COA00-1323

NORTH CAROLINA COURT OF APPEALS

Filed: 5 March 2002

STATE OF NORTH CAROLINA

v. Craven County
No. 98 CRS 3472

ANTHONY E. WALL

Appeal by defendant from judgment entered 29 October 1998 by Judge Donald Jacobs in Craven County Superior Court. Heard in the Court of Appeals 10 October 2001.

Attorney General Roy Cooper, by Assistant Attorney General Sylvia Thibaut, for State.

McCotter, McAfee & Ashton, P.L.L.C., by Rudolph A. Ashton, III for defendant.

BIGGS, Judge.

On 24 April 2000, this Court issued a writ of certiorari to review defendant's convictions from felonious breaking or entering, felonious larceny, felonious possession of stolen goods, and being an habitual felon. For the reasons stated herein, we hold that defendant received a fair trial free of prejudicial error and we affirm the trial court.

The facts presented at trial tended to show the following: Anthony Wall (defendant) went to the Tabernacle Baptist Church in New Bern, North Carolina, seeking work. Bobby Blanton, the church maintenance man, hired defendant to trim the bushes and mow the

grass. On several occasions when defendant mowed the grass, he would accompany Blanton to the shed to retrieve the lawnmower. The church owned two mowers, a weed eater and an edger which were kept locked in the shed and Blanton was the only person with a key. One mower was a three-year old red "North Pride" lawnmower with black handles and a black engine. Blanton had "a little spring [tied] around the handle to hold onto it and [he] always just left it on [the mower]." The other mower was blue, but it was not operable. Blanton also kept his personal riding mower locked in the church shed.

On 30 August 1997, during the Labor Day holiday, Blanton went to the church to pick up his personal lawnmower. When he left around noon, the church's lawnmowers, weed eater, and edger were still locked in the shed.

Around midnight on 30 August 1997, defendant went to Danny Dawson's home and attempted to sell him (Dawson) a lawnmower for $20.00. Dawson, who cuts grass for a living and owns several lawnmowers that are often visible to the neighbors, refused to buy the lawnmower from defendant. Defendant left the lawnmower at Dawson's house but returned approximately five minutes later with a man named Grover Hicks, to reclaim the lawnmower.

At approximately 4:23 a.m. on or about 31 August 1997, Officer Troy Horie, of the New Bern Police Department, while patrolling the area, observed defendant and Grover Hicks walking down the street pushing a lawnmower. The officer had an existing arrest warrant for Hicks for a prior stolen lawnmower, consequently he stopped the

two men. After placing Hicks under arrest pursuant to the arrest warrant, the officer proceeded to inquire about the lawnmower in the two men's possession. Defendant and Hicks gave conflicting stories about who owned the mower and as a result, the officer seized the lawnmower. The officer advised them that the police station would be "holding [the lawnmower] for a couple of days to see if anybody had reported or would report one stolen and then after a few days if they wanted to come down", they could claim it.

On 2 September 1997, when Blanton returned to work, he discovered that the lock had been broken on the shed, and that the two lawnmowers, the edger and the weed-eater were missing. Blanton called the police to report the missing equipment. About a week later, Blanton received a call from the police department notifying him that there was a lawnmower at the station. Blanton went to the police station and identified the lawnmower as one of those owned by the church. The police released the lawnmower after Blanton said he was "100 percent" sure the lawnmower belonged to the church.

Officer Horie was notified that Blanton had identified the lawnmower seized on 31 August 1997. Following an interview with Blanton regarding the stolen lawnmower, arrest warrants were issued for defendant. Defendant was later indicted for felonious breaking and entering, felonious larceny, and felonious possession of stolen goods. In addition, defendant was charged in a separate indictment with being an habitual felon. On 29 October 1998 the jury returned a verdict of guilty to all three charges in the first indictment.

Thereupon, defendant entered a plea of guilty to being an habitual felon. The trial court arrested judgment on the possession of stolen goods charge. Defendant received a term of 80-105 months for the felony breaking/entering conviction which reflected an enhancement due to his habitual felon status. Defendant received a consecutive sentence of 80-105 months for felonious larceny, also enhanced due to his habitual felon status.

Defendant did not appeal; rather, on 5 April 2000, defendant filed a petition for writ of certiorari. On 24 April 2000, this Court entered an order allowing the petition and issuing a writ to review the convictions entered 29 October 1998.

I.

Defendant contends in his first assignment of error that the trial court erred in allowing the State to proceed without introducing into evidence the stolen lawnmower in violation of the best evidence rule. This assignment has no merit.

The best evidence rule which is codified in the North Carolina Rules of Evidence provides: "[t]o prove the content of a *writing, recording, or photograph*, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." N.C.G.S. § 8C, Rule 1002 (1999)(emphasis added). Thus, the best evidence rule requires the exclusion of secondary evidence to prove the contents of a document, recording, or photograph whenever the original itself is available. *State v. York*, 347 N.C. 79, 489 S.E.2d 380 (1997).

In the present case, no writing, recording or photograph was sought to be introduced at trial. Rather, defendant argues that the witness should not be allowed to describe the lawnmower without the actual lawnmower being present. Defendant, however, cites no authority for this contention and we find none. In fact, in the sole case cited by defendant for this contention, this Court held that the best evidence rule was not violated when the State chose not to introduce stolen television sets into evidence but rather introduced exhibits depicting the television sets. *State v. Allen*, 45 N.C. App. 417, 263 S.E.2d 630 (1980). Specifically, this Court in *Allen* stated that "the best evidence rule applies to writings introduced into evidence to prove their contents." *Id.* at 422, 263 S.E.2d at 633 (citation omitted). Moreover, in *State v. Powell*, 61 N.C. App. 124, 300 S.E.2d 270, *disc. review denied*, 308 N.C. 194, 301 S.E.2d 101 (1983), where the defendant challenged the testimony of a detective as to the identity of stolen tractors, this Court held that the best evidence rule was inapplicable. Our Court in *Powell* concluded that the best evidence rule did not require that actual tractor serial number inscription to be introduced, and that the witness' oral testimony as to the serial numbers was competent to establish the inscription of the serial numbers on the tractors. *Id.* at 127, 300 S.E.2d at 272.

In the present case, the State neither sought to introduce exhibits of the stolen property or testimony of serial numbers on such property. Rather, the State offered the oral testimony of Blanton to establish that the lawnmower seized from defendant was

the lawnmower taken from the church's shed. We hold that the State is not required to introduce the stolen lawnmower into evidence and the testimony of Blanton was competent to establish the identity of the lawnmower. The best evidence rule has no application to the facts of this case; accordingly, this assignment of error is overruled.

II.

The defendant next contends that the trial court erred in allowing the officer to testify about statements and gestures made by Grover Hicks in that such evidence was hearsay. We disagree.

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C.G.S. § 8C-1, Rule 801(c) (1999). Here, defendant challenges the admission of the officer's testimony regarding both verbal statements and non-verbal gestures made. A "statement" may be a written or oral assertion or nonverbal conduct intended by the declarant as an assertion. N.C.G.S. § 8C-1, Rule 801(a). "An act, such as a gesture, can be a statement for purposes of [the hearsay rules]." *State v. Sibley,* 140 N.C. App. 584, 587, 537 S.E.2d 835, 838 (2000) (citing *State v. Satterfield,* 316 N.C. 55, 340 S.E.2d 52 (1986)). "However, out-of-court statements offered for purposes other than to prove the truth of the matter asserted are not considered hearsay." *State v. Call,* 349 N.C. App. 382, 409, 508 S.E.2d. 496, 513 (1998). "This Court has held that statements of one person to another to explain subsequent actions taken by the person to whom

the statement was made are admissible as nonhearsay evidence." *Id.* at 409, 508 S.E.2d at 513.

In the case *sub judice,* defendant objects to the following testimony of Officer Horie:

> MR. ADAIR (State's counsel): Now, did you think anything about the lawnmower?
>
> A: Yes, sir, I did. Knowing, at that time knowing Mr. Hicks' background since I had dealt with him previously for a lawnmower, I started asking questions pertaining to whose lawnmower it was.
>
> MR. ADAIR: Okay. Were you able to determine by asking the two people, Mr. Hicks and the defendant, were you able to determine whose lawnmower it was?
>
> MR. MAYO (Defense Counsel): Objection.
>
> A: No, I was not, sir. They both gave conflicting stories.
>
> MR. ADAIR: I'm sorry.
>
> THE COURT: I'm sorry, what?
>
> MR. MAYO: I had, I had objected, Your Honor. I think he answered.
>
> MR. ADAIR: So did you, were you able to determine whose lawnmower it was by talking to these two people?
>
> A: No, sir.
>
> MR. ADAIR: Okay. Did they satisfy your curiosity as to where the lawnmower was?

A: No, sir, they did not.

Q: And what they were using it for?

A: No, sir.

Q: What did you do after you were not satisfied with their explanation as to who owned the lawnmower? Did either one of them say that they owned the lawnmower?

A: No. They pointed the finger at each other.

Q: And after having this happen, did you, what did you do with respect to the lawnmower?

A: I seized the lawnmower and advised them that they would be holding onto it for a couple of days to see if anybody had reported or would report one stolen and then after a few days if they wanted to come down and get it, they would be more than happy (sic) to come down and get it at that time if they hadn't been able to locate the owner.

Q: But they didn't say it was their lawnmower?

A: No. Neither one says [sic] it was theirs. It was the other person.

Q: So, did you in fact seize the lawnmower?

A: Yes, I did.

Defendant contends that this testimony was offered to prove that he possessed the lawnmower and is therefore hearsay. The State on the other hand asserts that it elicited this testimony from the officer to explain his subsequent conduct of confiscating the lawnmower. First, the testimony does not reflect that the

officer testified to any verbal statements made by Hicks. Nor do we find that the officer's testimony regarding the gestures (pointing at defendant) made by Hicks' was offered to prove that defendant was in possession of the lawnmower. We conclude that the trial court did not err in allowing the testimony.

Moreover, defendant did not object to the statement that they "pointed the finger at each other" at trial and hence has waived any objection to its admission on appeal pursuant to the Rules of Appellate Procedure Rule 10(b). Second, the State had already offered substantial evidence that defendant possessed the lawnmower. Third, defendant cannot demonstrate prejudice by the introduction of this testimony. In fact, as the State contends, this testimony may have been helpful to defendant in that a jury could find that it was Hicks rather than defendant who possessed the lawnmower. Hence, we conclude that the testimony of Officer Horie is nonhearsay in that his statements were offered for the purpose of explaining why he seized the lawnmower and not to prove that the lawnmower was in fact in defendant's possession and control. Finally, assuming *arguendo* that the court did err in allowing the statement, the error was harmless. Accordingly, this assignment of error is overruled.

III.

Defendant next contends that the trial court improperly refused to permit him to cross-examine the officer regarding the description of another stolen lawnmower for which a warrant had

already been issued for Grover Hicks. We disagree.

A trial court has wide discretion in determining what evidence is to be introduced at trial. *State v. Mackey*, 352 N.C. 650, 535 S.E.2d 555 (2000). Its ruling on whether proffered evidence is relevant must be given great deference on appeal. *Holt v. Williamson*, 125 N.C. App. 305, 481 S.E.2d 307, *disc. review denied*, 346 N.C. 178, 486 S.E.2d 204 (1997); *In Re Will of Jones*, 114 N.C. App. 782, 443 S.E.2d 363, *disc. review denied*, 337 N.C. 693, 448 S.E.2d 526 (1994). Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C.G.S. § 8C-1, Rule 401 (1999). A trial court's ruling that evidence is irrelevant "may be reversed for abuse of discretion only upon a showing that its ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision." *State v. Riddick*, 315 N.C. 749, 756, 340 S.E.2d. 55, 59 (1986) (citations omitted).

Defendant has failed to establish that the testimony regarding the description of the lawnmower that Hicks was charged with stealing is relevant. Moreover, we are unable to discern any relevance. He correctly points out that a defendant may introduce evidence tending to show that someone other than defendant committed the crime charged. *State v. Burke*, 342 N.C. 113, 463 S.E.2d 212 (1995). Thus, while the fact that Hicks was charged

with stealing another lawnmower may have been relevant, defendant has not offered anything to support his proposition that a description of the other lawnmower would assist the jury in resolving any issues before it in this case. "Evidence is relevant if it . . . can assist the jury in 'understanding the evidence.'" *State v. Mackey*, 137 N.C. App. 734, 737, 530 S.E.2d 306, 308 (2000) (quoting *State v. Huang*, 99 N.C. App. 658, 663, 394 S.E.2d 279, 283, *disc. review denied*, 327 N.C. 639, 399 S.E.2d 127 (1990)). We conclude that the trial court's decision not to allow detailed evidence of the lawnmower was not an abuse of discretion. This assignment of error is overruled.

IV.

The defendant next contends that the trial court should have granted his motions to dismiss all charges. Defendant claims that there was not enough evidence to show that he broke or entered the shed and not enough evidence to support a finding of felonious intent to commit a larceny therein. As to both contentions, we disagree.

When the trial court rules on a motion to dismiss, the prosecution must be given "every reasonable inference" of the evidence presented. *State v. Cross*, 345 N.C. 713, 717, 483 S.E.2d 432, 434 (1997). "If the evidence adduced at trial gives rise to a reasonable inference of guilt, it is for the members of the jury to decide whether the facts shown satisfy them beyond a reasonable doubt of defendant's guilt." *State v. Jones*, 303 N.C. 500, 504, 279 S.E.2d 835, 838 (1981). Circumstantial and direct evidence are

each considered in weighing whether the evidence is substantial so as to survive the defendant's motion. *See State v. Capps,* 61 N.C. App. 225, 300 S.E.2d 819, *disc. review denied,* 308 N.C. 547, 304 S.E.2d 242 (1983).

In the case *sub judice*, defendant was charged with felonious breaking and entering in violation of N.C.G.S. § 14-54 and felonious larceny in violation of N.C.G.S. § 14-72. The State was required to present substantial evidence of three elements on the breaking and entering charge. The essential elements of felonious breaking or entering are: "(1) the breaking or entering (2) of any building (3) with the intent to commit any felony or larceny therein." *State v. Litchford,* 78 N.C. App. 722, 725, 338 S.E.2d 575, 577 (1986), *see also*, N.C.G.S. § 14-54(a) (1999). Larceny is defined as the "tak[ing] and carry[ing] away the goods of another with the intent to deprive the owner of his goods permanently and to convert same to the use of the taker." *State v. Simpson,* 299 N.C. 377, 383-84, 261 S.E.2d 661, 665 (1980).

The State's evidence tended to show the following: Defendant, not Hicks, was aware of the contents in the shed; that on 30 August around noon, when Blanton went to the shed to retrieve his personal lawnmower, the other lawnmowers were in place; that Blanton locked the shed and that no one else had permission to enter the shed and remove tools therefrom; that defendant came to Dawson's home around midnight on 30 August and offered to sell a lawnmower for $20.00; that later that evening, Officer Horie confiscated a lawnmower from defendant after observing defendant and Hicks walking down the

street pushing a lawnmower; that the lawnmower which the officer confiscated was later identified by Blanton as the one belonging to the church. Viewing the evidence in the light most favorable to the State and giving the State the benefit of all inferences, there was sufficient evidence from which the jury could find that defendant broke into the shed, took the lawnmower, attempted to sell it and thus permanently deprive the owner thereof.

Moreover, we reject defendant's contention that there was insufficient evidence of his intent to commit a felony inside the shed required for felonious breaking and entering. If the evidence presents no other explanation for breaking into the shed and there is no showing of the owner's consent, intent to commit a felony inside "'may be inferred from the circumstances surrounding the occurrence.'" *See State v. Myrick*, 306 N.C. 110, 115, 291 S.E.2d 577, 580 (1982) (quoting *State v. Thorpe*, 274 N.C. 457, 464, 164 S.E.2d 171, 176 (1968)); *see also, State v. Thompkins*, 83 N.C. App. 42, 43, 348 S.E.2d 605, 606 (1986) ("[t]he intent to commit larceny may be inferred from the fact that defendant committed larceny"). No evidence of any other reason for breaking or entering the shed was offered or suggested by defendant. We hold that the evidence was sufficient to support an inference that defendant broke or entered the shed with felonious intent to commit larceny and that he in fact did commit larceny. The trial court did not err in denying defendant's motions to dismiss.

This assignment of error is overruled.

V.

Defendant next contends that the trial court improperly permitted the State to proceed under the doctrine of recent possession. We disagree.

The doctrine of recent possession is a rule of law that raises a presumption of guilt when one possesses recently stolen property. *State v. Bell*, 270 N.C. 25, 153 S.E.2d 741 (1967); *State v. Allison*, 265 N.C. 512, 144 S.E.2d 578 (1965). The doctrine "allows the jury to presume that the possessor of stolen property is guilty of larceny." *State v. Callahan,* 83 N.C. App. 323, 325, 350 S.E.2d 128, 130 (1986), *disc. review denied,* 319 N.C. 225, 353 S.E.2d 409 (1987). The presumption is strong or weak depending upon the circumstances of the case and the length of time intervening between the larceny of the goods and the discovery of them in defendant's possession. *State v. Williams,* 219 N.C. 365, 13 S.E.2d 617 (1941). Furthermore, when there is sufficient evidence that a building has been broken into and entered and thereby the property in question has been stolen, the possession of such stolen property recently after the larceny raises presumptions that the possessor is guilty of the larceny and also of the breaking and entering. *State v. Lewis,* 281 N.C. 564, 189 S.E.2d 216, *cert. denied,* 409 U.S. 1046, 34 L. Ed. 2d 498 (1972).

The doctrine of recent possession arises when, and only when, the State shows beyond a reasonable doubt the following:

> (1) the property described in the indictment was stolen; (2) the stolen goods were found in

> defendant's custody and subject to his control and disposition to the exclusion of others though not necessarily found in defendant's hands or on his person so long as he had the power and intent to control the goods; and (3) the possession was recently after the larceny, mere possession of stolen property being insufficient to raise a presumption of guilt.

State v. Maines, 301 N.C. 669, 674, 273 S.E.2d 289, 293 (1981) (citations omitted)*; see also, In Re Phillips*, 128 N.C. 732, 497 S.E.2d 292, *disc. review denied*, 348 N.C. 283, 501 S.E.2d 919 (1998); *State v. Carter,* 122 N.C. App. 332, 470 S.E.2d 74 (1996).

Our Supreme Court in *State v. Eppley,* 282 N.C. 249, 254, 192 S.E.2d 441, 445 (1972) (citations omitted) stated:

> The possession sufficient to give rise to such inference does not require that the defendant have the article in his hand, on his person or under his touch. It is sufficient that he be in such physical proximity to it that he has the power to control it to the exclusion of others and that he has the intent to control it.

In the case *sub judice*, defendant first challenges the establishment of the second element: "whether the stolen goods were found in defendant's custody and subject to his control and disposition to the exclusion of others." *Maines,* 301 N.C. at 675, 273 S.E.2d at 294. To establish exclusive possession of stolen goods to support an inference of a felonious taking, the trial court must consider the circumstances of the possession. *Id.* The exclusive possession required to support an inference or presumption of guilt need not be a sole possession but may be joint. *State v. Holloway,* 265 N.C. 581, 144 S.E.2d 634 (1965). If the situation is one where persons other than defendant have equal

access to the stolen goods, the inference may not arise. For the inference to arise where more than one person has access to the property in question, the evidence must show the person accused of the theft had complete dominion, which might be shared with others, over the property or other evidence which sufficiently connects the accused person. *State v. Maines,* 301 N.C. at 675, 273 S.E.2d at 294.

Here, the State has shown such possession. The State's evidence tended to show the following: Defendant had knowledge that the lawnmower was in the shed; there was no evidence that Hicks had any such knowledge; that defendant, alone, attempted to sell the lawnmower to Dawson; and that Officer Horie observed defendant pushing the lawnmower down the street. In sum, defendant had actual possession of the stolen property. The goods were in his control although he did not make any actual assertion of ownership. There is sufficient evidence to submit to the jury on this element.

Next, defendant challenges the establishment of the third element: that the defendant had possession of this property so soon after it was stolen and under such circumstances as to make it unlikely that he obtained possession honestly. Our Supreme Court reasoned in *State v. Blackmon,* 6 N.C. App. 66, 169 S.E.2d 472 (1969), that "[o]bviously if the stolen article is of a type normally and frequently traded in lawful channels, then only a relatively brief interval of time between the theft and finding a defendant in possession may be sufficient to cause the inference of

guilt to fade away entirely." *Id.* at 76, 169 S.E.2d at 479. In the alternative, "if the stolen article is of a type not normally or frequently traded, then the inference of guilt would survive a longer time [period]." *Id.* This Court in *Blackmon* concluded the stolen item, a hand-made tool, was unique and that a time interval of twenty-seven days between the theft and discovery was permissible to allow an instruction on the doctrine of recent possession. *Id.*

In the case *sub judice,* we note the following crucial time intervals: there were approximately twelve hours between the time that the lawnmower was last seen by Blanton and when defendant stopped by the home of Dawson in an attempt to sell a lawnmower; and further, there were only a few additional hours between the time that defendant attempted to sell the lawnmower to Dawson and when the officer confiscated the lawnmower after observing defendant and Hicks pushing it down the street. In this case, the church's lawnmower is unique in that it was a red "North Pride" lawnmower with a spring tied around the handle. Moreover, it is not the sort of equipment normally sold at midnight for $20. We conclude that there was sufficient evidence that defendant had this property soon after it was stolen and under circumstances as to make it unlikely that he obtained it honestly.

We hold that there is sufficient evidence to allow the State to proceed under the doctrine of recent possession; thus, we overrule this assignment of error.

VI.

Defendant next contends that the trial court erred by refusing to instruct the jury on lesser included offenses of the crimes charged. We disagree.

Where there is evidence of a defendant's guilt of a lesser included offense, that defendant is entitled to have the question submitted to the jury even if there is no request for the instruction. *State v. Summitt*, 301 N.C. 591, 273 S.E.2d. 425, *cert. denied*, 451 U.S. 970, 68 L. Ed. 2d 349 (1981). When the State seeks a conviction of only the greater offense and the case is tried on an all or nothing basis, "the State's evidence is not regarded as evidence of the lesser included offense unless it is conflicting." *State v. Bullard,* 97 N.C. App. 496, 498, 389 S.E.2d 123, 124, *disc. review denied*, 327 N.C. 142, 394 S.E.2d 181 (1990). "The lesser included offense must be submitted only when a defendant presents evidence thereof or when the State's evidence is conflicting." *Id.*

In the case *sub judice*, the trial court declined to submit an instruction on misdemeanor breaking and entering and misdemeanor larceny. The defendant has failed to offer any explanation for breaking into the shed. Thus there is no evidence which conflicts with the inference that he broke into the shed for the purpose of committing a larceny therein.

We conclude that there is substantial evidence establishing defendant's guilt of the crimes charged; thus, the trial court was not required to instruct on the lesser included offenses. Accordingly, we overrule this assignment of error.

VII.

Defendant contends that the trial court committed plain error in sentencing him to two (2) consecutive sentences, both as an habitual felon, when he was convicted of felonious breaking and entering and felonious larceny arising out of the same incident. We find this assignment of error without merit.

North Carolina General Statute 14-7.1 defines an habitual felon as "[a]ny person who has been convicted of or pled guilty to three felony offenses in any federal court or state court in the United States or combination thereof. . . ." *See* N.C.G.S. § 14-7.1 (1999); *State v. Gentry*, 135 N.C. App. 107, 519 S.E.2d 68 (1999). When a defendant is convicted of a felony after having achieved habitual felon status, the punishment for that offense is elevated to a class C felony. *State v. Penland*, 89 N.C. App. 350, 365 S.E.2d. 721 (1988). The status of being an habitual felon, once obtained, is never lost. *State v. Creason*, 123 N.C. App. 495, 473 S.E.2d 771 (1996).

In the instant case, it is undisputed that defendant has achieved the status of an habitual felon based upon felonies committed prior to the present convictions (felonious breaking and entering, felonious larceny and possession of stolen goods arising in Richmond County on 30 May 1989; (2) common law robbery on 17 May 1989; (3) common law robbery on 7 July 1989; (4) felony common law robbery on 19 November 1992).

Once a defendant has achieved habitual felon status, the trial court must then sentence him pursuant to the habitual felon

statutes upon each conviction thereafter. *See generally, State v. Aldridge,* 67 N.C. App. 655, 314 S.E.2d 139 (1984). This is true so long as he has notice that he is being so charged in order to "eliminat[e] the possibility that he will enter a guilty plea without a full understanding of the possible consequences of [the] conviction." *See State v. Oakes*, 113 N.C. App. 332, 338, 438 S.E.2d 477, 480, *disc. review denied*, 336 N.C. 76, 445 S.E.2d 43 (1994). In the instant case, the court went to great lengths to explain to defendant that he would be sentenced as an habitual felon on each count as follows:

> Q: Do you understand that you are pleading guilty to the following charges, which carry the total punishments listed below, which are you are [sic] pleading guilty to the first count of habitual felon status which carries a maximum total punishment of 261 months, and you are pleading guilty to the status of being [sic] habitual felon as to Count II, which also carries maximum punishment of 261 months, for total maximum punishment exposure of 522 months. Do you understand that?
>
> A: Yes, I do.
>
> Q: Do you now personally plead guilty to the two counts of being [sic] habitual felon?
>
> A: Yes, I do.
>
> Q: Are you in fact guilty of that status and those two counts.
>
> A: Yes, I do. [sic]
>
> Q: Have you agreed to plead as part of a plea arrangement, and before you answer that question, I advise you that the courts have approved plea arrangements and you now, sir, without regard to the, without any anxiety or worry at all about it, do you have a plea arrangement with the State?

A: Yes, I do, Your Honor.

Q: I have been told that your plea arrangement is the defendant will plead guilty to being a habitual felon and will be sentenced to two counts of habitual felon in 98 CRS 3472. The sentences will be from the mitigating range Class C, Level IV, and the sentences will be consecutive. I need to see a work sheet. Is this your plea arrangement?

A: Yes, it is, Your Honor.

. . . .

Q: Do you now personally accept this arrangement?

A: Yes, Your Honor.

Q: Other than the plea arrangement between you and the prosecutor, has anyone made any promises or threatened you in any way to cause you to enter this [sic] these pleas against your wishes?

A: No, Your Honor.

Q: Do you enter this plea of your own free will fully understanding what you are doing?

A: Yes, Your Honor.

Having concluded that the trial court did not commit error when sentencing defendant as an habitual felon, we overrule defendant's claim of plain error.

We conclude that defendant received a fair trial.

No error.

Judges MCGEE and TIMMONS-GOODSON concur.

Report per Rule 30(e).