NO. COA05-760

NORTH CAROLINA COURT OF APPEALS

Filed: 7 February 2006

IN THE MATTER OF: Mecklenburg County
B.W. No. 04 J 1200

Appeal by juvenile from adjudication and disposition orders entered 12 January 2005 by Judge Regan A. Miller in Mecklenburg County District Court. Heard in the Court of Appeals 9 January 2006.

Attorney General Roy Cooper, by Assistant Attorney General Timothy W. Jones, for the State.

Moshera H. Mohamed for respondent appellant.

McCULLOUGH, Judge.

On 1 November 2004, a juvenile petition was filed alleging that respondent had committed the offense of possession of stolen property. On 12 January 2005, respondent was adjudicated a delinquent juvenile. A disposition order was entered placing respondent on probation for nine months and requiring him to pay restitution. Respondent appeals.

At trial, the State adduced the following evidence: On 1 November 2004, Officer D.E. Neeley of the Charlotte-Mecklenburg Police Department was in his car in the Boulevard Homes area of Charlotte, North Carolina. Officer Neeley drove past an unoccupied, dark blue Honda Accord parked on the wrong side of the road.

Officer Neeley ran the tag and got an alert that the car was reported stolen. Officer Neeley turned around and drove back towards the car. When he came back to it, two individuals were sitting in the car. The respondent was sitting in the driver's seat behind the wheel with the car off. Officer Neeley detained both individuals, confirmed that the vehicle was stolen, and arrested them both.

Following his arrest, respondent signed the following statement:

> An unknown dude came up. We got in the Honda Accord, the car. There is a store across the street from Captain D's. We went there and then went to Boulevard Homes to see some girls. We were standing on the porch, and I went and sat inside this bluish-green Honda Accord. The car had a popped ignition. The unknown dude started it with a flat-head screwdriver. While I was sitting in the car, the police pulled up.

At trial, respondent testified that he never drove the vehicle, and he only saw it for the first time earlier in the day on 1 November 2004. Respondent further testified that he did not realize it was a stolen car while riding around in it. Respondent claimed he was sitting in the car to get out of the heat.

Respondent argues that there was insufficient evidence to sustain the adjudication. Respondent asserts that there is no evidence that he possessed the vehicle or acted with a dishonest purpose.

After careful review of the record, briefs and contentions of the parties, we affirm. This Court has stated:

> In reviewing a challenge to the sufficiency of evidence, it is not our duty to weigh the evidence, but to determine whether there was substantial evidence to support the adjudication, viewing the evidence in the light most favorable to the State, and giving it the benefit of all reasonable inferences.

In re Heil, 145 N.C. App. 24, 29, 550 S.E.2d 815, 819 (2001).

In the case *sub judice*, the petition alleged that respondent was delinquent for possession of stolen property pursuant to N.C. Gen. Stat. § 14-71.1 (2005). "Felonious possession of stolen goods requires evidence of: (i) possession of personal property; (ii) valued at greater than $ 1,000; (iii) which has been stolen; (iv) the possessor knowing or having reasonable grounds to believe that the property is stolen; and (v) the possessor acts with a dishonest purpose." *State v. King*, 158 N.C. App. 60, 66, 580 S.E.2d 89, 94, *disc. review denied*, 357 N.C. 509, 588 S.E.2d 376 (2003); *see* N.C. Gen. Stat. § 14-71.1 (2005). Respondent challenges the sufficiency of the evidence as to the last two elements.

This Court has stated that "[a] defendant charged with possession of stolen property under G.S. 14-71.1 . . . may be convicted if the State produces sufficient evidence that defendant possessed stolen property (i.e. a vehicle), which he knew or had reason to believe had been stolen or taken." *State v. Lofton*, 66 N.C. App. 79, 83, 310 S.E.2d 633, 635-36 (1984). In the case *sub judice*, the evidence presented by the State tended to show that respondent was found in the driver's seat of a stolen vehicle. The car's fan was on, and the car could only be started with a screwdriver because the ignition had been popped. Respondent

admitted in his statement to police that he had been driven around in the vehicle earlier in the day by an "unknown dude" and this person had started the ignition with a screwdriver. Because respondent knew that the ignition could only be started with a screwdriver, a reasonable person could infer that petitioner had reason to believe the vehicle was stolen. Furthermore, respondent's position in the driver's seat of the vehicle with the fan running gave him possession and control of the vehicle. *See, e.g.*, *State v. McCabe,* 85 N.C. App. 500, 355 S.E.2d 186 (1987), where this Court held that sitting behind the steering wheel of a car was sufficient evidence to show defendant had control of the vehicle).

Our Supreme Court has further stated that

> the "dishonest purpose" element of the crime of possession of stolen property can be met by a showing that the possessor acted with an intent to aid the thief, receiver, or possessor of stolen property. The fact that the defendant does not intend to profit personally by his action is immaterial. It is sufficient if he intends to assist another wrongdoer in permanently depriving the true owner of his property.

State v. Parker, 316 N.C. 295, 305-06, 341 S.E.2d 555, 561 (1986). We conclude that respondent's knowledge that the vehicle was stolen, as well as his admission that he had been driven to the spot where the vehicle was found in his possession, is sufficient evidence that respondent intended to continue to deprive the true owner of his vehicle, and thus acted with a dishonest purpose.

In a juvenile adjudication hearing where the trial court is the trier of fact, "the court is empowered to assign weight to the

evidence presented at the trial as it deems appropriate." *In re Oghenekevebe*, 123 N.C. App. 434, 439, 473 S.E.2d 393, 397 (1996). "In this situation, the trial judge acts as both judge and jury, thus resolving any conflicts in the evidence." *Id.* Thus, respondent's testimony disavowing or explaining his statement goes to the weight and not the sufficiency of the evidence. Accordingly, in the light most favorable to the State, we conclude there was sufficient evidence that respondent possessed stolen property.

We finally note that the adjudication and disposition orders state that petitioner was delinquent for receiving stolen property. However, it is clear from the petition and hearing transcript that petitioner was found delinquent for possession of stolen goods. Accordingly, the adjudication and disposition orders are remanded for correction of these clerical errors.

Affirmed; remanded for correction of a clerical error.

Judges TYSON and ELMORE concur.

Report per Rule 30(e).