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NO. COA05-1552

NORTH CAROLINA COURT OF APPEALS

Filed: 5 July 2006

STATE OF NORTH CAROLINA

v.

Alamance County

No. 04 CRS 23566

04 CRS 58608

04 CRS 58611-14

COREY ALGERNON ALSTON,
Defendant.

Appeal by defendant from judgments entered 20 July 2005 by Judge Orlando F. Hudson in the Superior Court in Alamance County. Heard in the Court of Appeals 26 June 2006.

Attorney General Roy Cooper, by Assistant Attorney General Jeffrey R. Edwards, for the State.

William B. Gibson, for defendant-appellant.

HUDSON, Judge.

Defendant was indicted of habitual felon status, having an open container of an alcoholic beverage, failure to stop for a stop sign, driving while impaired ("DWI"), driving while license revoked, reckless driving, speeding, failure to heed blue light and siren, and operating a motor vehicle to elude arrest. He pled guilty to all charges except the last two; a jury found him guilty of those charges. The court consolidated all of the offenses except for the DWI into a single judgment and imposed an active term of 70-93 months. The court imposed a concurrent term of 120 days for DWI. Defendant appeals. We conclude that there was no

error.

The State's evidence tends to show that at approximately 3:00 a.m. on 26 September 2004, Officers James Hamlet and Leslie Valencia of the Burlington Police Department were in a patrol vehicle when they heard a loud motor and saw a truck coming over a hill on North Mebane Street traveling at a high rate of speed. The radar unit on the police vehicle measured the estimated speed as 85 miles per hour. The driver of the truck slammed on brakes and came into the officers' travel lane. Officer Valencia turned the police vehicle around, turned on the blue light and siren, and pursued the speeding vehicle. The truck accelerated and turned right onto Ireland Street. Officer Hamlet notified other police units that they were pursuing a silver Dodge Ram being operated at a high rate of speed by a black male driver.

Officer Bruce Crostic heard a radio call about a speeding vehicle and soon thereafter saw a silver truck speeding north on Ireland Street. Officer Crostic activated his blue lights and siren and pursued the vehicle. Officer Crostic followed Sergeant Billy White, who was also pursuing the truck in a marked police vehicle. Officer Crostic witnessed the silver truck travel through the air, land, and lose a front tire. The truck stopped and defendant emerged smiling from the vehicle with his hands in the air.

Sergeant White testified that as the silver truck passed his police vehicle, which had its blue lights on, he could see the driver, whom he identified as defendant. Defendant looked in his

direction with a smile on his face.

Defendant argues that the trial court erred in failing to dismiss the charges against him for insufficiency of the evidence. To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense. *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997).

"Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." *State v. Scott*, 356 N.C. 591, 597, 573 S.E.2d 866, 869 (2002). In deciding a motion to dismiss, a court must examine the evidence 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. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984).

N.C. Gen. Stat. § 20-141.5(a) (2004) defines speeding to elude arrest as "operat[ing] a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties." *Id.* The crime is a felony if two or more aggravating factors listed in N.C. Gen. Stat. § 20-141.5(b) (2004) are proved. *Id.* Defendant pled guilty to DWI, reckless driving, and driving while license revoked, all of which are aggravating factors pursuant to N.C. Gen. Stat. § 20-141.5(b). Defendant argues the evidence fails to show that he willfully fled or attempted to elude the officer because there is no evidence he was aware Officer Valencia was pursuing his vehicle.

"Knowledge is a mental state and may be proved by the conduct

and statements of the defendant, by statements made to him by others, by evidence of reputation which it may be inferred had come to his attention, and by circumstantial evidence from which an inference of knowledge might reasonably be drawn." *State v. Boone*, 310 N.C. 284, 294-95, 311 S.E.2d 552, 559 (1984). Here, viewed in the light most favorable to the State, the evidence shows that the speeding silver truck operated by defendant came over the crest of the hill and encountered Officer Valencia's police cruiser. The driver of the silver truck suddenly applied the brakes. As Officer Valencia's vehicle turned around to pursue, the silver truck accelerated again. The silver truck continued to proceed at a high rate of speed as it was being pursued not only by Officer Valencia, but by Officer Crostic, with blue lights flashing and sirens blaring on their police vehicles. The silver truck failed to stop for a stop sign and stopped only when it became disabled. Defendant had a smile on his face as he was being pursued and he emerged smiling from the disabled vehicle. Based upon the foregoing evidence, we conclude that a jury could reasonably infer that defendant knew law enforcement officers were pursuing him for violating the law.

No error.

Judges MCCULLOUGH and STEELMAN concur.

Report per Rule 30(e).