NO. COA01-1515

NORTH CAROLINA COURT OF APPEALS

Filed: 01 October 2002

STATE OF NORTH CAROLINA

v. Mecklenburg County
Nos. 00 CRS 114716
DAVID LOVE 00 CRS 114717
00 CRS 114718
00 CRS 114719

Appeal by defendant from judgments entered 1 June 2001 by Judge Marcus L. Johnson in Mecklenburg County Superior Court. Heard in the Court of Appeals 30 September 2002.

Attorney General Roy Cooper, by Associate Attorney General Margaret P. Eagles, for the State.

Haakon Thorsen for defendant-appellant.

THOMAS, Judge.

Defendant, David Love, appeals convictions of driving while license suspended, resisting a public officer, possession of a stolen vehicle, and being an habitual felon. He was sentenced to an active prison term of a minimum of 120 months and a maximum of 153 months. For the reasons discussed herein, we find no error.

The State's evidence tends to show that on 23 December 1999, a 1993 Dodge Caravan was stolen as it idled unoccupied outside the owner's apartment in Charlotte, North Carolina. On 28 December 1999, three Charlotte-Mecklenburg Police Department officers saw a

1993 Dodge Caravan leave an area known for high criminal activity. Their check of the vehicle's license plate number through the Division of Motor Vehicles computer system revealed that the vehicle had been reported stolen. The officers activated their blue light and pursued the Dodge Caravan. The driver of the Dodge Caravan, defendant, jumped and ran from the vehicle before it came to a stop. He ignored the officers' commands to stop. Defendant subsequently gave a statement that a teenager named "J.J." had handed him the keys to the vehicle approximately one hour earlier and asked him to go to the store and purchase "blunts" or cigars for him. The officer who received the statement also testified, without objection, that defendant told him the vehicle "looked hot, meaning stolen."

Defendant did not present any evidence.

By defendant's sole assignment of error, he argues the trial court erred by denying his motion to dismiss the charge of possession of a stolen vehicle. We disagree.

A motion to dismiss requires the court to determine whether there is substantial evidence (1) of each essential element of the charged offense and (2) of perpetration of the offense by the defendant. *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). The evidence must be viewed in the light most favorable to the State, giving it the benefit of every reasonable inference that may be drawn from the evidence. *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992). The court is to determine only whether the evidence is sufficient to allow the jury to draw a

reasonable inference of the defendant's guilt of the crime charged. *State v. Earnhardt,* 307 N.C. 62, 67, 296 S.E.2d 649, 652 (1982).

Defendant was charged with violating N.C. Gen. Stat. § 20-106, which reads in pertinent part:

> Any person . . . who has in his possession any vehicle which he knows or has reason to believe has been stolen or unlawfully taken, and who is not an officer of the law engaged at the time in the performance of his duty as such officer shall be punished as a Class H felon.

N.C. Gen. Stat. § 20-106 (1999). To withstand a motion to dismiss a charge of this violation, the State must present substantial evidence to show the defendant (1) possessed a stolen vehicle (2) knowing or having reason to believe that the vehicle had been stolen or unlawfully taken. *State v. Craver*, 70 N.C. App. 555, 559, 320 S.E.2d 431, 434 (1984). Whether the defendant knew or had reason to know that the vehicle was stolen is usually proved by inferences that may be reasonably drawn from the evidence. *State v. Baker*, 65 N.C. App. 430, 436, 310 S.E.2d 101, 107 (1983), *cert. denied*, 312 N.C. 85, 321 S.E. 2d 900(1984). Defendant argues the State failed to present evidence to show he knew or had reason to know the vehicle was stolen.

Viewed in the light most favorable to the State, the evidence shows that defendant made a statement indicating he had reason to believe the vehicle was "hot, meaning stolen." Defendant jumped out of the vehicle and ran while the vehicle was still moving. Flight of an accused is generally recognized as evidence of consciousness of guilt. *State v. Parker*, 316 N.C. 295, 304, 341

S.E.2d 555, 560 (1986). Whether defendant fled because he knew he was driving while his license was suspended, as defendant argues in his brief, as opposed to because he knew he possessed a stolen vehicle, is a question of fact for determination by the jury, taking into consideration the surrounding facts and circumstances. *See State v. Irick*, 291 N.C. 480, 493-95, 231 S.E.2d 833, 842-43 (1977). The trial court properly denied the motion to dismiss.

NO ERROR.

Judges WALKER and BIGGS concur.

Report per Rule 30(e).