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NO. COA10-1494
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 09CRS246128-29

DEVAN JAHREYLL WASHINGTON

Appeal by defendant from judgment entered on or about 21 July 2010 by Judge J. Gentry Caudill in Superior Court, Mecklenburg County. Heard in the Court of Appeals 18 July 2011.

Attorney General Roy A. Cooper, III, by Assistant Attorney General G. Mark Teague, for the State.

William D. Auman, for defendant-appellant.

STROUD, Judge.

Defendant Devan J. Washington ("defendant") appeals from a judgment consistent with jury verdicts finding him guilty of felonious possession of stolen goods and resisting a public officer. On appeal, defendant contends the trial court erred by: (1) denying his motion to dismiss, and (2) instructing the jury on the doctrine of recent possession. For the following reasons, we find no error.

The State's evidence tended to show that around 4:15 p.m. on Sunday, 20 September 2009, Jason Cook looked out his kitchen window and noticed an older model black Chevy pickup truck parked in front of his neighbor's house. The pickup truck "piqued [his] interest" because Cook had never seen the pickup truck at his neighbors' house and he knew that his neighbors, Jim and Libby Pearsall, were on vacation. Cook was also aware that break-ins had occurred in the neighborhood, so he called 911 to report the suspicious pickup truck.

While on the phone with the dispatcher, Cook observed three black males congregating near the cab of the truck and two black males sitting inside the truck. Cook observed two of the men walk around the side of the Pearsall house and one man walk to the front door. The males appeared to be in their late teens or early twenties. Shortly thereafter, Cook heard a "series of bangs [and he] presumed they were kicking in the Pearsall's back door." As Cook ran to another neighbor's home for assistance, he heard the truck horn beep four or five times. Cook ran around his neighbor's side yard and saw the pickup truck drive off. Two men were sitting in the cab and three men were riding in the bed of the truck.

At approximately 4:22 p.m., Officer Matthew Blaich received a dispatch call about the Pearsall home break-in. Officer Blaich drove toward the Pearsall residence while keeping a lookout for the suspect truck described by the dispatcher. Six minutes after receiving the dispatch call, Officer Blaich saw an older model black Chevy pickup truck at an intersection. The pickup truck quickly turned into a gas station and stopped next to a gas pump. Officer Blaich crossed over the median in the road, pulled in behind the truck, and activated the blue lights of his patrol vehicle.

Officer Blaich observed three black males in the cab of the truck and one Hispanic male in the bed of the truck. The driver and the man in the bed of the truck quickly exited the vehicle as Officer Blaich approached the truck. Officer Blaich attempted to grab both men as they fled. The driver's blue shirt and undershirt tore when he pulled away from the officer's grasp. After Officer Blaich detained the remaining two men, he radioed for assistance. Officer Blaich briefly looked under a blanket in the bed of the truck and saw two televisions.

Officer Jonathan Campbell received Officer Blaich's radio call, in which he stated the break-in suspects were at the gas station and he was in need of assistance. Upon arriving at the

gas station, Officer Campbell observed an older model black Chevy pickup parked next to a gas pump. Officer Campbell was informed that one of the two fleeing suspects was a tall, skinny, black male with a short haircut and wearing black shorts. Witnesses reported seeing the black male suspect run behind the gas station in the direction of a nearby apartment complex. Officer Campbell drove his patrol vehicle along the outskirts of the apartment complex. When the officer came upon a family standing in front of their home, he advised the family if they saw a tall, skinny, black male with short black hair run by, they should call 911 because the man was running from the police. At that time, a man who was out of breath stepped out from the side yard. The man was wearing a ripped t-shirt. The man, later identified as defendant, was escorted back to the gas station.

At the gas station, an officer identified defendant as the driver of the black pickup truck and the officer testified that the defendant admitted to owning the black pickup truck. Cook, who was transported to the gas station by police, identified the black pickup truck as the same truck he saw at the Pearsall's home, but could not identify defendant as one of the perpetrators.

In the meantime, the Pearsalls, who were returning home, received a phone call at 4:15 p.m. from their security firm alerting them that their home alarm had been activated. The Pearsalls were met by police when they arrived at their home twenty minutes later. Mr. Pearsall determined that among the items missing were a fifty-inch Sony television, a thirty-seven inch television, and Panasonic surround sound DVD player. Police transported Mr. Pearsall to the gas station where he identified the items in the back of defendant's truck as those items stolen from his home. The Pearsalls later confirmed that the electronics recovered from defendant's truck belonged to them by matching serial numbers on the property to the serial numbers contained in product documentation they kept.

At the close of the State's evidence, defendant moved to dismiss the charges against him and requested the court not instruct the jury on the doctrine of recent possession. The trial court denied the motions. Defendant did not present any evidence.

A jury found defendant guilty of felonious possession of stolen goods and resisting, obstructing, or delaying a public officer. The jury deadlocked on the charges of felonious breaking and entering and felonious larceny after breaking and

entering, and the trial court declared a mistrial on those counts. The trial court sentenced defendant to six to eight months imprisonment.

I. Motion to Dismiss

Defendant first contends the trial court erred by denying his motion to dismiss the charge of felonious possession of stolen goods based on insufficiency of the evidence. The standard for ruling on a motion to dismiss is "whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *State v. Patterson*, 335 N.C. 437, 449-50, 439 S.E.2d 578, 585 (1994) (quoting *State v. Vause*, 328 N.C. 231, 236, 400 S.E.2d 57, 61 (1991)). In ruling on a motion to dismiss, the trial court must consider all of the evidence "in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence." *State v. Davis*, 130 N.C. App. 675, 679, 505 S.E.2d 138, 141 (1998).

The essential elements of felonious possession of stolen goods are: "(1) possession of personal property; (2) having a value in excess of [\$1,000]; (3) which has been stolen; (4) the possessor knowing or having reasonable grounds to believe the property was stolen; and (5) the possessor acting with a dishonest purpose." *State v. Martin*, 97 N.C. App. 19, 25, 387 S.E.2d 211, 214 (1990); *see also* N.C. Gen. Stat. §§ 14-71.1, -72 (2009). Defendant challenges elements one and four, that he possessed the stolen goods and that he knew or had reasonable grounds to believe the goods were stolen.

A defendant has possession of stolen property when he has both the power and intent to control its disposition or use. *State v. Harvey*, 281 N.C. 1, 12, 187 S.E.2d 706, 714 (1972). Whether defendant knew or had reasonable grounds to believe that the items were stolen must necessarily be proved through inferences drawn from the evidence. *State v. Allen*, 45 N.C. App. 417, 421, 263 S.E.2d 630, 633 (1980).

Here, sufficient evidence was presented from which the jury could conclude that defendant possessed the electronics and that he had reason to believe the electronics were stolen. The evidence tended to show that the Pearsalls' did not authorize anyone to take the electronics; defendant was identified as the

owner of the pickup truck seen at the Pearsall's home at the time of the break-in; defendant was driving the pickup truck less than thirty minutes after the Pearsall home break-in; and the electronics belonging to the Pearsalls were found in the bed of defendant's pickup truck. Finally, when a police vehicle pulled up behind defendant's pickup truck, defendant quickly exited his pickup truck and fled from the scene. See *State v. Jones*, 292 N.C. 513, 525, 234 S.E.2d 555, 562 (1977) ("An accused's flight is 'universally conceded' to be admissible as evidence of consciousness of guilt and thus of guilt itself."). The evidence in the present case, viewed in the light most favorable to the State, was sufficient to present the case to the jury. Accordingly, the trial court properly denied defendant's motion to dismiss.

II. Doctrine of Recent Possession

Defendant also contends the trial court erred by instructing the jury on the legal doctrine of recent possession. After the close of the State's evidence and at the charge conference, defense counsel raised an objection to the proposed instruction on the doctrine of recent possession. The trial court noted defense counsel's objection, and gave the following jury instruction with regard to recent possession:

The State seeks to establish the defendant's guilt by the doctrine of recent possession. For this doctrine to apply, the State must prove three things beyond a reasonable doubt.

First, that the property was stolen.

Second, that the defendant had possession of this property. A person has -- a person possesses property when that person is aware of its presence and has, either alone or together with others, both the power and intent to control its disposition or use.

And third, that the defendant had possession of this property so soon after it was stolen and under such circumstances as to make it unlikely that the defendant obtained possession honestly.

If you find these things from the evidence beyond a reasonable doubt, you may consider them, together with all other facts and circumstances, in deciding whether or not the defendant is guilty of breaking or entering, larceny and possession of stolen prop - of stolen goods.

After all the jury instructions were given, defense counsel renewed his previous objection, which was subsequently overruled.

Defendant argues the doctrine of recent possession instruction should not have been given before instructing on the three substantive charges because: (1) the instruction was not properly given for offenses other than larceny; and (2) the instruction was "irrelevant and confusing."

"It is well established that the 'possession of stolen property recently after the theft, and under circumstances excluding the intervening agency of others; affords presumptive evidence that the person in possession is himself the thief, and the evidence is stronger or weaker, as the possession is nearer to or more distant from the time of the commission.'" *State v. Joyner*, 301 N.C. 18, 28, 269 S.E.2d 125, 132 (1980) (citation omitted). The inference drawn from recent possession "is to be considered by the jury merely as an evidential fact, along with the other evidence in the case, in determining whether the State has carried the burden of satisfying the jury beyond a reasonable doubt of the defendant's guilt." *State v. Baker*, 213 N.C. 524, 526, 196 S.E. 829, 830 (1938). "The inference which arises, however, is that the possessor is the thief." *Joyner*, 301 N.C. at 28-29, 269 S.E.2d at 132. In addition, the jury may consider defendant's recent possession of stolen property as a relevant circumstance in determining whether defendant was guilty of all the crimes charged against him, provided all the crimes occurred as a part of the same criminal enterprise. *Id.* at 29, 269 S.E.2d at 132.

Here, the evidence tended to show a brief period between the time defendant's pickup truck was seen at the Pearsalls'

house when the break-in occurred and the time defendant was found driving his pickup truck containing the stolen electronics. Therefore, as the court instructed, the jury could consider the recent possession doctrine "together with all other facts and circumstances in deciding" whether or not defendant is guilty of all the crimes. Further, defendant's contention that the instruction was misleading is belied by the jury's verdicts in this case. Although the charges of felonious possession of stolen goods, felonious breaking and entering, and felonious larceny after breaking and entering were presented to the jury, the jury found defendant guilty of only felonious possession of stolen goods. Accordingly, the trial court properly instructed the jury on the doctrine of recent possession.

NO ERROR.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).