaction. This is sufficient evidence that defendant was the perpetrator of the offense.

Accordingly, we hold that the trial court did not err in denying Defendant's motion to dismiss the charge of obtaining property by false pretenses.

NO ERROR.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).