

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-670

Filed: 19 May 2020

Catawba County, Nos. 15 CRS 5016–17; 18 CRS 3249

STATE OF NORTH CAROLINA

v.

THOMAS BLAKE SEAGLE

Appeal by defendant from judgments entered 7 November 2018 by Judge Lisa C. Bell in Catawba County Superior Court. Heard in the Court of Appeals 4 March 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Alexander H. Ward, for the State.

Dunn, Pittman, Skinner & Cushman, LLC, by Rudolph A. Ashton, III, for defendant.

DIETZ, Judge.

Defendant Thomas Blake Seagle appeals his conviction and sentence for stealing a truck, driving it to a secluded nearby driveway, and leaving it there with the keys inside. Seagle argues that there was insufficient evidence to convict him of misdemeanor larceny and possession of a stolen vehicle; that his indictment for

attaining habitual felon status was defective; and that the trial court committed plain error by not instructing on the lesser-included offense of unauthorized use of a motor vehicle.

We reject these arguments. First, although there was some competing evidence, the State presented substantial evidence of all essential elements of the offenses, including evidence that Seagle stole the truck without intending to return it. Second, under our precedent, the stand-alone habitual felon indictment complied with the Habitual Felons Act and was valid. Finally, the trial court did not err, and certainly did not commit plain error, by declining to instruct on a lesser-included offense not requested by Seagle when the State's evidence established all the elements of the greater offense. Accordingly, we find no error in the trial court's judgments.

Facts and Procedural History

Wayne Willis and his fiancée, Dixie Simpson, lived in an apartment behind Wayneo's Silver Bullet, a Catawba County nightclub owned by Willis. On 27 September 2015, Simpson saw Defendant Thomas Blake Seagle in the Silver Bullet parking lot trying to open the doors of cars and trucks parked there.

As Simpson watched from her apartment, Seagle got into an unlocked Ford F-150 truck that belonged to Willis. Simpson had not seen Seagle before and did not believe Willis gave him permission to use the truck.

STATE V. SEAGLE

Opinion of the Court

Simpson reported the truck as stolen and law enforcement officers arrived to investigate. The officers retrieved surveillance footage showing Seagle driving the truck out of the parking lot and turning off the highway onto an unpaved driveway nearby. That driveway extended to a house more than fifty feet from the highway. Law enforcement officers later found the truck in that driveway with the keys still inside. According to an investigating officer, Seagle left the truck “off the roadway to where you’d kind of have to look and see” because “[y]ou wouldn’t be able to see it just in passing.”

Later that day, Seagle returned to the Silver Bullet parking lot and retrieved his moped, which he had left there. Seagle rode to a convenience store across the street where law enforcement officers apprehended him. Seagle admitted to taking the truck and leaving it in the nearby driveway. He explained that he borrowed the truck to buy a birthday cake and some toilet paper because it was raining and he did not want to use his moped.

On 2 November 2015, Seagle was indicted for felony larceny. In a separate indictment, he was charged with attaining habitual felon status. Nearly two years later, on 10 July 2017, the State obtained a superseding indictment that added another felony charge, possession of a stolen motor vehicle.

Seagle’s case went to trial. The jury found Seagle guilty of misdemeanor larceny, possession of a stolen vehicle, and attaining habitual felon status. The trial

court arrested judgment on the misdemeanor larceny charge and sentenced Seagle to 67 to 93 months in prison. Seagle appealed the judgments against him, including the arrested judgment for misdemeanor larceny.¹

Analysis

I. Motion to dismiss

Seagle first argues that the trial court erred by failing to dismiss the larceny and possession of a stolen vehicle charges for insufficiency of the evidence.

We review 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). A trial court properly denies a motion to dismiss if there is "substantial evidence" that the defendant committed each essential element of the charged offense. *Id.* "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.*

The essential elements of larceny are that the defendant "(1) took the property of another; (2) carried it away; (3) without the owner's consent; and (4) with the intent to permanently deprive the owner of the property." *State v. Allen*, 193 N.C. App. 375, 380, 667 S.E.2d 295, 299 (2008).

¹ Some arrested judgments are appealable; some are not. *State v. Reeves*, 218 N.C. App. 570, 575–76, 721 S.E.2d 317, 321–22 (2012). Here, the trial court appears to have arrested judgment on the misdemeanor larceny charge because, although entering judgment on both might not raise constitutional (that is, double jeopardy) concerns, this Court has recognized that "our General Assembly did not intend to punish an individual for receiving or possession of the same goods that he stole." *State v. Stroud*, 252 N.C. App. 200, 216, 797 S.E.2d 34, 46 (2017). When judgment is arrested in this situation, the arrested judgment is appealable. *Reeves*, 218 N.C. App. at 576, 721 S.E.2d at 322.

Seagle first argues that there was insufficient evidence that Willis owned the truck, and thus insufficient evidence of the first larceny element. We disagree. The State presented testimony from Willis's fiancée that Willis owned the truck, evidence that Willis was listed on the truck's insurance, and evidence that Willis identified the truck as his when police recovered it. Under our precedent, that is substantial evidence of the first element of larceny. *See State v. Bost*, 55 N.C. App. 612, 616, 286 S.E.2d 632, 635 (1982).

Next, Seagle challenges the fourth element of larceny, arguing that he only intended to borrow the truck rather than steal it. But when a thief abandons property after stealing it, "he puts it beyond his power to return the property and shows a total indifference as to whether the owner ever recovers it." *State v. Barts*, 316 N.C. 666, 690, 343 S.E.2d 828, 844 (1986). From this abandonment, a factfinder may infer an intent to permanently deprive an owner of his property. *Id.* at 690, 343 S.E.2d at 843–44.

Here, Seagle left the truck in a secluded driveway not easily visible from any public road and where one "wouldn't be able to see it just in passing." To be sure, as Seagle points out, the spot where he left the truck was quite close to the Silver Bullet, where he stole the truck. But that does not change the abandonment analysis. *Id.* at 690, 343 S.E.2d at 844; *State v. Kemmerlin*, 356 N.C. 446, 474, 573 S.E.2d 870, 890 (2002). The State presented substantial evidence that Seagle left the truck behind

and showed a “total indifference” to whether the owner recovered it. That is sufficient evidence of the fourth element of larceny.

Seagle also challenges the sufficiency of the evidence for the possession of a stolen vehicle charge. But, importantly, he acknowledges that his argument rests entirely on his challenge to the larceny elements—he contends that “if there was insufficient evidence of larceny in the first place, there was also insufficient evidence that the vehicle was stolen,” which is an essential element of the possession of a stolen vehicle offense. As explained above, the State presented substantial evidence of the larceny offense and, thus, substantial evidence of this element of possession of a stolen vehicle as well. Accordingly, the trial court did not err by denying Seagle’s motion to dismiss.

II. Habitual felon conviction

Seagle next argues that his habitual felon conviction should be vacated because the triggering felony conviction—for possession of a stolen vehicle—was a charge added through a superseding indictment many months after the initial substantive indictment and accompanying habitual felon indictment. We reject this argument.

The Habitual Felons Act codified at N.C. Gen. Stat. §§ 14-7.1–14-7.6 “allows for the indictment of a defendant as a habitual felon if he has been convicted of or pled guilty to three felony offenses.” *State v. Blakney*, 156 N.C. App. 671, 674, 577 S.E.2d 387, 390 (2003). “The Habitual Felons Act requires two separate indictments,

the substantive felony indictment and the habitual felon indictment, but does not state the order in which they must be issued.” *Id.* Instead, what matters is that, “in advance of the judicial proceeding,” there is both an underlying indictment alleging some new felony offense and a separate habitual felon indictment that alleges three or more prior predicate felony convictions and satisfies the “notice and procedural requirements” of the Habitual Felons Act. *Id.* at 675, 577 S.E.2d at 390.

That is the case here. Seagle does not dispute that the habitual felon indictment complied with the notice requirements under N.C. Gen. Stat. § 14-7.3 and that it alleges three predicate felony convictions, all of which occurred many years before Seagle’s trial in this case. Moreover, before trial, Seagle had more than six months’ notice of the superseding substantive indictment that added the felony possession of a stolen vehicle charge to the other triggering felonies in that underlying indictment. Finally, the habitual felon indictment stated that it was triggered by felony offenses occurring “on or about” 27 September 2015, the date that, according to the underlying indictment, Seagle allegedly committed felony possession of a stolen vehicle. **{R 6, 10}** Thus, under *Blakney*, the habitual felon indictment was not defective and the trial court did not err by entering judgment against Seagle as a habitual felon.

III. Lesser-included offense instruction

Finally, Seagle argues that the trial court erred by failing to instruct the jury

STATE V. SEAGLE

Opinion of the Court

on unauthorized use of a motor vehicle, a lesser-included offense of the larceny charge. N.C. Gen. Stat. § 14-72.2(a). Seagle concedes that he did not raise this issue at trial and we therefore review it only for plain error. *State v. Lawrence*, 365 N.C. 506, 518, 723 S.E.2d 326, 334 (2012).

“For error to constitute plain error, a defendant must demonstrate that a fundamental error occurred at trial.” *Id.* Our Supreme Court has emphasized that we should invoke the plain error doctrine “cautiously and only in the exceptional case” where the consequences of the error “seriously affect[] the fairness, integrity or public reputation of judicial proceedings.” *Id.*

“An instruction on a lesser-included offense must be given only if the evidence would permit the jury rationally to find defendant guilty of the lesser offense and to acquit him of the greater.” *State v. Millsaps*, 356 N.C. 556, 561, 572 S.E.2d 767, 771 (2002). A defendant is not entitled to an instruction on the lesser-included offense if the State fully satisfies its burden of proving each element of the greater offense and “there is no evidence to negate those elements other than defendant’s denial that he committed the offense.” *State v. Smith*, 351 N.C. 251, 267–68, 524 S.E.2d 28, 40 (2000).

Here, Seagle contends that he was entitled to an instruction on unauthorized use of a motor vehicle because there was evidence that he merely “borrowed” the truck without Willis’s permission, rather than taking it with the intent never to return it.

But even in the light most favorable to Seagle, the evidence shows that Seagle could have returned the truck to the Silver Bullet when he went back to retrieve his moped but he did not do so, leaving the truck abandoned in a location only he knew. Thus, the State presented substantial evidence of every element of the larceny offense including the intent element, and Seagle offered no counter-evidence for the lesser-included offense “other than defendant’s denial that he committed the offense.” *Id.* As a result, the trial court did not err by declining, on the court’s own initiative, to instruct the jury on the lesser-included offense of unauthorized use of a motor vehicle.

In any event, this alleged error certainly cannot rise to the level of plain error. There are many situations in which defendants choose not to request an instruction on a lesser-included offense. This, in turn, means there is nothing inherently unjust in the trial court’s decision to instruct the jury—without objection from the defendant—solely on the charges expressly contained in the indictment. Even if we thought this to be error (and we do not), it is simply not the sort of “exceptional case” where the consequences of the error “seriously affect[] the fairness, integrity or public reputation” of the criminal justice system. *Lawrence*, 365 N.C. at 518, 723 S.E.2d at 334. We thus find no error, and certainly no plain error, on this issue.

Conclusion

We find no error in the trial court’s judgments.

NO ERROR.

STATE V. SEAGLE

Opinion of the Court

Judges BERGER and BROOK concur.

Report per Rule 30(e).