NO. COA01-477

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v. Guilford County
Nos. 00 CRS 23572
GREG PARSON 00 CRS 86976

Appeal by defendant from judgment entered 13 September 2000 by Judge Melzer A. Morgan in Guilford County Superior Court. Heard in the Court of Appeals 24 June 2002.

Attorney General Roy Cooper, by Assistant Attorney General Phillip T. Jackson, for the State.

Public Defender Wallace C. Harrelson, by Assistant Public Defender Wayne T. Baucino, for defendant-appellant.

TIMMONS-GOODSON, Judge.

Defendant Greg Parson was charged with possession of a stolen automobile and having attained the status of habitual felon. The State's evidence tends to show that on or about 5:54 a.m. on 19 April 2000, Deputy Sheriff Randall Shepherd was dispatched to the Whitsett area of Guilford County, North Carolina to investigate reports of a suspicious male subject in the road, when the deputy noticed a Ford Explorer parked behind the Mount Hope Volunteer Fire Department. Upon running the license plate number of the vehicle, Deputy Shepherd discovered that the plate had been reported stolen.

The deputy then exited his vehicle and approached the Explorer to get the Vehicle Identification Number (VIN), which he determined to be 1FMZU63X3YZB69455. Deputy Shepherd had this VIN number checked against the North Carolina Department of Motor Vehicles (DMV) records, however, the VIN number came back as being unregistered.

At this point, Deputy Shepherd returned to his police car and called for a tow truck to take the Explorer to the police impound lot. While the deputy was waiting for the tow truck, he observed a car pull behind the Explorer. Defendant got out of the passenger side of the car and approached the Explorer, with a gas can in his hand. When defendant approached the Explorer as if to put gas into the vehicle, Deputy Shepherd exited his vehicle and approached defendant. The deputy asked defendant if he was out of gas. Defendant replied, "yes." When Deputy Shepherd asked defendant for identification, defendant dropped the gas can and ran. Deputy Shepherd and another sheriff's deputy gave chase, and defendant was apprehended a short distance away. During a search incident to a lawful arrest, deputies found a key to the 2000 Ford Explorer, attached to a key box regularly used by the Green Ford car dealership to keep keys for vehicles maintained on their car lot.

It was subsequently discovered that the Ford Explorer had been stolen from the lot of Green Ford, between early and mid April 2000. The license plate on the Explorer on 19 April 2000 had been stolen from Maurica Lamb on or about 16 April 2000.

Defendant did not present any evidence. A jury found defendant guilty of possession of a stolen vehicle, and defendant

thereafter admitted to having attained the status of habitual felon. The trial court then sentenced defendant to a mitigated sentence of seventy to ninety-three months imprisonment. Defendant appeals.

By his sole assignment of error on appeal, defendant argues that the trial court erred in denying his motion to dismiss. Defendant contends that there was insufficient evidence to show that he knew the Ford Explorer was stolen. We disagree.

"A motion to dismiss is properly denied if 'there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of [that] offense.'" *State v. Wheeler*, 138 N.C. App. 163, 165, 530 S.E.2d 311, 312 (2000)(citations omitted). "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). In ruling upon a motion to dismiss, the court must consider the evidence--direct, circumstantial, or both--in the light most favorable to the State, giving the State the benefit of every reasonable inference arising therefrom. *Id.* "[T]he trial court should be concerned only with the sufficiency of the evidence, not with its weight." *Id.*

To obtain a conviction for possession of a stolen vehicle, the State must provide substantial evidence (1) "that defendant had possession of the stolen car[,]" and (2) "that defendant knew or had reason to know the car was stolen." *State v. Suitt*, 94 N.C.

App. 571, 573, 380 S.E.2d 570, 571 (1989). Since defendant does not take issue with the State's proof as to his "possession of a stolen vehicle," we proceed immediately to the "knowledge" prong of the offense. In *State v. Parker*, our Supreme Court noted that a "defendant's 'guilty knowledge' could be either actual or implied from [the] circumstances[.]" 316 N.C. 295, 303, 341 S.E.2d 555, 560 (1986). The Court went on to state, "[w]e have recognized that an accused's flight is evidence of consciousness of guilt and therefore of guilt itself." *Id.* at 304, 341 S.E.2d at 560; *cf. State v. Murchinson*, 39 N.C. App. 163, 169, 249 S.E.2d 871, 875 (1978), *overruled on other grounds by State v. Wesson*, 45 N.C. App. 510, 263 S.E.2d 298 (1980)(utilizing the doctrine of recent possession to justify denial of a motion to dismiss the charge of possession of a stolen vehicle).

Viewing the evidence in the light most favorable to the State and giving the State every reasonable inference arising therefrom, the evidence tends to show that during the early morning hours of 19 April 2000, defendant was observed by Deputy Shepherd approaching, what was later determined to be, a vehicle recently stolen from the Green Ford car lot, with a gas can. When defendant began to remove the gas cap as if to put fuel into the vehicle, the deputy approached. When the deputy asked defendant for identification, defendant fled. After giving chase and apprehending defendant, Deputy Shepherd found that defendant had in his possession a key to the stolen vehicle -- that key being attached to a key box of the type regularly used by Green Ford to

keep keys for vehicles maintained on their car lot. We conclude that defendant's possession of the stolen vehicle just two weeks after its theft, his flight after the deputy requested identification, along with his possession of a key to the vehicle with the dealership key box attached, is sufficient to permit the reasonable fact-finder to find that defendant knew or should have known that the vehicle in his possession was stolen. Accordingly, the trial court did not err in denying defendant's motion to dismiss.

Having so concluded, we hold that defendant received a fair trial, free from prejudicial error.

No error.

Chief Judge EAGLES and Judge MCCULLOUGH concur.

Report per Rule 30(e).