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NO. COA12-289
NORTH CAROLINA COURT OF APPEALS

Filed: 6 November 2012

STATE OF NORTH CAROLINA

v.

Halifax County
Nos. 10 CRS 953, 50830-31

KEVIN DEWAYNE CARSWELL

Appeal by defendant from judgments entered 9 November 2011 by Judge Alma L. Hinton in Halifax County Superior Court. Heard in the Court of Appeals 22 October 2012.

Attorney General Roy Cooper, by Assistant Attorney General Allison A. Angell, for the State.

Geoffrey W. Hosford for defendant appellant.

McCULLOUGH, Judge.

Defendant appeals from judgments entered upon his conviction for possession of a firearm by a felon, possession of a firearm with an altered serial number, possession of a stolen firearm, and resisting a public officer. We find no error.

Evidence at trial establishes the following factual background. On 18 June 2009, Mike Hardy discovered that his

home in Scotland Neck had been broken into and his "380 Bersa" handgun had been taken.

Approximately eight months later, Sergeant Marcus Ruffin was patrolling in Scotland Neck and began pursuing an automobile in which defendant was a passenger. Sergeant Ruffin knew defendant, spotted him in the car, and knew that he and another passenger had outstanding warrants for their arrest. Sergeant Ruffin therefore stopped the vehicle and ordered the occupants to remain inside the vehicle. Defendant, however, exited the vehicle, stumbled, and began to fall. As defendant stumbled, Sergeant Ruffin saw a black firearm fall from defendant's waistband. Defendant then ran from the scene. Sergeant Ruffin collected the gun, checked its serial number, and discovered that it was the Bersa 380 handgun taken from Mr. Hardy's residence.

Sergeant Ruffin testified that the serial number on the gun had been scratched out, and the evidence property sheet described the gun as having its "serial number almost scratched out." Despite the scratch marks, the serial number was still visible, and the gun had scratch marks in other places as well. Sergeant Ruffin admitted that he did not know whether defendant made the scratch marks.

At the close of the State's evidence, defendant moved to dismiss the charges, and the trial court denied his motion. Defendant renewed his motion to dismiss at the close of all evidence, which the trial court again denied.

On 4 November 2011, a jury found defendant guilty of possession of a firearm by a felon, possession of a firearm with an altered serial number, possession of a stolen firearm, and resisting a public officer. The trial court sentenced defendant to three consecutive terms, totaling 37 to 45 months' imprisonment.

I.

On appeal, defendant contends that the trial court erred by denying his motion to dismiss the charges of possession of a stolen firearm and possession of a firearm with an altered serial number. "'Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied.'" *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)). "Substantial evidence is such relevant

evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994). "This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007).

II.

First, we turn to the possession of a stolen firearm charge. In order to convict a defendant of this charge, "the State must present substantial evidence that (1) the defendant was in possession of a firearm; (2) which had been stolen; (3) the defendant knew or had reasonable grounds to believe the property was stolen; and (4) the defendant possessed the pistol with a dishonest purpose." *State v. Brown*, 182 N.C. App. 277, 281, 641 S.E.2d 850, 853 (2007). "Our Supreme Court has held the legislature intended for the 'reasonable man' standard to apply to the offense of possession of [a] stolen [firearm]." *State v. Weakley*, 176 N.C. App. 642, 652, 627 S.E.2d 315, 321

(2006) (citing *State v. Parker*, 316 N.C. 295, 304, 341 S.E.2d 555, 560 (1986)).

Defendant argues the State failed to produce substantial evidence that he knew or had reasonable grounds to believe the firearm was stolen. "Whether the defendant knew or had reasonable grounds to believe that the [property was] stolen must necessarily be proved through inferences drawn from the evidence.'" *Weakley*, 176 N.C. App. at 652, 627 S.E.2d at 321 (quoting *State v. Brown*, 85 N.C. App. 583, 589, 355 S.E.2d 225, 229 (1987)). "[C]ases upholding convictions when knowledge was at issue have contained some evidence of incriminating behavior on the part of the accused." *State v. Allen*, 79 N.C. App. 280, 285, 339 S.E.2d 76, 79, *aff'd per curiam*, 317 N.C. 329, 344 S.E.2d 789 (1986).

In the instant case, we find that the State presented substantial evidence that defendant knew or had reasonable grounds to believe that the gun was stolen. The scratch marks on the gun's serial number constitute an incriminating circumstance. Although the number was legible, Sergeant Ruffin testified that "[t]he serial number on the handgun was scratched, like somebody was trying to mark it out so that it couldn't be read." Sergeant Ruffin further explained that he

had to tilt the gun to a certain angle to make the serial number visible. The scratch marks were abundant enough that the property sheet described the serial number as "almost scratched out." From this evidence, one can infer that an attempt had been made to remove the serial number from the firearm. Additionally, defendant fled from the scene, from which one can infer guilt. "We have recognized that an accused's flight is evidence of consciousness of guilt and therefore of guilt itself." *Parker*, 316 N.C. at 304, 341 S.E.2d at 560. After giving the State all reasonable inferences, we hold that this evidence was sufficient to send the case to the jury.

III.

Next, we turn to the possession of a firearm with an altered serial number charge. In order to convict a defendant of this charge, the State must present substantial evidence that (1) the property was a firearm; (2) the firearm's permanent serial number had been altered, defaced, destroyed, or removed; (3) the firearm's permanent serial number had been altered, defaced, destroyed, or removed for the purpose of concealing or misrepresenting the identity of the firearm; and (4) defendant possessed the firearm. See N.C. Gen. Stat. § 14-160.2 (2011); N.C.P.I., Crim. 254A.17. Defendant argues that the State failed

to present sufficient evidence that (1) the scratch marks altered, defaced, destroyed, or removed the firearm's serial number; and (2) the scratch marks were meant to conceal the identity of the firearm.

After reviewing the evidence in the light most favorable to the State, we find that the State presented substantial evidence as to each challenged element. As an initial matter, we note that the serial number of the firearm need not be completely removed to constitute an offense pursuant to N.C. Gen. Stat. § 14-160.2. The definition of "alter" is "to cause to become different in some particular characteristic . . . without changing into something else." Webster's Third New International Dictionary 63 (2002). The definition of "deface" is "to destroy or mar the face or external appearance of." *Id.* at 590. In the instant case, the gun's serial number was not "removed" or "destroyed," but the jury could have concluded that it was "altered" or "defaced."

We find that the evidence is sufficient to show that the scratch marks on the gun (1) altered or defaced the serial number and (2) were meant to conceal the identity of the gun. Additionally, the members of the jury had an opportunity to view the gun themselves and therefore were better able to judge the

extent and placement of the scratch marks. It is not our duty to reweigh the evidence presented to the jury. "It is well settled that '[t]he weight of evidence is always a question for the jury.'" *State v. Boyd*, ___ N.C. App. ___, ___, 714 S.E.2d 466, 473 (2011) (quoting *State v. Keath*, 83 N.C. 626, 628 (1880)). Therefore, we hold that the State presented substantial evidence as to each element of this offense. Accordingly, we conclude that the trial court did not err in denying defendant's motion to dismiss and sending the charges to the jury.

No error.

Judges HUNTER (Robert C.) and CALABRIA concur.

Report per Rule 30(e).