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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-824

No. COA22-254

Filed 6 December 2022

Mecklenburg County, Nos. 19CRS13134-36, 19CRS13138

STATE OF NORTH CAROLINA

v.

DONALD KEITH PATTERSON, Defendant.

Appeal by defendant from judgment entered 8 October 2021 by Judge Casey Viser in Mecklenburg County Superior Court. Heard in the Court of Appeals 21 September 2022.

Attorney General Joshua H. Stein, by Assistant Attorney General Jodi Privette Carpenter, for the State-appellee.

Assistant Public Defender Max Edward Ashworth, III, for defendant-appellant.

GORE, Judge.

¶ 1 Defendant appeals the judgment entered against him on 8 October 2021 upon the jury's verdict. Defendant was convicted of felony larceny from the person, felony breaking and entering a motor vehicle, and misdemeanor larceny. Defendant then entered a guilty plea for habitual felon status and received an active prison term of

77 to 105 months. Defendant orally and timely appealed the judgments. We discern no error.

I.

¶ 2 Defendant first engaged the victim, Adam Baltimore at a stop light, by offering Adam $100 if he helped him get his locked keys from his car. Defendant was in his car, in the lane next to Adam's car. Adam ignored defendant and continued to drive to his destination at an apartment complex to deliver food (Adam works for a food delivery service); defendant continued in his car behind Adam. At the apartment complex, Adam left his phone and wallet in the car and left the car unlocked while he delivered the food.

¶ 3 When Adam returned, he testified defendant was parked behind Adam's car, which prevented Adam from leaving. Defendant emerged from his car and told Adam if he did not go with defendant to an ATM (across the street in the Common Market) and get him $30, defendant would smash Adam's windshield in just like defendant's smashed windshield. Adam noticed a woman was in the back seat of defendant's car. Adam testified he was fearful for his safety and did not know if defendant had a gun, so he complied.

¶ 4 Defendant followed Adam as he drove across the street to the Common Market with the ATM. Defendant then followed Adam into the store and stood nearby while Adam took out $30 from the ATM. Adam realized $100 was missing from his wallet

at that moment, which was in his wallet when he started his shift around 3:00 p.m. Adam then handed the money to defendant when they left the store and defendant left in his car. Adam took pictures of defendant and his car as defendant drove away and then called the police. Adam testified the duration of his encounter with defendant was approximately 10 to 15 minutes total. While Adam waited for the police, he realized his car had been rummaged through, and testified he did not notice this on his way from the apartments to the store. Defendant was arrested on 11 June 2018.

II.

¶ 5 Defendant argues the trial court erred by denying his motion to dismiss all charges for insufficiency of the evidence. We disagree.

¶ 6 We review de novo the trial court's denial of a motion to dismiss for insufficient evidence. *State v. Southerland*, 266 N.C. App. 217, 219, 832 S.E.2d 168, 170 (2019). This Court may consider the "matter anew and freely substitute[] its own judgment for that of the lower tribunal." *Id.* (citation omitted). When ruling on a motion to dismiss, the lower court must decide if the State presented "substantial evidence" for every element of the charged offenses and for the defendant's identity to properly deny the motion. *Id.* "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Bullard*, 312 N.C. 129, 160, 322 S.E.2d 370, 387 (1984) (citation omitted). It is within the trial court's

purview, as a "question of law," to decide whether the evidence is substantial. *State v. Stephens*, 244 N.C. 380, 384, 93 S.E.2d 431, 433 (1956).

¶ 7 The court must view the evidence "in the light most favorable to the State, and the State is entitled to every reasonable inference to be drawn from the evidence." *Bullard*, 312 N.C. at 160, 322 S.E.2d at 387–88. "[C]ontradictions and discrepancies do not warrant dismissal of the case—they are for the jury to resolve." *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649, 653 (1982). "If there be any evidence tending to prove the fact in issue, or which reasonably conduces to its conclusion as a fairly logical and legitimate deduction, and not merely such as raises a suspicion or conjecture in regard to it, the case should be submitted to the jury." *Stephens*, 244 N.C. at 383, 93 S.E.2d at 433 (citation omitted). "It is immaterial whether the substantial evidence is circumstantial or direct, or both." *Id.* The trial court's duty is to determine if the evidence is substantial enough to send the case to the jury, and it is for the jury to decide if the evidence proves "guilt beyond a reasonable doubt." *Id.* at 384, 93 S.E.2d at 433.

A.

¶ 8 Defendant argues there is insufficient evidence for the felony breaking and entering a motor vehicle and misdemeanor larceny convictions because there is no evidence he entered the vehicle and took $100 from the victim's wallet. We disagree.

¶ 9 "The State must prove . . . five elements beyond a reasonable doubt" for the offense of "breaking and entering a motor vehicle" to convict the defendant per Section 14-56. *State v. McDowell*, 217 N.C. App. 634, 636, 720 S.E.2d 423, 424 (2011) (citation omitted); *see* N.C. Gen. Stat. § 14-56 (2018). These five elements are: "(1) there was a breaking or entering by the defendant; (2) without consent; (3) into a motor vehicle; (4) *containing goods, wares, freight, or anything of value*; and (5) with the intent to commit any felony or larceny therein." *McDowell*, 217 N.C. App. at 636, 720 S.E.2d at 424 (emphasis in original) (citation omitted). Defendant is challenging the first element, a breaking and entering by the defendant.

¶ 10 The State presented evidence Adam left his wallet in the unlocked car, he returned to find defendant blocking Adam's car, and defendant demanded Adam go to an ATM at a specified market to get $30. Adam testified he had $100 in his wallet around 3 p.m. but when he went into the market to withdraw $30, he discovered the money missing. Upon returning to his car, he realized his car had been rummaged through. These facts taken together raise sufficient evidence in the State's favor to deny a motion to dismiss and allow the jury to resolve the questions of fact for the breaking and entering a motor vehicle offense.

¶ 11 Defendant further contests the sufficiency of the evidence for the misdemeanor larceny count claiming no money was found on defendant. Larceny is a crime under common law in which the State must prove the following elements: "(1) taking the

property of another; (2) carrying it away; (3) without the owner's consent; and (4) with the intent to deprive the owner of the property permanently." *State v. Wilson*, 154 N.C. App. 686, 690, 573 S.E.2d 193, 196 (2002) (citations omitted). The intent element is often proved through inferences drawn from circumstantial evidence rather than direct evidence. *State v. Arnold*, 264 N.C. 348, 349, 141 S.E.2d 473, 474 (1965).

¶ 12 Defendant appears to be arguing the doctrine of recent possession. The "doctrine of recent possession" creates a "presumption of fact" that the defendant is guilty when the stolen item is found on the defendant's person. *State v. Bell*, 270 N.C. 25, 30, 153 S.E.2d 741, 745–46 (1967). However, this doctrine is not a requirement for proving the defendant committed larceny. *See Wilson*, 154 N.C. App. at 690, 573 S.E.2d at 196.

¶ 13 In the present case, the larceny conviction was for stolen money. Money is easily expendable and rarely identifiable to a specific owner. Here, defendant was arrested days after the incident. The existence of money, or lack thereof, found on defendant does not amount to insufficient evidence such that this Court should overturn a denied motion to dismiss. Adam left his wallet in his unlocked car and found defendant blocking his car when he returned to his car. Adam discovered the money was missing when he arrived at the ATM. These facts taken as a whole and

viewed in the light most favorable to the State, are sufficient to withstand a motion to dismiss and send the question to the jury for it to weigh the evidence.

¶ 14 Defendant cited to *State v. McKinney* and *State v. Milligan* as analogous and distinguishable from the case at hand. *Milligan*, 192 N.C. App. 677, 666 S.E.2d 183 (2008); *McKinney*, 25 N.C. App. 283, 212 S.E.2d 707 (1975). However, this Court is unconvinced by defendant's analysis. While this Court determined there was insufficient evidence to withstand a motion to dismiss in *McKinney*, the reasoning for such outcome differs from the case at hand. *McKinney*, 25 N.C. App. at 287, 212 S.E.2d at 710. In *McKinney*, the defendant's charges of "breaking and entering and larceny" were based upon the stolen tools and guns from the victim's residence that were relocated to an "embankment" on the side of a public road. *Id.* at 284–85, 212 S.E.2d at 708. The only link to the defendant was his physical location near the stolen goods at the time of arrest. *Id.* at 286, 212 S.E.2d at 709.

¶ 15 Whereas, in the case at hand, defendant was in proximity to the stolen money throughout the encounter with Adam when the money went missing, when Adam's car was rummaged through, and when he threatened Adam to surrender additional money from an ATM. While it may be possible, inferentially speaking, that the woman seen in the backseat of defendant's car participated in or committed the crimes, that is not a question for this Court in determining sufficiency of the evidence. Instead, such an inference is one for the jury to weigh and decide.

¶ 16 Defendant distinguished the present case from *Milligan* on the basis the defendant in that case possessed the stolen goods, and the victim immediately recognized the tampering with his property. 192 N.C. App. at 678, 666 S.E.2d at 185. Whereas in this case, there is no evidence the stolen money was in defendant's possession and Adam did not recognize his car was rummaged through until after defendant drove away. However, as previously stated, possession of the stolen goods is not a requisite element for larceny. Nor does the delay in Adam's recognition of the break-in to his car and missing money negate the State's presented circumstantial evidence as substantial enough to withstand dismissal. The State's presented circumstantial evidence was sufficient to meet the elements of breaking and entering, larceny, and withstand a motion to dismiss.

B.

¶ 17 Defendant next argues there was insufficient evidence for the felony larceny from the person conviction because the victim handed the $30 to defendant, which was a form of consent rather than a taking. We disagree.

¶ 18 A felony larceny from the person differs from simple larceny by an additional element. *See State v. Hull*, 236 N.C. App. 415, 418, 762 S.E.2d 915, 918 (2014). The additional element requires the stolen property be taken from the victim's "presence and control." *State v. Barnes*, 345 N.C. 146, 149, 478 S.E.2d 188, 190 (1996). Our Supreme Court previously stated this means "the property stolen must be in the

immediate presence of and under the protection or control of the victim *at the time the property is taken*." *Id.* (emphasis in original) (citation omitted). "[A] key element of larceny is that the property be wrongfully taken without the owner's consent. If the property was initially obtained with the consent of the owner, then there can be no larceny." *State v. Kelly*, 75 N.C. App. 461, 464, 331 S.E.2d 227, 230 (1985). Further, while larceny by trick is a means of committing a larceny, it is not a "crime separate and distinct from common law larceny," but instead, it is another way a defendant acquires possession of stolen property. *State v. Harris*, 35 N.C. App. 401, 402, 241 S.E.2d 370, 371 (1978).

¶ 19 The crux of defendant's argument for the felony larceny from a person conviction centers around the idea of consent. Under defendant's interpretation of the facts, Adam consented to the taking by withdrawing the money from the ATM and then handing it to defendant.

¶ 20 This is a creative interpretation of the law but would be strange if this Court applied such interpretation for larceny. The State presented evidence that Adam weighed much less than defendant, was afraid something bad would happen if he did not comply, and that he did not know if defendant had a gun. Defendant threatened to smash in Adam's car if he did not comply. Defendant had pinned in Adam's car so he could not drive until he complied. Defendant followed Adam to the Common Market, into the Common Market, and stood at a close distance to ensure Adam

withdrew the money from the ATM. While it may have been reasonable to scream and seek help, a person under distress does not always make reasonable choices. Even though Adam technically did take out the money and "give" it to defendant, given the circumstantial evidence presented by the State, the giving was not a consent, but rather an acquiescence out of distress and fear for one's safety. Additionally, as soon as defendant was a distance from Adam, Adam immediately called the police to report the theft. This circumstantial evidence taken in the light most favorable to the State was substantial enough to survive a motion to dismiss.

III.

¶ 21 For the foregoing reasons, the trial court did not err in denying the motion to dismiss all charges for insufficient evidence.

NO ERROR.

Judges ARROWOOD and HAMPSON concur.

Report per Rule 30(e).