IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-468

Filed 19 September 2023

Randolph County, No. 17CRS051759

STATE OF NORTH CAROLINA

v.

BRETT ANDREW ANTHONY LINK

Appeal by Defendant from judgment entered 13 September 2022 by Judge Lee Gavin in Randolph County Superior Court. Heard in the Court of Appeals 29 August 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Tirrill Moore, for the State-Appellee.

W. Michael Spivey for Defendant-Appellant.

PER CURIAM.

Defendant appeals from judgment entered upon a jury verdict of guilty of felony habitual larceny. Defendant argues that the trial court erred by denying his motion to dismiss because there was insufficient evidence that Defendant acted in concert with another to commit larceny. We find no error.

I. Background

Defendant and Philip Baker arrived together in a yellow car driven by Defendant at the Walmart in Randleman, North Carolina, at 4 a.m. on 11 April 2017. When the two arrived, it was still dark and there were few cars in the parking lot. Defendant parked the car in a handicap parking spot. Only one entrance to the store was open given the early hour. Defendant got out of the car wearing a white, short-sleeved collared shirt and an arm brace on his right wrist. He entered the store and then returned to the car with a mobility cart for Mr. Baker, who is disabled.

Defendant entered the store in front of Mr. Baker and went alone to the outside Garden Center. The Garden Center exit was not open, but the area was accessible through the store. Defendant examined the exit gate before returning inside. Meanwhile, Mr. Baker drove the mobility cart alone through the store.

The two men went to the automotive area, where Defendant took a car battery off the shelf and placed it in the basket of Mr. Baker's mobility cart. The two men then moved to a different aisle, where Defendant placed a large box in the basket of the mobility cart. After placing the box in the basket, the two men talked for a few moments and Defendant pointed towards the end of the store where the Garden Center was located. The two men proceeded together for a short time, with Defendant again pointing his finger towards the Garden Center, before they separated again. Mr. Baker drove alone to the Garden Center where he waited in front of the exit gate

for a few minutes before driving around the Garden Center.

While Mr. Baker was in the Garden Center, the store's security camera videotaped a yellow car driving around the exterior of the store. After Mr. Baker had been waiting in the Garden Center for a few minutes, a man wearing what looked to be a white shirt and an arm brace on his right wrist appeared outside of the Garden Center gate. The man opened the gate for Mr. Baker, and Mr. Baker drove through the gate with the items in his mobility cart. The items were never paid for.

Officer J.C. Clark of the Randleman Police Department received a report on 21 April 2017 regarding the larceny. Clark met with the store's loss prevention representative and reviewed the video captured on the morning of 11 April 2017. The loss prevention officer gave Clark a receipt showing that a car battery and a pressure washer worth a total of $446.76 had been stolen. Clark recognized Defendant from the security footage because he had previously interacted with Defendant. Another officer similarly recognized Mr. Baker.

Defendant was indicted for habitual larceny pursuant to N.C. Gen. Stat. § 14-72(b)(6) on 9 July 2018. The case came on for trial on 12 September 2022. Defendant stipulated to his prior larceny convictions that were alleged in the indictment.

At trial, Defendant moved to dismiss the charge based on insufficient evidence

at the close of the State's evidence. That motion was denied. Defendant presented no additional evidence and again moved to dismiss based on insufficient evidence. His motion was again denied. The trial court instructed the jury that Defendant could be convicted based on the theory of acting in concert. The jury found Defendant guilty, and the trial court entered judgment sentencing Defendant to 20 to 33 months of imprisonment.

Defendant appealed. Because Defendant failed to comply with the requirements for filing a valid notice of appeal, Defendant filed a petition for writ of certiorari to review the judgment. In our discretion, we grant Defendant's petition. *See* N.C. R. App. P. 21(a)(1).

II. Discussion

Defendant argues that the trial court erred by denying his motion to dismiss because the State presented insufficient evidence that Defendant was acting in concert with Mr. Baker to commit larceny.

"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) (citation omitted). "Under a de novo standard of review, this Court considers the matter anew and freely substitutes its own judgment for that of the trial court." *State v. Walters*, 276 N.C. App. 267, 270, 854 S.E.2d 607, 610 (2021) (quotation marks and citation omitted).

When reviewing challenges to the sufficiency of evidence, the Court "must view the evidence 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) (citation omitted). "All evidence, competent or incompetent, must be considered. Any contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered." *Walters*, 276 N.C. App. at 271, 854 S.E.2d at 610 (citation omitted). Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve. *Benson*, 331 N.C. at 544, 417 S.E.2d at 761.

"Upon [the] defendant's motion for dismissal, the question for the Court is whether 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 (2000) (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Stone*, 323 N.C. 447, 451, 373 S.E.2d 430, 433 (1988) (citation omitted).

Defendant was convicted of felony habitual larceny pursuant to N.C. Gen. Stat. § 14-72(b)(6). "The essential elements of larceny are: (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). Larceny is a Class H felony, regardless of the value of the property taken, if the defendant has been convicted of four prior misdemeanor larceny convictions. N.C. Gen. Stat. § 14-72(a), (b)(6) (2022). Because Defendant stipulated to his prior convictions, the State was only required to prove the essential elements of larceny.

The State's theory was that Defendant acted in concert with Mr. Baker to commit larceny. Defendant acknowledges that the evidence offered by the State was "sufficient to permit a jury to find that Mr. Baker left [the store] without paying for" the stolen items.

"To act in concert means to act together, in harmony or in conjunction one with another pursuant to a common plan or purpose." *State v. Joyner*, 297 N.C. 349, 356, 255 S.E.2d 390, 395 (1979). While it is not "necessary for a defendant to do any particular act constituting at least part of a crime in order to be convicted of that crime under the concerted action principle[,]" the defendant must be "present at the scene of the crime and the evidence [must be] sufficient to show he is acting together with another who does the acts necessary to constitute the crime pursuant to a common plan or purpose to commit the crime." *Id.* at 357, 255 S.E.2d at 395.

In the present case, when viewed in the light most favorable to the State, substantial evidence was presented that Defendant acted in concert with Mr. Baker pursuant to a common plan to commit larceny. Defendant and Mr. Baker arrived at Walmart together in a yellow car; Defendant was wearing a white, short-sleeved collared shirt and a brace on his right wrist; the two men communicated with each other throughout their time in the store; Defendant went to the Garden Center and examined the exit gate but did not pick up anything in the Garden Center; Defendant helped put both a car battery and a large box into Mr. Baker's cart; soon after Defendant and Mr. Baker separated inside the store, a yellow car was seen on the security camera driving around outside the store; a man wearing what looked to be a white shirt and a brace on his right wrist appeared outside the Garden Center gate; the man opened the gate for Mr. Baker; and Mr. Baker drove through the gate with the items in his mobility cart.

This is substantial evidence to support that Defendant acted in concert with Mr. Baker pursuant to a common plan or purpose to commit larceny. Accordingly, the trial court did not err by denying Defendant's motion to dismiss.

III. Conclusion

Because the State presented substantial evidence that Defendant acted in concert with another to commit larceny, the trial court did not err by denying Defendant's motion to dismiss.

NO ERROR.

Panel consisting of:

Chief Judge STROUD and Judges ARROWOOD and COLLINS.

Report per Rule 30(e).