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NO. COA05-588

NORTH CAROLINA COURT OF APPEALS

Filed: 4 April 2006

STATE OF NORTH CAROLINA

v. Cumberland County
No. 04 CRS 55044

BENNIS STEPHON GLOVER

Appeal by defendant from judgment entered 1 December 2004 by Judge James Floyd Ammons, Jr., in Cumberland County Superior Court. Heard in the Court of Appeals 27 February 2006.

Attorney General Roy Cooper, by Assistant Attorney General Elizabeth N. Strickland for the State.

Thomas R. Sallenger for defendant-appellant.

ELMORE, Judge.

Bennis Stephon Glover (defendant) was indicted for breaking or entering a motor vehicle, misdemeanor larceny, and misdemeanor possession of stolen goods. In a separate bill of indictment, defendant was charged with attaining habitual felon status. On 1 December 2004 a jury convicted defendant of breaking or entering a motor vehicle, misdemeanor larceny, and misdemeanor possession of stolen goods, and defendant pled guilty to being an habitual felon. The court arrested defendant's conviction for possession of stolen goods and sentenced defendant to 96 to 125 months imprisonment.

Defendant appeals, contending that there was insufficient evidence to support his convictions and that the jury should not have been instructed on flight. For the reasons discussed below, we find no error.

The State's evidence tended to show that Missouri National Guardsmen Jonathan Rulon, Douglas Martin, Casey Utterback and John Welch were staying at a Ramada Inn Hotel in Fayetteville upon being stationed to Fort Bragg. On the morning of 10 March 2004, Rulon was looking out his hotel room window and saw a male, later identified as defendant, and a female walking down the road. Rulon observed defendant, who had nothing in his hands, walk to the back of a red truck parked in the hotel's parking lot and start "messing around." Defendant walked to each side of the truck, looking around. Rulon put on his shoes, went outside and saw defendant carrying away tools. Rulon asked defendant if those were his tools. Defendant responded that they were and to leave him alone. As defendant walked off, Rulon observed that the camper to the red truck was still locked, but could be opened. Afterwards, Rulon told the hotel's desk clerk that one of the trucks parked outside had been robbed. Rulon subsequently phoned the police.

Rulon described defendant to his fellow guardsmen, Madden, Martin, and Utterback. The guardsmen drove their vehicles in the direction that defendant was walking. Rulon and Madden found defendant behind a building "trying to hide the tools in his sweatshirt." Defendant told the men that the tools were his. Rulon told defendant he was lying because Rulon had seen defendant

break into the truck. When defendant began to walk away with the tools, Madden stepped in front of defendant. Defendant tried to give the tools back, but Rulon and Madden told defendant he was "busted." Defendant then dropped the tools and started to walk away, but Madden detained defendant until police arrived by putting defendant in a wrist lock. Sergeant Darry Whitaker of the Fayetteville Police Department testified that after defendant was advised of his *Miranda* rights, defendant confessed that he broke into the truck and took the tools.

At trial, Welch testified that his "practically new" red truck was "undamaged" when he parked it in the Ramada Inn's parking lot the night prior to 10 March 2004. Upon examining the truck on 10 March 2004, he discovered that the brackets holding the lock to his camper were bent, allowing the door to come open. He further testified that two SK socket sets in green boxes and one set of Craftsman wrenches had been removed from his truck, but were returned to him by police. Welch stated that he had never met defendant and he had not given defendant permission to enter his truck or take his tools.

On appeal, defendant contends the court erred in denying his motion to dismiss the charges against him. He argues the State failed to prove that he was the perpetrator of the crimes. We disagree.

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 that amount of ‘relevant evidence that a reasonable mind might accept as adequate to support a conclusion.’” *State v. Williams*, 355 N.C. 501, 579, 565 S.E.2d 609, 654 (2002) (quoting *State v. Vick*, 341 N.C. 569, 583-84, 461 S.E.2d 655, 663 (1995)), *cert. denied,* 537 U.S. 1125, 154 L. Ed. 2d 808 (2003). In evaluating the motion the trial judge must consider the evidence in the light most favorable to the State, allowing every reasonable inference to be drawn therefrom. *State v. Davis*, 130 N.C. App. 675, 679, 505 S.E.2d 138, 141 (1998).

For the State to successfully obtain a conviction for breaking or entering a motor vehicle, the State must prove the following five elements beyond a reasonable doubt: (1) there was a breaking or entering by the defendant; (2) without consent; (3) into a motor vehicle; (4) containing goods, wares, freight, or anything of value; and (5) with the intent to commit any felony or larceny therein. *See* N.C. Gen. Stat. § 14-56 (2005). To prove larceny the State must show that the defendant took property belonging to another person, without that person’s consent, with the intent to permanently deprive the owner of the property and to convert it to the defendant’s own use. *State v. Boykin*, 78 N.C. App. 572, 576, 337 S.E.2d 678, 681 (1985). To prove the charge of misdemeanor possession of stolen goods, the State needed to proffer substantial evidence that: (1) defendant possessed the property, (2) the property had been stolen, (3) defendant knew or had reasonable grounds to believe that the property was stolen, and (4) defendant

acted with a dishonest purpose. N.C. Gen. Stat. §§ 14-71.1, 14-72 (2005).

Here, the State presented substantial evidence that defendant broke into the cab of the red truck, which contained tools; that defendant took some of the tools from the truck; that defendant had the tools in his possession when confronted behind a building moments later; Guardsman Welch did not give defendant permission to enter his truck and take his tools. Moreover, defendant confessed to breaking into the truck and taking the tools. The evidence presented by the State was sufficient to submit the charges to the jury. Thus, we find no error in the court's denial of the motion to dismiss on that charge.

Defendant also contends the trial court erred in instructing the jury on flight because he merely departed from the area and did not "fle[e] the scene in a more dramatic posture." We disagree.

"A flight instruction is appropriate where 'there is some evidence in the record reasonably supporting the theory that defendant fled after commission of the crime[.]'" *State v. Kornegay*, 149 N.C. App. 390, 397, 562 S.E.2d 541, 546 (quoting *State v. Irick*, 291 N.C. 480, 494, 231 S.E.2d 833, 842 (1977)), *disc. review denied,* 355 N.C. 497, 564 S.E.2d 51 (2002). "The relevant inquiry concerns whether there is evidence that defendant left the scene . . . and took steps to avoid apprehension." *State v. Levan*, 326 N.C. 155, 165, 388 S.E.2d 429, 434 (1990)).

After a review of the record before us, we conclude that the evidence tended to show that defendant left the scene with the

intention of avoiding apprehension. First, when Rulon confronted defendant at the crime scene, defendant told Rulon to leave him alone and defendant walked away. Once confronted by Rulon and Madden at the building, defendant first attempted to leave with the tools, but eventually dropped the tools and started to walk away. We conclude this evidence reasonably supports the theory that defendant left and took steps to avoid apprehension. *Id.* Accordingly, the flight instruction was appropriate, and defendant's assignment of error is without merit.

No error.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).