IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-374

Filed 2 January 2024

Buncombe County, Nos. 21-CRS-84572; 21-CRS-87417-19

STATE OF NORTH CAROLINA

v.

SCOTT EVERETT FORD

Appeal by defendant from judgments entered 1 July 2022 by Judge Alan Z. Thornburg in Buncombe County Superior Court. Heard in the Court of Appeals 17 October 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Brenda Menard, for the State.

Devereux & Banzhoff, PLLC, by Andrew B. Banzhoff, for defendant-appellant.

THOMPSON, Judge.

Defendant appeals his convictions stemming from charges of felony obstruction of justice, reckless driving, failure to give required information after a crash involving property damage, felony animal cruelty, and the lesser-included offense of simple assault for which defendant was found guilty by a jury. Defendant contends that the

trial court erred by (1) failing to dismiss the charge of felony cruelty to animals, (2) failing to properly instruct the jury as to the charge of felony cruelty to animals, and (3) failing to dismiss the charge of felony obstruction of justice. For the reasons discussed below, we find that there was no error and we affirm the trial court's judgments.

I. Factual Background and Procedural History

Defendant was indicted on 4 October 2021 for the charges of felony obstruction of justice, failure to provide required information following a crash involving property damage (hit/run), reckless driving, felony animal cruelty, and assault with a deadly weapon with intent to kill for an incident which occurred on 17 May 2021, involving Claude Alex McPherson and his cat, Thomas. The evidence at trial tended to show the following:

McPherson and Thomas had become well-known figures in the Asheville area. In May of 2021, McPherson had been living in the area for approximately three years during which he had become known for panhandling. The cat, Thomas, went everywhere with McPherson, often riding on his shoulder or back, or in a stroller that had been donated to McPherson in January of 2021 specifically for Thomas. If Thomas was not being carried on McPherson's shoulder, the cat was riding in the stroller, and Thomas had earned McPherson the nickname of "Cat Man."

Defendant is the owner of Classic Event Rentals, an event rental company in Asheville. The business supplies customers with "tables, chairs[, and] tents" and

owns between 16 and 20 vehicles for that purpose. On 17 May 2021, defendant was notified that an employee of Classic Event Rentals had gotten one of the white F-150 trucks owned by the company stuck while on a job in Waynesville. Defendant went to assist, but upon his arrival the truck was no longer stuck and Kelby Manos, another employee of the business, was in the truck. Defendant then drove the truck, with Manos as his passenger, back to Classic Event Rentals in Asheville. On the way back to the business, defendant took Exit 44 off of Interstate I-40.

McPherson panhandled frequently at Exit 44 off of Interstate 40 and on 17 May 2021 was there at the side of the intersection of Smokey Park Highway and the Exit 44 off-ramp. Madison Stewart, an eyewitness to the incident at issue in this case, testified that on 17 May 2021 she had taken Exit 44 from Interstate 40 on the way to her grandfather's house in Buncombe County and was stopped for the light at the top of the off-ramp when she heard "fussing." She observed McPherson with his stroller in the field and saw a white Ford truck pulling off to the left into the grassy area at the intersection. Stewart stated that the truck drove in a circle around the field, "ran over the buggy with the cat inside," and then the truck drove in front of the other traffic and turned left toward Asheville. Using her cell phone, Stewart was able to take video of most of the incident, including the truck's impact with the stroller.

Joseph Schlenk, another eyewitness who was stopped at the traffic light on the Exit 44 off-ramp on 17 May 2021 between 4:30 and 5:00 p.m., testified that as he sat at the intersection, he noticed a vehicle "moving very quickly" to his left on the

shoulder of the ramp, and that the vehicle abruptly veered to the left and executed a wide, sweeping turn. Schlenk stated that the truck did not hit McPherson but "kind of drove past him" and "went right over the baby carriage." After taking photos of the incident with his cell phone, Mr. Schlenk called 911. Kelby Manos, as a passenger in the truck defendant was driving during the time the incident was taking place, testified that he "was looking down, and the next thing I know I seen [sic] I was in a field." Manos further stated that after realizing the truck was in a field, he then noticed the cat.

Defendant asserted that when he stopped at the light at Exit 44 on 17 May 21, defendant "decided to harass McPherson on the side of the road" by "flick[ing] a golf ball" at McPherson. Defendant's testimony at trial was that he went "through this intersection. You mess with me every time I go through asking for money, whatever it might be. So I'm going to mess with you a little bit and I'm going to chuck this in your general direction." McPherson testified that he dodged the golf ball and when he looked in the direction from which the projectile had come, he saw a truck "barrelling [sic] down on" him, and that the truck was going "at least 25 miles an hour" when it hit the stroller holding Thomas. Defendant stated that after he threw the golf ball, he saw McPherson pick up the ball, grin at defendant, and start to come toward defendant's truck. Afraid that McPherson might throw the golf ball back at the truck and damage the vehicle, defendant testified, "I guess at this moment I thought I had two options . . . . hit this homeless man or [ ] hit a carriage. . . . I don't want to hurt

anyone. So . . . that's when I hit the carriage with Thomas inside of it." Defendant also asserted at trial that he was not aware of the cat being in the stroller.

According to McPherson, Thomas was "screaming bloody murder" immediately after defendant's truck hit the stroller and when McPherson removed Thomas from the stroller's harness, the cat jumped on to McPherson's shoulder. McPherson stated that Thomas was shaking after the collision, that the cat was examined by a veterinarian, and that the veterinarian found that Thomas did not have any broken bones or visible physical injuries, although the doctor advised McPherson that Thomas might suffer "ill effects later" and showed some concern about the cat's shaking. McPherson asserted that he could never get Thomas back in the stroller after the incident and based on Thomas's behavior subsequent to the event, McPherson had "no doubt" that Thomas had experienced some kind of nonphysical harm.

The incident was initially investigated by Officer Rebecca Williams of the Asheville Police Department. On 17 May 2021, in response to numerous 911 calls received regarding the event, Officer Williams was dispatched to the scene and spoke with McPherson with whom she was familiar due to McPherson's history of panhandling. Officer Williams obtained the license plate number of the truck and determined that the vehicle was registered to Classic Event Rentals. When Officer Williams questioned defendant about the identity of the driver of the vehicle, defendant responded that he was "trying his best" to find the information.

Detective Adam Roach was subsequently assigned to the matter on 18 May 2021, conducted a telephone interview with defendant and asked defendant who was driving the truck, and defendant told the detective "that he wasn't sure." Detective Roach then went to Classic Event Rentals where he spoke to defendant and Caleb Anglin, a manager at the business. Defendant and Anglin explained to Detective Roach the process the company used to assign vehicles to employees. Defendant did not offer to provide the detective with any documentation to identify the driver of the truck.

On 21 May 2021, after obtaining a search warrant, Detective Roach returned to Classic Event Rentals and offered defendant "one last chance to give us some kind of documentation" as to the driver of the truck. Defendant showed Detective Roach spreadsheets that he removed from the company's recycle bin reflecting vehicle assignments; there were records for every day of that week except 17 May 2021. Defendant's cell phone was also seized during the execution of the warrant, and a photograph of the 17 May 2021 spreadsheet of vehicle assignments was found on the phone. The photo was dated 17 May 2021 and time-stamped 11:08 a.m. Defendant testified that he did not recall having the photo of the spreadsheet on his cell phone.

On 7 January 2022, defendant filed a motion for a bill of particulars with regard to the charge of felony obstruction of justice, and the court granted defendant's motion on 4 April 2022. The State subsequently filed a bill of particulars on 7 April 2022. On 13 May 2022, defendant filed a motion to dismiss the animal cruelty charge

to which the State filed a response on 17 May 2022. In that motion, defendant contended that the indictment on the charge of felony cruelty to animals by means of torture failed to allege a violation of N.C. Gen. Stat. § 14-360(b) because the indictment failed to allege the specific acts by defendant that could constitute torture and because the indictment alleged only a single act, while torture, in defendant's view requires allegations of a course of conduct. The trial court denied defendant's motion on 17 May 2022. The case was set for trial on that date but continued due to the illness of a witness.

Defendant's case was tried on 27 June 2022. Defendant filed an amended motion to dismiss the charge of felony cruelty to animals which was denied by the trial court and which contained the same bases as his original motion to dismiss with the addition that defendant alleged that the legislature, in enacting the cruelty to animals criminal statute, "did not intend to supplant the common law." At the close of the State's evidence, defendant moved to dismiss the charges against him, arguing in connection to the animal cruelty charge the same positions as in his written pretrial motions and further asserting that, even if the indictment could support the charge, the evidence at trial did not show any long-term physical harm to the cat.

On 1 July 2022, defendant was found guilty by a jury of felony obstruction of justice, reckless driving, failure to give required information after a crash involving property damage, felony animal cruelty, and the lesser-included offense of simple assault. Defendant was sentenced to two consecutive terms of eight to nineteen

months of imprisonment, and the trial court suspended the sentences upon condition that defendant serve two four-month consecutive split sentences of imprisonment and undergo a 24-month term of supervised probation. Defendant appealed in open court.

II. Analysis

On appeal, defendant argues error by the trial court by its failure to dismiss the charge of felony cruelty to animals, to properly instruct the jury as to the charge of felony cruelty to animals, and to dismiss the charge of felony obstruction of justice. We find no merit in any of defendant's contentions.

A. Motion to dismiss felony cruelty to animals charge

Defendant first contends that the trial court erred in denying his motions to dismiss the felony cruelty to animals charge on the basis that the indictment alleged, and the evidence at trial showed, only a single malicious act by defendant while torture as defined under the statute requires a course of conduct. We disagree.

To the extent defendant alleges that the indictment is fatally defective, as appears from his pretrial motion to dismiss, the question is whether the indictment "fails to state some essential and necessary element of the offense of which the defendant is found guilty." *State v. Ellis*, 368 N.C. 342, 344, 776 S.E.2d 675, 677 (2015) (citation and quotation marks omitted). Upon a motion to dismiss for insufficiency of the evidence

> the trial court must consider the evidence in the light most favorable to the State, drawing all reasonable inferences in the State's favor. Any contradictions or conflicts in the

> evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered. The trial court must decide only whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. When the evidence raises no more than a suspicion of guilt, a motion to dismiss should be granted. However, so long as the evidence supports a reasonable inference of the defendant's guilt, a motion to dismiss is properly denied even though the evidence also permits a reasonable inference of the defendant's innocence.

State v. Miller, 363 N.C. 96, 98–99, 678 S.E.2d 592, 594 (2009) (citations and internal quotations marks omitted). A trial court's ruling on each type of motion to dismiss is reviewed de novo on appeal. *See, e.g.*, *State v. Falana*, 254 N.C. App. 329, 332, 802 S.E.2d 582, 584 (2017) and *State v. Crockett*, 368 N.C. 717, 720, 782 S.E.2d 878, 881 (2016).

In enacting the animal cruelty statute at issue here, the General Assembly has directed that "[i]f any person shall maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill, or cause or procure to be tortured, mutilated, maimed, cruelly beaten, disfigured, poisoned, or killed, any animal, every such offender shall for every such offense be guilty of a Class H felony." N.C. Gen. Stat. § 14-360(b) (2021). A definitions subsection of the statute further provides, *inter alia*, that "the words 'torture', 'torment', and 'cruelly' include or refer to any act, omission, or neglect causing or permitting unjustifiable pain, suffering, or death" and "the word

'maliciously' means an act committed intentionally and with malice or bad motive." *Id.* § 14-360(c).

Beginning with his arguments concerning the animal cruelty indictment, defendant first suggests that this Court's decision in *State v. Gerberding*, 237 N.C. App. 502, 508, 767 S.E.2d 334, 338 (2014) controls our understanding of the animal cruelty statute as far as the appropriate definition of "torture." Defendant contends that "this Court specifically rejected the defendant's argument in *Gerberding* that the definition of *malice* as used in homicide cases could not also apply to felony animal cruelty cases" and further that

> [m]uch like the defendant in *Gerberding*, the State herein argued that the term "torture" as used in the statute provides the exclusive definition of that term. Also, much like the defendant in *Gerberding*, the State argued to the trial court that the term "torture" as used in homicide cases could not also apply to felony animal cruelty cases. This Court's prior decision in *Gerberding* forecloses both of these contentions.

Thus, defendant appears to suggest that this Court's discussion in *Gerberding* of the proper definition of "malice" as regards a felony animal cruelty charge should be imported to assist our understanding of the term "torture" as used in the same statutory subsection. Defendant misreads the cited decision, and more importantly, he fails to read the plain language of the animal cruelty statute.

This Court in *Gerberding* undertook its analysis of how the word "malice" as used in N.C. Gen. Stat. § 14-360 should be interpreted *because the statute itself does*

not explicitly define the term.[1] In contrast, the statute does define "torture." For that reason, in this appeal we need not construe the term; we are merely to read and apply the plain language set forth by the General Assembly. S*mith Chapel Baptist Church v. City of Durham*, 350 N.C. 805, 811, 517 S.E.2d 874, 878 (1999) (" 'When the language of a statute is clear and unambiguous, there is no room for judicial construction, and the courts must give it its plain and definite meaning.' ") (quoting *Lemons v. Old Hickory Council, BSA, Inc.*, 322 N.C. 271, 276, 367 S.E.2d 655, 658 (1988)).

For the same reason, we reject defendant's suggestion that we adopt the definition of torture noted in *State v. Crawford*, 329 N.C. 466, 479, 406 S.E.2d 579, 586 (1991)—"the course of conduct by one or more persons which intentionally inflicts grievous pain and suffering upon another for the purpose of punishment, persuasion or sadistic pleasure" to hold that felony animal cruelty by means of torture requires a "course of conduct" rather than a single act as defendant was alleged to have committed. The quoted section of *Crawford* concerned a charge of first-degree murder by torture, not animal cruelty, *see id.*, and moreover, the animal cruelty statute explicitly defines "torture" in the singular: "any *act*, *omission*, or neglect causing or permitting unjustifiable pain, suffering, or death." N.C. Gen. Stat. § 14-360(c) (emphasis added). "It is a well-settled principle of statutory construction that where

[1] As noted above, the statute does define "maliciously"—albeit somewhat unhelpfully—as "an act committed intentionally and with malice or bad motive." N.C. Gen. Stat. § 14-360(c).

a statute is intelligible without any additional words, no additional words may be supplied." *State v. Camp*, 286 N.C. 148, 151, 209 S.E.2d 754, 756 (1974).

Turning to defendant's sufficiency of the evidence argument, we need not address the portion of his argument premised upon an assertion that torture requires a course of conduct, having overruled that position above. Defendant also contends that the State failed to produce substantial evidence that he acted intentionally and knowingly or that his act of driving over the carriage in which the cat was situated was not torture because the cat did not suffer lasting physical harm. Again, we disagree.

As already noted, the animal cruelty statute provides that "the word 'intentionally' refers to an act committed knowingly and without justifiable excuse, while the word 'maliciously' means an act committed intentionally and with malice or bad motive." N.C. Gen. Stat. § 14-360(c). Defendant refers the Court to *State v. Aguilar-Ocampo*, 219 N.C. App. 417, 428, 724 S.E.2d 117, 125 (2012) for the proposition that "knowingly" means having actual knowledge or "sufficient 'relation to,' 'association with,' 'control over,' and his 'direction of' the [thing] provided 'actual information,' " and he then represents that the evidence here was insufficient that defendant knew the cat was in or likely to be in the carriage when he drove his truck over it.

As a mental state, intent is often proven with circumstantial as opposed to direct evidence. *See, e.g.*, *State v. Sexton*, 357 N.C. 235, 238, 581 S.E.2d 57, 58 (2003).

Here, there was substantial circumstantial evidence which would permit a juror to reasonably infer that defendant knew that McPherson was nearly certain to have his cat with him when defendant drove his truck off the roadway toward McPherson and struck the carriage.

We agree that defendant denied knowing that McPherson was known as the "cat man" or that he was aware that McPherson would likely have had his cat with him when defendant commenced his harassment and assault of McPherson. However, defendant, who had been running his business in the area for 21 years, also testified, in reference to Exit 44—the site of the incident and the location where McPherson regularly panhandled—"I go through this intersection. *You mess with me every time I go through asking for money*, whatever it might be." (Emphasis added). Moreover, defendant testified that when he received a telephone call from law enforcement about the report of a truck from his business trying "to run over and kill a homeless man," one of defendant's immediate thoughts was "I thought the man was not injured. The cat was not injured. So in my mind was it's kind of like this thing might just go away. . . ." When defendant's trial counsel asked him whether "at this point [defendant] even [knew] about the cat," defendant responded, "I mean, I guess I didn't learn about the cat until—I can't tell you exactly when I learned about the cat a hundred percent it would probably be." This testimony could support a reasonable inference by the jury that defendant had previously encountered or at least seen McPherson at his typical panhandling location, as it suggests that

defendant's behavior during the incident was the result of built-up irritation caused by McPherson having asked defendant for money repeatedly.

Further, testimony from multiple other witnesses,[2] including a law enforcement officer, was to the effect that: (1) McPherson was always accompanied by his cat when panhandling at the location in question; (2) this knowledge was shared on social media; and (3) until January 2021, some four months prior to the incident at issue, when McPherson obtained a carriage for the cat, the cat sat on McPherson's shoulder thus leading to the nickname "Cat Man" for McPherson. In addition, Manos, the passenger in defendant's truck at the time of the incident, testified that when he realized that defendant had driven the truck off the road and into a field, the next thing he noticed was the cat.

It is not our task to consider whether this evidence proves defendant intentionally ran over a carriage containing a cat or whether it would permit a jury to acquit defendant of felony animal cruelty. Instead, we conclude that this evidence, taken together in the light most favorable to the State, giving the State the benefit of every inference that can be drawn from this evidence and disregarding any unfavorable evidence, was sufficient such that "a reasonable mind might accept [it] as adequate to support [the] conclusion" that defendant knew or should have known

[2] In addition, State's witness Schlenk testified without objection from defendant that when he called 911 to report defendant's attempt to run McPherson down with his truck, the dispatcher inquired about the cat even though Schlenk had only referred to "the homeless man" at the intersection.

that McPherson had the cat with him in the carriage. *Miller*, 363 N.C. at 98–99, 678 S.E.2d at 594.

Defendant next argues that the motion to dismiss should have been allowed because "the State is required to demonstrate that Thomas the cat suffered 'unjustifiable pain or suffering.' " In support of this contention, defendant notes that McPherson testified that a veterinarian to whom he took the cat found no physical injuries and that a law enforcement officer who responded to the incident testified that the cat appeared "ok" to her. He then cites a common law case which he contends held that "injuries to an animal that did not result in death were not recognized as a basis for sustaining a criminal charge. *State v. Manuel*, 72 N.C. 201, 203 (1875)."

Defendant next suggests that physical harm is required to sustain a felony conviction under the animal cruelty statute. We find the State's response on this point highly instructive:

> In 1881, the General Assembly passed the animal cruelty statute, making it a crime to, *inter alia*, "torture . . . or cause or procure to be . . . tortured . . . any animal . . . ." 1881 Rev. Code ch. 368, § 1. The word "torture" was defined "to include every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted." *Id.* at § 15 (emphasis added). This language remained largely the same until 1998, when the General Assembly made significant changes to the statute. As relevant here, the legislature removed the word "physical" from before "pain, suffering, or death." 1998 N.C. Sess. Laws 1192–93. It remained a crime to "torture . . . or cause or procure to be tortured . . . any animal . . . ." *Id.* at 1192. The definition of torture, however, was revised to "include or refer to any act, omission, or neglect causing or

> permitting unjustifiable pain, suffering, or death," without reference to the word "physical." *Id.* at 1193.

Where a statute has been amended as was done with the animal cruelty statute here, we assume it was either to change or clarify the act's previous effect. *See Colonial Pipeline Co. v. Neill*, 296 N.C. 503, 509, 251 S.E.2d 457, 461 (1979) ("In construing a statute with reference to an amendment, it is presumed that the Legislature intended either (1) to change the substance of the original act or (2) to clarify the meaning of it."). We therefore hold that no physical harm or injury to an animal is required to sustain a conviction under N.C. Gen. Stat. § 14-360(c).

In considering whether there was evidence in this case which could permit a reasonable inference of pain or suffering by the cat, we note McPherson's testimony that the cat carriage flipped over after being struck by the truck driven by defendant, the cat was "screaming bloody murder" and shaking immediately after the impact, and further that the cat thereafter refused to get into the carriage, became "jumpy and irate," and stayed awake for several days, atypical behavior for the cat. The jury here also had the benefit of viewing the videorecording of the truck striking the carriage made by the eyewitness Madison Stewart in assessing whether the cat inside might have experienced pain or suffering during and after the collision. While the weight and credibility to be given to this evidence was for the jury's determination, the evidence was sufficient for the trial court to submit the question of the cat's pain and suffering to the jurors.

B. Defendant's request for a special jury instruction on torture

Defendant next assigns error to the trial court's denial of his written request for a jury instruction incorporating the common law definition of torture as developed in the homicide context in the pattern jury instructions for the offense of animal cruelty. In light of our holding that the specific definition of torture provided by the animal cruelty statute itself controls over any definition of torture derived in other contexts, we overrule this argument.

C. Motion to dismiss the obstruction of justice charge

In his final appellate argument, defendant contends that the trial court erred in denying his motion to dismiss the charge of felony obstruction of justice by means of the destruction of a document concerning who drove which vehicles and when on behalf of defendant's business. We disagree.

Defendant was indicted on one count of felony common law obstruction of justice, an offense which is defined as "to do any act which prevents, obstructs, impedes or hinders public or legal justice . . . . with deceit and intent to defraud." *State v. Ditenhafer*, 373 N.C. 116, 128, 834 S.E.2d 392, 400 (2019) (citations and internal quotation marks omitted). *See also State v. Wright*, 206 N.C. App. 239, 242, 696 S.E.2d 832, 835 (2010) (holding that " '[w]here, as alleged here, a party deliberately [acts] to subvert an adverse party's investigation of [potential wrongdoing or a crime]' " that person obstructs justice) (quoting *Henry v. Deen*, 310

N.C. 75, 87–88, 310 S.E.2d 326, 334–35 (1984))[3] (first alteration in original). For example, in *Ditenhafer*, the defendant appealed from convictions on, *inter alia*, two counts of felony obstruction of justice—one for failing to report that the defendant's husband was sexually abusing the defendant's minor child and the other for denying access to the child victim by law enforcement officers and department of social services representatives who were investigating reports of the abuse. 373 N.C. at 123, 834 S.E.2d at 397. Even in the absence of "pending proceedings, the Supreme Court [has] held that '[the falsification, alteration, or destruction of records] by [a] defendant[ ], if found to have occurred, would be acts which obstruct, impede or hinder public or legal justice and would amount to the common law offense of obstructing public justice.' " *Wright*, 206 N.C. App. at 241, 696 S.E.2d at 835 (quoting *Henry*, 310 N.C. at 87, 310 S.E.2d at 334; *see also Grant v. High Point Reg'l Health Sys.*, 184 N.C. App. 250, 254–55, 645 S.E.2d 851, 854–55 (2007) (applying *Henry* to uphold a claim for common law obstruction of justice where a defendant destroyed medical records to prevent the plaintiff from obtaining the Rule 9(j) certification required for a medical malpractice action), *disc. review improvidently allowed*, 362 N.C. 502, 666 S.E.2d 757 (2008).

[3] The issue in *Henry*, a "civil action[ ] for recovery for injury caused by acts committed pursuant to a conspiracy," concerned a common law obstruction of justice claim brought against the medical professional defendants who had tampered with and destroyed portions of medical records in an effort to prevent the plaintiff administrator of an estate from learning the true circumstances surrounding the decedent's death. 310 N.C. at 86, 77, 310 S.E.2d at 334, 328.

In sum, there is no error in denying a motion to dismiss a charge of felony obstruction of justice where there was sufficient evidence that the defendant "(1) unlawfully and willfully (2) obstructed justice by providing false statements to law enforcement officers investigating [a crime] (3) with deceit and intent to defraud." *State v. Cousin*, 233 N.C. App. 523, 531, 757 S.E.2d 332, 339, *disc. review denied*, 367 N.C. 521, 762 S.E.2d 446 (2014) (considering the appeal of a defendant who was charged with felony obstruction of justice after giving eight contradictory written statements regarding his knowledge of a murder which law enforcement officers were investigating). Thus, we consider here whether "the evidence support[ed] a reasonable inference of [ ] defendant's guilt, . . . even [if] the evidence also permits a reasonable inference of the defendant's innocence." *Miller*, 363 N.C. at 99, 678 S.E.2d at 594.

The indictment for obstruction of justice in this case alleged that defendant "unlawfully, willfully and feloniously did obstruct justice by disposing of documentation and information identifying the driver of a motor vehicle, a Ford F150, that was seen intentionally trying to run over another person, Claude Alex McPherson. The offense was done with deceit and intent to defraud." The bill of particulars subsequently filed by the State read:

> That the "documentation and information" recited in the Indictment and referred to later in [d]efendant's Motion for Bill of Particulars and throughout discovery, is the

> document attached as "Exhibit A,"[4] seized from a search of Defendant's phone pursuant to a search warrant.
>
> The "documentation and information" was "disposed" of by way of making it not available to the officers who were executing a search warrant seeking said documentation and information.

Defendant's sole contention on appeal regarding error in the denial of the motion to dismiss this charge is that "[s]ince there was no legal or policy obligation requiring retention of the record at issue, disposing of the records could only be a crime if the destruction occurred to obstruct the investigation which began after 5 p.m. on Monday, May 17, 2021 [the approximate time when defendant drove his truck off the roadway and into a field toward McPherson]." Defendant represents that even in the light most favorable to the State, the evidence at trial[5] would not support an inference by the jury that the document was disposed of at or after that time.

Defendant contends that the evidence adduced at trial demonstrated only that the "spreadsheet" including the information about who was driving which truck on a particular day in the course of defendant's business was that the document was created each morning for purposes of accomplishing the day's assignments and that the paper document was regularly disposed of or destroyed. However, defendant's

---

[4] Defendant stipulates that this reference to "Exhibit A" actually refers to State's Exhibit 16.

[5] According to defendant, "[t]he only evidence that the State presented with regard to the disposition of the document was: (1) that the document was not found in the recycling bin at the time of the search, (2) that a similar document for May 18 was found in the recycling bin on May 21, 2021; and (3) that a picture of the document was later found on the defendant's phone."

recap of the evidence is not in the light most favorable to the State, the standard of review applicable upon a motion to dismiss. *See id.*

A detective with the Asheville Police Department testified that defendant was contacted by law enforcement on 17 May 2021, the day of the incident, about any documentation of the use of defendant's various business vehicles, and a detective visited the following day seeking to obtain that documentation. At that point, in the words of the State,

> [d]espite the fact that the defendant had himself written that very information down the day before and had it easily accessible on his phone, he did not provide or even mention this documentation. Instead, the defendant implied that the information was not documented at all, stating "we just have so many people, we throw keys and tell them to go."

Further, defendant acknowledged that when a detective visited defendant's business again on 21 May 2021 with a search warrant, defendant suggested the dispatch documents as something "that might help this case." On that date, the recycling container at defendant's business contained documentation for consecutive days dating back to 18 May 2021, but not including 17 May 2021.

This testimony, "*in the light most favorable to the State, drawing all reasonable inferences in the State's favor. . . .* [*with a*]*ny contradictions or conflicts in the evidence . . . resolved in favor of the State, and evidence unfavorable to the State . . . not considered*," *Miller*, 363 N.C. at 98, 678 S.E.2d at 594 (emphasis added), supports a reasonable inference by the jury that the 17 May 2021 dispatch document in question

here existed at about 5:00 p.m. on that day when law enforcement first inquired of defendant about it and, in addition—absent an intentional variation from the normal course of events, potentially suggesting deceit or an intent to defraud—would have been available in the recycling bin when the detective visited defendant's business on 18 May 2021 had defendant decided to reveal the existence of these regular business records and their apparently regular placement into the business's recycling container. A juror could also reasonably infer that defendant refused to provide the documentation sought, and even denied that such a regular business record was created, despite knowing that the record existed in the form of a photograph on his phone at all pertinent times given that defendant testified that his business regularly used an application intended for cellular phone usage to store such documents.

Defendant cannot "have it both ways" on this issue. He wishes the Court to note that his business regularly created records documenting what vehicle was to be driven by which employee on a given day—the very item which law enforcement asked him about immediately after the incident at the heart of this case—and that these records were typically destroyed when no longer needed and then suggests that the jury could *only* have inferred that the 17 May 2021 document met this fate even before the end of that day. Yet defendant himself denied the existence of such documentation, including the picture of the same on his cellular telephone, to law enforcement officers investigating an offense which defendant knew he had just

committed.[6] Ultimately, in considering the sufficiency of the evidence upon a motion to dismiss, the credibility of the witnesses' testimony (including defendant's) and the weight to be accorded the evidence at trial is a matter for the jury and not the trial court, or for this Court. *See State v. Hyatt*, 355 N.C. 642, 666, 566 S.E.2d 61, 77 (2002). Here, we hold that the evidence was sufficient to send those questions to the jury because, in the light most favorable to the State, the evidence *could* support a reasonable inference by the jury that the defendant "deliberately destroy[ed] a . . . document to subvert an adverse party's investigation." *Henry*, 310 N.C. at 88, 310 S.E.2d at 334; *Wright*, 206 N.C. App. at 242, 696 S.E.2d at 835.

III. Conclusion

After careful review, we determine that defendant by his appellate arguments has failed to demonstrate error by the trial court in the course of his trial.

NO ERROR.

Judge HAMPSON concurs.

Judge CARPENTER dissents in part by separate opinion.

Report per Rule 30(e).

[6] Even if defendant believed himself innocent of some of the charges he eventually faced, he admitted at trial that he intentionally drove his vehicle off the roadway and struck the cat carriage before driving away from the scene of that collision.

No. COA23-374 – *State v. Ford*

CARPENTER, Judge, dissenting in part.

I respectfully dissent in part from the majority opinion, in which the majority concludes the trial court did not err in failing to dismiss the charge of felony obstruction of justice. Although I largely agree with the majority opinion, I cannot join my colleagues' analysis of the felony obstruction-of-justice issue and write separately to explain my reasoning.

On appeal, Defendant argues the trial court erred in failing to dismiss the felony obstruction-of-justice charge because he was under no legal obligation to retain the spreadsheet at issue, and disposing of the spreadsheet was consistent with his regular business practice. For these reasons, the narrow circumstances alleged in the State's bill of particulars, and the fact that law enforcement obtained a copy of the spreadsheet while executing the first and only search warrant appearing in the record, I agree with Defendant.

On 4 October 2021, the grand jury returned four true bills of indictment for five offenses, including felony obstruction of justice in file number 21 CRS 84572. On 7 January 2022, Defendant moved for a bill of particulars concerning the felony obstruction indictment, requesting additional detail on the State's theory of guilt. Defendant asked the State to identify the specific "documentation and information" allegedly disposed of by Defendant, and to identify the specific acts which the State

alleged constituted "disposal" of the documentation and information. By requesting a bill of particulars, Defendant sought "to be informed of the nature and cause of the accusation" to prepare a defense with the assistance of legal counsel. U.S. CONST. amend. VI; *see State v. Young*, 312 N.C. 669, 676, 325 S.E.2d 181, 186 (1985) (explaining the purpose of a bill of particulars is "to inform defendant of specific occurrences intended to be investigated at trial and to limit the course of the evidence to a particular scope of inquiry").

On 6 April 2022, the Honorable Alan Z. Thornburg granted Defendant's motion for a bill of particulars. On 7 April 2022, the State filed a bill of particulars stating:

> (1) That the "documentation and information" recited in the Indictment, and referred to in Defendant's Motion for Bill of Particulars and throughout discovery, is the document attached [to the bill of particulars] as Exhibit A, seized from a search of Defendant's phone pursuant to a search warrant. This document has previously been provided to defense counsel in discovery.
>
> (2) The "documentation and information" was "disposed" of by way of making it not available to officers who were executing a search warrant seeking said documentation and information.

The State's theory of Defendant's guilt of obstruction is this: Detective Roach executed a search warrant seeking a specific record—the 17 May 2021 spreadsheet; Detective Roach obtained the record in question during the same search; however, because the record was located on Defendant's phone, instead of in the recycling bin where Detective Roach expected to find it, Defendant feloniously obstructed justice.

The plain language of the indictment and the State's bill of particulars begs the question: if Defendant "disposed" of the document, how did the State acquire it? Indeed, the documentation and information could *not* have been disposed of, because the State acquired the document in question while executing the search warrant. The State admits as much in the bill of particulars, acknowledging "the 'documentation and information' . . . is the document attached as Exhibit A, seized from a search of Defendant's phone pursuant to a search warrant."

Under the State's theory, in order for Defendant to have avoided a felony obstruction of justice conviction, he presumably should have turned over the document *before* the search warrant was issued or executed. This is not the law. Whenever law enforcement seeks incriminating information on a person or business, unless the information is provided consensually, the Constitution requires law enforcement to possess probable cause, obtain a search warrant, and lawfully execute the search warrant. U.S. CONST. amend. IV. This is precisely what occurred here: Defendant did not impede law enforcement's investigation; he merely required law enforcement to abide by the Constitution in obtaining the documentation. The record reflects Defendant was approached with the search warrant and cooperated with law enforcement during their search, which yielded the document sought. Therefore, with respect to the documentation and information sought by the State, I would hold Defendant merely acted consistent with the protections set forth in the Fourth Amendment to the United States Constitution, which afford all persons freedom from

compelled self-incrimination and warrantless search and seizure.

My review of the majority's Statement of Facts indicates certain additions and clarifications are warranted. First, Defendant testified, and Detective Roach confirmed, it was not the regular business practice of Classic Event Rentals to retain hard-copy spreadsheets. Next, it is true that Detective Roach initially testified that Defendant "went through his recycle bin for the week and was able to find every day except for the day in question. There was every single day consecutively except for May 17th." Detective Roach immediately clarified, however, that only records from "the 18th on" were found in the recycle bin. Finally, it bears repeating that Defendant was charged with felony obstruction by "disposing of documentation and information" concerning the identity of the driver, *not* by making false or misleading statements to law enforcement.

Therefore, the majority's recitation of the elements of felony obstruction of justice from *State v. Cousin* is inapposite. Again, Defendant was not indicted for felony obstruction based on false statements to law enforcement. Although any act which prevents, obstructs, impedes, or hinders justice may constitute common-law obstruction, *In re Kivett*, 309 N.C. 635, 670, 309 S.E.2d 442, 462 (1983), the State's bill of particulars limited the evidence "to a particular scope of inquiry," *Young*, 312 N.C. at 676, 325 S.E.2d at 186.

Consequently, to uphold Defendant's felony obstruction-of-justice conviction as charged, there must be substantial evidence Defendant unlawfully and willfully

obstructed justice by "disposing of documentation and information" identifying the driver of the F-150 observed attempting to run down McPherson, with deceit and intent to defraud. *See State v. Ditenhafer*, 373 N.C. 116, 128, 834 S.E.2d 392, 400 (2019) ("The elements of common law felonious obstruction of justice are: (1) the defendant unlawfully and willfully; (2) obstructed justice; (3) with deceit and intent to defraud.").

Here, the bill of particulars alleged Defendant committed felony obstruction of justice because the "'documentation and information' was 'disposed of' by way of making it not available to officers who were executing a search warrant seeking said documentation and information." Although the bill of particulars specifies the crime of felony obstruction results from Defendant's conduct *during* the search warrant's execution, the majority considers Defendant's statements and conduct *before* the search warrant was issued. At that time, however, Defendant was under no duty to retain the hard-copy record sought by law enforcement, nor was he obligated to volunteer it and potentially self-incriminate. The evidence is undisputed that Defendant's regular business practice was to dispose of the records close in time to their creation. Thus, at least prior to the first visit from Detective Roach, Defendant had no duty to deviate from his regular business practice and retain the hard-copy record. Even assuming *arguendo* he was, he retained an electronic copy on his phone, which law enforcement later obtained during their search. In each precedential case discussed by the majority, none pertain to a business acting consistent with its

regular practice. Based upon the evidence of record, if Defendant deviated from his regular business practice, the deviation appears to be preserving a digital copy of the document, thereby permitting law enforcement to obtain the documentation sought while executing the search warrant.

On appeal, our standard of review is the lens through which we view each issue, and my colleagues recite the appropriate one. *See Miller*, 363 N.C. at 98–99, 678 S.E.2d at 594. Although we must consider the evidence in the light most favorable to the State and draw all reasonable inferences in the State's favor, this standard neither requires us to invert constitutional presumptions nor to enforce duties that do not exist under the law.

Considering the evidence in the light most favorable to the State, including the State's bill of particulars, the evidence is insufficient to establish or permit one to reasonably infer that Defendant feloniously obstructed justice by disposing of documentation and information. In fact, even in the light most favorable to the State, the evidence establishes the issue to the contrary—law enforcement actually obtained the document sought during the execution of the search warrant. I cannot agree that Defendant feloniously obstructed justice simply because law enforcement discovered the record in a different form or location than anticipated. Because any evidence of Defendant's guilt of felony obstruction as charged is "seeming or imaginary" rather than "existing and real," I would reverse the felony obstruction-of-justice conviction. *State v. Bradsher*, 382 N.C. 656, 670, 879 S.E.2d 567, 576 (2022); *see also Miller*, 363

N.C. at 99, 678 S.E.2d at 594 ("When the evidence raises no more than a suspicion of guilt, a motion to dismiss should be granted.")

Under the United States Constitution, Defendant is protected from warrantless searches and seizures and from compelled self-incrimination. Accordingly, Defendant was under no obligation to: deviate from his regular business practice; affirmatively assist law enforcement's investigation; submit to a warrantless search or seizure; or self-incriminate. Although Defendant is hardly a sympathetic accused under the circumstances of this case, the law applies equally to all without favor. The majority's analysis drastically exceeds the "particular scope of inquiry" narrowly identified by the State's bill of particulars and the trial court's instruction to the jury. *See Young*, 312 N.C. at 676, 325 S.E.2d at 186. Furthermore, I am concerned that the majority's implicit approval of Defendant's felony obstruction conviction may incentivize prosecutors to be less restrained and transparent with respect to future bills of particulars, thus undermining their "function" for existing. *See id.* at 676, 325 S.E.2d at 186. For these reasons, I respectfully dissent in part.