NO. COA01-342

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v. Forsyth County
Nos. 00 CRS 28213
00 CRS 50003

EDWARD VAN MCCRAE

Appeal by defendant from judgment entered 16 October 2000 by Judge William Z. Wood, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 24 January 2002.

Attorney General Roy A. Cooper, by Assistant Attorney General Richard G. Sowerby, for the State.

Jeffrey S. Lisson for defendant-appellant.

TIMMONS-GOODSON, Judge.

Edward Van McCrae ("defendant") was charged with robbery with a dangerous weapon, possession of a stolen vehicle and being an habitual felon. The State's evidence at trial tended to show that on 24 April 2000, Armando Martinez's ("Martinez") van was stolen from his home. Martinez testified that he followed the van for some distance and saw another person jump into the vehicle. After losing sight of the van, Martinez notified the Winston-Salem Police Department. Martinez further testified that the van was valued at approximately two-thousand dollars.

Mohammed Saleen ("Saleen"), a convenience store owner,

testified that defendant and a woman came into his store to purchase cigarettes. Defendant then brandished a knife and stated "Stay there or I'll cut your throat." As defendant and the woman left the store, Saleen was able to obtain the license plate number of the van in which they were traveling. Thereafter, Saleen notified the police.

Defendant was subsequently convicted of possession of stolen goods, in violation of N.C. Gen. Stat. § 14-71.1. Defendant was also found to be an habitual felon. From his conviction and resulting sentence, defendant appeals.

In his first assignment of error, defendant contends that the trial court erred by instructing the jury on an offense for which he was not indicted. Specifically, defendant contends that his conviction must be reversed, because he was indicted for possession of a stolen vehicle in violation of N.C. Gen. Stat. § 20-106, however, the jury was instructed and subsequently convicted him of possession of stolen goods in violation of N.C. Gen. Stat. § 14-71.1.

We note initially that defendant failed to raise this issue at trial. We therefore review the alleged error under plain error. Plain error is "'fundamental error, something so basic, so prejudicial, so lacking in its elements that justice cannot have been done, or where [the error] is grave error which amounts to a denial of a fundamental right of the accused.'" *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983)(quoting *United States v.*

McCaskill, 676 F.2d 995, 1002 (4th Cir.), *cert. denied*, 459 U.S. 1018, 74 L. Ed. 2d 513 (1982)). In order to prevail under plain error, defendant must establish that the (1) trial court committed error and that (2) absent the error, the jury would have reached a different result. *State v. Morganherrring*, 350 N.C. 701, 722, 517 S.E.2d 622, 634 (1999).

N.C. Gen. Stat. § 15A-924 (a)(5) (2001) mandates that every bill of indictment contain:

> A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation.

Further, "[a]n indictment or criminal charge is constitutionally sufficient if it apprises the defendant of the charge against him with enough certainty to enable him to prepare his defense and to protect him from subsequent prosecution for the same offense." *State v. Coker*, 312 N.C. 432, 434, 323 S.E.2d 343, 346 (1984).

The elements of felonious possession of stolen property under N.C. Gen. Stat. § 14-71.1 are: "(1) possession of personal property, (2) valued at more than $400.00, [now $1,000.00] (3) which has been stolen, (4) the possessor knowing or having reasonable grounds to believe the property to have been stolen, and (5) the possessor acting with a dishonest purpose. *State v. Bartlett*, 77 N.C. App. 747, 749, 336 S.E.2d 100, 101 (1985). The elements of possession of a stolen vehicle in violation of N.C. Gen. Stat. § 20-106 are: "(1) possession of a vehicle, and (2) the

possessor knowing or having reason to believe the vehicle has been stolen or unlawfully taken." *State v. Craver*, 70 N.C. App. 555, 559, 320 S.E.2d 431, 434 (1984). "A defendant charged with possession of stolen property under N.C. Gen. Stat. § 14-71.1 or possession of a stolen vehicle under N.C. Gen. Stat. § 20-106 may be convicted if the State produces sufficient evidence that defendant possessed stolen property (i.e, a vehicle) which he knew or had reason to believe had been stolen or taken." *State v. Lofton*, 66 N.C. App. 79, 83, 310 S.E.2d 633, 636 (1984).

The indictment in the present case reads as follows:

> The jurors for the State upon their oath present that on or about the date of offense shown and in Forsyth County the defendant named above unlawfully, willfully and feloniously did possess a vehicle, a 1987 Dodge Caravan, N.C. tag being . . . , the personal property of Armando Martinez Hernandez, valued at $4000, which the defendant knew or had reason to know it was stolen or unlawfully taken.

Thus, defendant was indicted under N.C. Gen. Stat. § 20-106.

The trial court instructed the jury that they should return a verdict of guilty if they found that the van was in defendant's possession, that it worth more than one thousand dollars, that it was stolen, and that defendant knew or had reason to know it was stolen. Under the instructions provided by the court, defendant was convicted of possession of stolen property under N.C. Gen. Stat. § 14-71.1. The allegations set forth in the indictment adequately apprised defendant that he was charged with possessing stolen property and the allegations support a conviction under N.C. Gen. Stat. § 14-71.1. Both offenses are punishable as Class H

felonies. Further, the State presented evidence tending to show that on 24 April 2000, Martinez reported to law enforcement officers that his vehicle, which was valued at $2,000, had been stolen. Two days later, a convenience store owner identified defendant as the person who walked into his store, brandished a knife, and stole two cartons of cigarettes. Defendant was later found by law enforcement officers in possession of the vehicle. The evidence clearly tends to prove that defendant possessed the vehicle and such possession was without permission. We therefore hold that the factual allegations in the indictment were sufficient to apprise defendant of the charges against him and support a conviction under N.C. Gen. Stat. § 14-71.1. Furthermore, defendant has failed to carry his burden under a plain error analysis, that absent the error, a different result would have been obtained. This assignment of error is overruled.

In his second assignment of error, defendant contends that the trial court erred by allowing the State, over his objection, to refer to an indictment evincing a prior felony conviction, for the purpose of establishing his status as an habitual felon. We disagree.

Section 14-7.4 of our General Statutes states:

> In all cases where a person is charged . . . with being an habitual felon, the record or records of prior convictions of felony offenses shall be admissible in evidence, but only for the purpose of proving that said person has been convicted of former felony offenses. A prior conviction may be proved by stipulation of the parties or by the original or a certified copy of the court record of the court record. The original or certified copy

> of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein is the same as the defendant before the court, and shall be prima facie evidence of the facts set out therein.

N.C. Gen. Stat. § 14-7.4. In the instant case, the State introduced three certified true copies of court records in establishing prima facie evidence of defendant's three prior felony convictions. Defendant offered no evidence to rebut this evidence. We therefore overrule this assignment of error.

In his third assignment of error, defendant contends that the trial court erred in denying his motion to dismiss his habitual felon charge for the following reasons: (1) a letter written by defendant and contained in the court file in support of a previous conviction was not properly authenticated; and (2) the evidence was insufficient due to inconsistencies in the recording of defendant's name in various court documents. We disagree with defendant's contentions.

"In ruling upon a motion to dismiss, the trial court must examine the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences which may be drawn from the evidence." *State v. Hairston*, 137 N.C. App. 352, 354, 528 S.E.2d 29, 30 (2000). "When a defendant moves for dismissal, the trial court is to determine only whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Vause*, 328 N.C. 231, 236, 400 S.E.2d 57, 61 (1991). "Substantial evidence is such relevant evidence as a reasonable

mind might accept as adequate to support a conclusion." *State v. Lucas*, 353 N.C. 568, 580-81, 548 S.E.2d 712, 721 (2001). If there is substantial evidence of each element of the charged offense and of the defendant being the perpetrator of the offense, the case is for the jury and the motion to dismiss should therefore be denied. *State v. Locklear*, 322 N.C. 349, 358, 368 S.E.2d 377, 383 (1988).

N.C. Gen. Stat. § 8C-1, Rule 901 (a) (2001) of the North Carolina Rules of Evidence provides:

> The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

N.C. Gen. Stat. § 8C-1, Rule 901 (b) (1) and (7) further provides that authentication may be established through (1) "testimony of a witness with knowledge -- that a matter is what is claimed to be" . . . . or (7) by "evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement . . . in any form, is from the public office where items of this nature are kept."

In the instant case, the letter submitted was properly authenticated under Rule 901 (b) (1) and (7) of the North Carolina Rules of Evidence. At trial, the clerk testified that defendant's letter was contained in an official court file maintained in the clerk's office of the superior court. The letter was addressed to the assistant clerk of superior court and was further signed by defendant and contained his birth date. Clearly, the fact that the

letter was contained in defendant's court file, written and signed by defendant, supports the conclusion that the letter was authentic.

Defendant further contends that his habitual felon charge should be dismissed due to the discrepancies in defendant's name on three certified judgments that were entered into evidence to support the habitual felon charge. Defendant specifically points to the fact that the judgment of conviction for one of the felonies was in the name of "Edward V. McCrae," the second, "Edward Van McCrae," and the third, "Van Edward McCrae." Defendant argues that the State failed to present prima facie evidence that the defendant named in the above-stated judgments is the same as the defendant before the court. This argument is without merit.

N.C. Gen. Stat. § 14-7.4 (2001) provides in pertinent part that the "original or certified copy of the court record, bearing the same name as that by which the defendant is charged, shall be prima facie evidence that the defendant named therein, is the same as the defendant before the court."

In the instant case, three certified judgments were introduced at trial to support defendant's habitual felon charge. The first judgment entered 5 June 1997, identified defendant as "Edward V. McCrae," the second judgment entered 20 July 1998, identified defendant as "Edward Van McCrae," and the third judgment entered 17 October 1989, identified defendant as "Van Edward McCrae." We hold that the names on these certified copies satisfy the "same name" requirement of N.C. Gen. Stat. § 14-7.4. *See State v. Petty*, 100 N.C. App. 465, 470, 397 S.E.2d 337, 341 (1990) (holding that for

purposes of N.C. Gen. Stat. § 14-7.4, "Michael Hodge" and "William Michael Hodge" are the same name, and that the documents constituted *prima facie* evidence that defendant was the same defendant before the court). We further note that any discrepancy between the actual age of the defendant at the time of conviction and his age as it appeared on the record of conviction, "goes to the weight of the evidence not its admissibility." *Id.* We therefore hold that the trial court properly denied defendant's motion to dismiss and this assignment of error is overruled.

In his last assignment of error, defendant contends that the trial court erred by not instructing the jury on misdemeanor possession of stolen goods. We disagree.

Misdemeanor possession of stolen goods is a lesser included offense of felonious possession of stolen goods. *See State v. Brantley*, 129 N.C. App. 725, 731, 501 S.E.2d 676, 679 (1998). "[T]he trial court is not required to submit lesser degrees of a crime to the jury 'when the State's evidence is positive as to each and every element of the crime charged and there is no conflicting evidence relating to any element of the charged crime.'" *State v. McKinnon*, 306 N.C. 288, 300-01, 293 S.E.2d 118, 126 (1982) (quoting *State v. Harvey*, 281 N.C. 1, 13-14, 187 S.E.2d 706, 714 (1972)).

In the instant case, there was sufficient evidence in the record to support the conclusion that the value of the vehicle exceeded $1,000.00 and the trial court did not err in failing to instruct the jury on a lesser included offense.

Based on the foregoing, we hold that defendant received a

trial, free from prejudicial error.

No error.

Judges MARTIN and BRYANT concur.

Report per Rule 30(e).