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NO. COA13-111  
NORTH CAROLINA COURT OF APPEALS

Filed: 15 October 2013

STATE OF NORTH CAROLINA

v.

Moore County  
No. 11 CRS 53120

BRADLEY SCOTT WEICHELT

Appeal by Defendant from judgment entered 7 August 2012 by Judge James M. Webb in Superior Court, Moore County. Heard in the Court of Appeals 27 August 2013.

*Attorney General Roy Cooper, by Assistant Attorney General Jonathan Shaw, for the State.*

*Gilda C. Rodriguez for Defendant.*

McGEE, Judge.

Bradley Scott Weichelt ("Defendant") was indicted on 11 June 2012 for breaking or entering, larceny, and possession of stolen goods pursuant to the breaking and entering of a storage room at St. Andrews Condominiums ("St. Andrews") in Pinehurst, North Carolina in late September 2011. Evidence at trial tended to show the following. Defendant often worked as a maintenance man at St. Andrews. He was working with John Fields ("Mr.

Fields"), during the weekend of 2 September 2011 to repair room ceilings at St. Andrews. In order to accomplish the work, Defendant had rented an acoustical sprayer ("sprayer") for one day from Richmond Rentals and Sales ("Richmond Rentals"). The sprayer was a "texturing machine for spraying popcorn ceiling" and was comprised of "a compressor . . . , a 50-foot hose and a hopper." The hopper is a large container that holds the material that is to be sprayed.

At trial, Defendant testified to the following. Prior to completing the repair job, the sprayer malfunctioned. Defendant cleaned the hopper, placed it in his van, and drove to Albemarle, North Carolina. Defendant did not return to Pinehurst until 24 January 2012.

A few days later, Mr. Fields returned to St. Andrews and completed the repair job. No explanation was offered at trial to explain how, if Defendant had taken the hopper to Albemarle, Mr. Fields had been able to complete the repair job. Defendant only agreed with the assertion that, in order to complete the job, Mr. Fields would have had to have "gotten . . . another hopper." Once Mr. Fields completed the job, he and Linbergh Galbreith ("Mr. Galbreith"), the manager of St. Andrews, locked the sprayer in the St. Andrews' storage room.

Mr. Galbreith called the police on 27 September 2011, after noticing that a window pane in the storage room door had been broken, and the door was unlocked. Mr. Galbreith had last checked on the storage room a "couple of days" earlier. Mr. Galbreith told Lieutenant Michael Wilson ("Lt. Wilson") of the Pinehurst Police Department, that the only item missing from the storage room was the sprayer. In Lt. Wilson's opinion, "it was obvious that someone had broken into the storage room." Mr. Galbreith also told Lt. Wilson that the "only person that knew that [the sprayer] was in [the storage room] was one other person [Defendant] who had [rented the sprayer] from Richmond Rentals."

Police officers obtained Defendant's contact information from Richmond Rentals. Detective Daryl Bender ("Detective Bender") of the Pinehurst Police Department attempted to call Defendant on numerous occasions, finally speaking with Defendant on 7 October 2011. Detective Bender notified Defendant that the sprayer had been reported stolen from St. Andrews. Defendant had previously learned of the reported theft through a friend, referred to in the transcript only as "Mary Jo" ("Mary Jo"). Detective Bender testified that Defendant told him "a friend had the top half [of the sprayer] and [Defendant] had the bottom half in his van in Albemarle, but [the van] was being worked

on[.]” Defendant also told Detective Bender that “he would have someone bring him [to return the sprayer], he just want[ed] to make things right.” At the time of Defendant’s trial on 6 August 2012, no part of the sprayer had been recovered or returned to Richmond Rentals. Defendant was found guilty on 7 August 2012 of felonious possession of stolen goods pursuant to a breaking or entering. Defendant appeals.

I.

We first address Defendant’s petition for writ of *certiorari*, filed with this Court 27 February 2013. Defendant acknowledges that the record does not demonstrate that Defendant gave notice of appeal in open court following his conviction. Defendant also acknowledges that an attempted written notice of appeal, though timely, was erroneously directed “from district court to superior court and does not reflect his intention of appealing his [s]uperior [c]ourt judgment to the North Carolina Court of Appeals.” We decide in our discretion to grant Defendant’s petition, and address his appeal on the merits. *State v. Gordon*, \_\_ N.C. App. \_\_, \_\_, 745 S.E.2d 361, 363 (2013).

II.

In Defendant’s sole argument, he contends the trial court erred in denying Defendant’s motion to dismiss the felony

possession of stolen goods charge for insufficient evidence. We disagree.

III.

Denial of a motion to dismiss for insufficient evidence is reviewed by this Court *de novo*. *State v. Robledo*, 193 N.C. App. 521, 525, 668 S.E.2d 91, 94 (2008) (citation omitted). In particular, the trial court must determine "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) (citation omitted).

In ruling on a motion to dismiss, "[t]he evidence must be examined in the light most favorable to the state, and the state is entitled to every reasonable intendment and inference to be drawn therefrom." *State v. Rasor*, 319 N.C. 577, 585, 356 S.E.2d 328, 333 (1987) (citation omitted).

IV.

"The elements of possession of stolen goods are: '(1) possession of personal property; (2) which has been stolen; (3) the possessor knowing or having reasonable grounds to believe the property to have been stolen; and (4) the possessor acting with a dishonest purpose.'" *State v. Tanner*, 364 N.C. 229, 232, 695 S.E.2d 97, 100 (2010) (citations omitted). "Dishonest

purpose is equivalent to felonious intent." *State v. Withers*, 111 N.C. App. 340, 348, 432 S.E.2d 692, 698 (1993) (citation omitted). In finding such intent, "the jury may consider the acts and conduct of the defendant and the general circumstances existing at the time of the alleged commission of the offense charged[.]" *State v. Hines*, 54 N.C. App. 529, 533, 284 S.E.2d 164, 167 (1981) (citation omitted). One circumstance under which possession of stolen goods is felonious is if the perpetrator possesses the goods while "know[ing] or ha[ving] 'reasonable grounds to believe' that the goods were stolen pursuant to a breaking or entering[.]" *Tanner*, 364 N.C. at 233, 695 S.E.2d at 100.

The first element of possession of stolen goods is that a defendant must have had the personal property in his possession. *Tanner*, 364 N.C. at 232, 695 S.E.2d at 100. In the present case, Detective Bender testified that, following the report of the missing sprayer, he contacted Defendant who told Detective Bender that "he had the bottom half [of the sprayer], and it was in his van in Albemarle being fixed[.]" Defendant also testified at trial that he was in possession of a part of the sprayer when contacted by Detective Bender.

As to the second element, that the property in question had to have been stolen, *Tanner*, 364 N.C. at 232, 695 S.E.2d at 100,

Mr. Galbreith testified that he and Mr. Fields placed the sprayer in the storage room at St. Andrews and locked the door following completion of the work. Mr. Galbreith discovered the broken window pane on 27 September 2011. Mr. Galbreith contacted the Pinehurst Police Department to report a break-in and Lt. Wilson responded. Following Lt. Wilson's arrival, Mr. Galbreith determined that the sprayer was missing. In Lt. Wilson's opinion, "it was obvious that someone had broken into the storage room." Finally, the lack of explanation of how Mr. Fields could have completed the repair job, if Defendant had removed the hopper for cleaning the weekend of 2 September 2011, is some evidence that the hopper was still in the storage room at the time of the alleged breaking and entering.

The third element of possession of stolen goods is that the individual charged knew, or had reasonable grounds to believe, that the property was in fact stolen. *Tanner*, 364 N.C. at 232, 695 S.E.2d at 100. In the present case, Defendant readily admits placing the hopper in his van and removing it from St. Andrews. Though Defendant claims that he had removed the hopper prior to the repair job being completed, Defendant's partner, Mr. Fields, used a functional sprayer (comprised of both a compressor and hopper) to complete the repairs at St. Andrews. This sprayer was placed in the locked storage room by Mr. Fields

and Mr. Galbreith. Defendant also testified that both Mary Jo, the individual with whom he was residing at the time, and Detective Bender, informed him that the sprayer had been reported stolen. Defendant also admitted he knew that the period for which the sprayer was rented had expired. Finally, Detective Bender testified that, at the time of the trial, no portion of the sprayer had been returned or recovered.

The final element of possession of stolen goods is that the possessor acted with a dishonest purpose. *Tanner*, 364 N.C. at 232, 695 S.E.2d at 100. Viewing the evidence in the case before us in the light most favorable to the State, there was sufficient evidence for a reasonable jury to conclude, that given Defendant's "acts and conduct," Defendant acted with a dishonest purpose. *Hines*, 54 N.C. App. at 533, 284 S.E.2d at 167. Defendant was aware the sprayer had been reported stolen from St. Andrews, he was in possession of at least some portion of the sprayer, and he had agreed to return the item but never did so. There was also evidence at trial indicating the sprayer could have been stolen pursuant to a breaking and entering, and that evidence, viewed in the light most favorable to the State, suggests Defendant was the perpetrator.

Possession of stolen goods can be classified as felonious if the property was stolen pursuant to a breaking or entering



and the possessor of such goods "knew or had reasonable grounds to believe the goods were stolen pursuant to a breaking or entering." *Tanner*, 364 N.C. at 233, 695 S.E.2d at 100. Defendant testified that he was aware that, prior to the sprayer being missing, it had been locked in the storage room. Defendant also testified that he was informed by both Mary Jo and Detective Bender that the sprayer had been reported stolen. Evidence was presented that Defendant possessed at least part of the sprayer immediately after the reported breaking and entering, and that Defendant continued to possess at least part of the sprayer after having been told of the break-in. Further, the sprayer was still missing at the time of trial. With evidence that Defendant was aware the sprayer had been stolen from a locked storage room, a jury could have determined that Defendant had "reasonable grounds to believe the goods were stolen pursuant to a breaking or entering." *Tanner*, 364 N.C. at 233, 695 S.E.2d at 100.

Viewing the evidence in the light most favorable to the State, there is sufficient evidence to support the elements of the charge of felonious possession of stolen goods pursuant to a breaking or entering. The trial court did not err in denying Defendant's motion to dismiss.

Affirmed.

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Judges STEELMAN and ERVIN concur.

Report per Rule 30(e).