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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-770

Filed: 19 April 2016

Mecklenburg County, No. 12 CRS 248102

STATE OF NORTH CAROLINA

v.

JAAHKII QURAN HARRIS

Appeal by Defendant from judgment entered 9 June 2014 by Judge Lisa C. Bell in Superior Court, Mecklenburg County. Heard in the Court of Appeals 25 January 2016.

*Attorney General Roy Cooper, by Associate Attorney General Rory Agan, for the State.*

*Wait Law, P.L.L.C., by John L. Wait, for Defendant.*

McGEE, Chief Judge.

## I. *Factual Background*

Jaahkii Quran Harris ("Defendant") was convicted of felonious possession of stolen property, in violation of N.C. Gen. Stat. § 14-71.1, on 9 June 2014. The State's evidence tended to show that a Cricket Communications store in Charlotte ("the store") was broken into around 2:00 a.m. on 2 November 2012, and thirty-four cell phones, two Bluetooth headsets, four other headsets, a laptop computer, and possibly

a tablet were stolen. Video surveillance showed that three people broke into the store and stole the items, but there was no identification made of the people in the video. Gregory Thomas ("Thomas"), a Cricket Communications manager, was notified of the break-in and theft. He alerted authorized dealers in the Charlotte area, including Rami Mhana ("Mhana"), to be on the lookout for the stolen items.

At around 3:00 p.m. that same day, five men – Defendant, a man called "Roy," and three others who were not identified – entered Mhana's store to inquire about selling Cricket-branded cell phones. Roy handed Mhana a bag containing several cell phones. Both Roy and Defendant talked to Mhana about selling the phones. Mhana regularly bought cell phones and, if not for the alert he had received from Thomas earlier that day, he would not have thought there was anything unusual about the inquiry. However, because of the alert from Thomas, Mhana did not want to buy the phones without instructions from Thomas, but he was unable to obtain any instruction at that time. Approximately fifteen minutes after entering the store, Defendant and Roy left with the cell phones. Three to four hours later, Defendant returned to the store and sold eight cell phones and two Bluetooth headsets to Mhana, all of which were among the items stolen from the store early that morning. Mhana did not recall whether anyone accompanied Defendant on his return visit.

## II. *Procedural Background*

After resting, the State voluntarily dismissed the charge of felony conspiracy. Defendant then moved to dismiss all remaining charges – felony breaking or entering, felony larceny, and felony possession of stolen property. The trial court denied Defendant's motions to dismiss. Defendant did not present evidence and renewed his motions to dismiss, which were again denied. The jury returned verdicts of not guilty of breaking or entering and larceny, but found Defendant guilty of felonious possession of stolen property. Defendant appeals.

## III. *Analysis*

Defendant argues that the trial court erred in denying his motion to dismiss the charge of felony possession of stolen property. As has been stated by our Supreme Court:

> To withstand a defendant's motion to dismiss, "the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator." "[T]he trial court should consider all evidence actually admitted, whether competent or not, that is favorable to the State."
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> Circumstantial evidence may be utilized to overcome a motion to dismiss "'even when the evidence does not rule out every hypothesis of innocence.'" If the trial court finds substantial evidence, whether direct or circumstantial, or a combination, "to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied." If, however, the evidence "is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator, the motion to dismiss must

be allowed."

*State v. Golphin*, 352 N.C. 364, 458, 533 S.E.2d 168, 229-30 (2000) (citations omitted). The elements of possession of stolen property are as follows: "'(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). Relevant to this appeal, possession of stolen property is a felony if it is proven that the value of the property exceeds $1,000.00, or that the property was stolen pursuant to a breaking or entering. N.C. Gen. Stat. §§ 14-72(a), 14-72(b)(2), 14-72(c) (2015).

A. *Knowledge Element*

Defendant specifically argues that the State failed to present sufficient evidence to satisfy the elements of possession, knowledge, and dishonest purpose. Because we agree there was insufficient evidence to establish the knowledge element, we do not address the other elements.

(1) *Doctrine of Recent Possession*

The State contends the doctrine of recent possession provided sufficient evidence to defeat Defendant's motion to dismiss the charge of possession of stolen property. The doctrine of recent possession is a permissible inference of fact that a person in possession of recently stolen property is the person who stole that property.

*State v. Maines*, 301 N.C. 669, 673-74, 273 S.E.2d 289, 293 (1981). This doctrine has also occasionally been applied as evidence of knowledge that property a defendant possessed was stolen. *See State v. Cannon*, 216 N.C. App. 507, 513, 721 S.E.2d 691, 696 (2011). However, in its response to Defendant's arguments at the hearing on Defendant's motions to dismiss, the State argued the following: "This is a recent possession case. It's always been, as far as the breaking and entering and larceny." The State made no argument at the motions hearing that the doctrine of recent possession should apply to the charge of possession of stolen property – only to the charges of breaking or entering and felony larceny. The trial court reflected this limited application of the doctrine in its jury charge for the doctrine of recent possession:[1]

> For this doctrine to apply, the State must prove three things beyond a reasonable doubt. First, that the property was stolen. Second, that the defendant had possession of this property. A person possesses property when the person is aware of its presence and has, either alone or together with others, both the power and intent to control its disposition or use. And third, that the defendant had possession of this property so soon after it was stolen and under such circumstances as to make it unlikely that the defendant obtained the property – possession of the property honestly. If you find from these things – if you find these things from the evidence beyond a reasonable doubt, you may consider them with all the other facts and circumstances in deciding whether or not the defendant is

[1] At the jury instruction conference, the State arguably referenced the possession of stolen property charge in its discussion of the doctrine of recent possession. However, any discussions regarding jury instructions could not have been considered by the trial court in its ruling on Defendant's earlier motions to dismiss.

> guilty of *breaking or entering and/or larceny*. [Emphasis added].

The State did not object to this instruction. The following three things demonstrate that the trial court did not consider the doctrine of recent possession when ruling to deny Defendant's motion to dismiss the charge of possession of stolen property: (1) the State's arguments in response to Defendant's motions to dismiss, (2) the trial court's instruction on the doctrine of recent possession – which was limited to breaking or entering and larceny – and (3) the State's implied agreement with that instruction. *See Cannon*, 216 N.C. App. at 513, 721 S.E.2d at 696 (citations omitted) ("At trial, the prosecutor argued that the fact that the four-wheeler was found in defendant's possession only two months after it was stolen should also be considered, alluding to the doctrine of recent possession. Although the doctrine has primarily been applied to prove charges of breaking and entering or larceny, it has also been permitted in the context of a charge for possession of stolen property. Here, the State raises no argument on appeal as to the doctrine of recent possession; the trial court made no indication in [its] ruling denying defendant's motion to dismiss that [it] considered the doctrine; and the State, during the charge conference, made no request for an instruction as to the doctrine and no instruction as to the doctrine of recent possession was given to the jury. Therefore, we need not address this issue.").[2]

[2] Although the State does argue on appeal that the doctrine of recent possession should be considered in reviewing the trial court's denial of Defendant's motion to dismiss the possession charge,

Further, we must presume that the jury did not apply the doctrine of recent possession in its deliberations on the charge of possession of stolen property. *State v. Tirado*, 358 N.C. 551, 581, 599 S.E.2d 515, 535 (2004) (citation omitted) ("The law presumes that jurors follow the court's instructions."). Because the trial court did not apply the doctrine of recent possession for the charge of possession of stolen property at the hearing, we do not apply the doctrine of recent possession in our analysis of Defendant's argument that the trial court erred in denying his motion to dismiss the charge of possession of stolen property.

(2) *Substantial Evidence*

We now examine whether there was substantial evidence, taken in the light most favorable to the State, that Defendant knew the cell phones and headsets were stolen. *Tanner*, 364 N.C. at 232, 695 S.E.2d at 100. This Court has addressed this issue in prior opinions. First, in *State v. Allen*, 79 N.C. App. 280, 339 S.E.2d 76 (1986), the defendant was in a Roses store at the same time as two men who stole VCRs from the Roses; there was no evidence that showed the defendant was with the other men while in the store; an off-duty police officer saw the defendant at a nearby carwash approximately one hour later; the two men were also at the carwash at the same time; one of the two men approached the defendant to talk to him; and the defendant then agreed to give the men a ride from the carwash and allowed them to place the VCRs

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it is the arguments that were presented to the trial court at the motions hearing – and what the trial court considered at that hearing – that are relevant to our review.

in the trunk of his car. *Id.* at 282-83, 339 S.E.2d at 78. This Court reversed the defendant's conviction for felony possession of stolen property, stating: "Granted, these facts give rise to a suspicion that defendant possessed the requisite knowledge; however, these facts just as reasonably lead to an inference that defendant had no knowledge that he was transporting stolen property. Conjecture, not reasonable inference of guilt, is raised." *Id.* at 282-83, 339 S.E.2d at 78. This Court concluded that "[the] evidence [was] not sufficient to conclude that defendant had reasonable grounds to believe the property was stolen. Taken together [the] facts [were] simply too tenuous to establish the element of knowledge sufficiently to take the case to the jury." *Id.* at 283-84, 339 S.E.2d at 78. In the present matter, Defendant, like the defendant in *Allen*, possessed property on the same day that they were stolen. *Id.* at 282, 339 S.E.2d at 78. Here, the State, as it did in *Allen*, relies primarily (if not entirely) on that fact to establish the knowledge element. *Id.* at 282-83, 339 S.E.2d at 78. That fact was not sufficient to withstand a motion to dismiss in *Allen* and it is not enough here. *Id.* at 283-84, 339 S.E.2d at 78.

Next, in *State v. Webb*, 192 N.C. App. 719, 666 S.E.2d 212 (2008), the defendant allowed a man named Garrett to move into his apartment. *Id.* at 720, 666 S.E.2d at 213. Garrett was arrested on an outstanding warrant two days after trying to pawn an item previously reported as stolen. *Id.* Garrett confessed to two burglaries and told police that he had hidden items taken during the burglaries throughout the

defendant's apartment. *Id.* Police executed a search warrant and "found a variety of property stolen by Garrett inside of defendant's apartment. Stolen property was found inside duffel bags hidden within bathroom cabinets, inside closets, underneath or behind a couch, and inside of and next to a green storage container underneath the kitchen table." *Id.* at 721, 666 S.E.2d at 213-14.

> The State contend[ed] defendant's knowledge that the property was stolen may be inferred from the: (1) number and type of stolen items discovered inside defendant's apartment; (2) fact that some of the items were found in plain view; and (3) fact that defendant gave a false name when first questioned by the police. Viewed in the light most favorable to the State, these facts only raise a mere suspicion or conjecture that defendant possessed the requisite knowledge.
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> "When the evidence most favorable to the State is sufficient only to raise a suspicion or conjecture that the accused was the perpetrator of the crime charged in the indictment, the motion for judgment . . . of nonsuit should be allowed." The trial court erred when it denied defendant's motion to dismiss.

*Id.* at 724, 666 S.E.2d at 215-16 (citations omitted).

In the present case, as in *Webb*, Defendant possessed items that had been stolen. *Id.* at 721, 666 S.E.2d at 214. However, we find the evidence in *Webb* – the variety of property, attempts to hide the property, and the defendant providing a false name – to be stronger evidence of knowledge than is present in the case before us – selling eight phones and two headsets on the same day they were stolen. *Id.* at 724, 666 S.E.2d at 215.

Lastly, this Court also addressed the question of whether there was sufficient evidence of the knowledge element of possession of stolen property in *State v. Bizzell*, 53 N.C. App. 450, 281 S.E.2d 57 (1981).

> In *State v. Bizzell*, this Court reversed the defendant's conviction of non-felonious possession of stolen property for lack of evidence which tended to establish the defendant's guilty knowledge.
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> > The key evidence relied upon by the State to show the requisite knowledge of the defendant was that (1) he had established a part-time residence at the mobile home where the goods were found; (2) he visited the robbery victim's home several days prior to the robbery and had an opportunity to know what valuable goods were there; (3) he told Margie Lewis that he was helping a friend move and asked if he could store some of his friend's possessions in their mobile home; (4) he never identified the friend or made an effort to return the goods to the friend; (5) he told Margie Lewis not to box the clothes for storage but rather to hang them in the closet; and (6) he was wearing an article of the stolen clothing at the time of his arrest.
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> This Court held that "[w]hile the State's evidence in this case may beget suspicion in imaginative minds, this is not enough to support a conviction for possession of stolen property." We find the evidence held to be insufficient in *Bizzell* substantially greater than the evidence in the case at bar.

*Webb*, 192 N.C. App. at 722-23, 666 S.E.2d at 214-15 (citations omitted). Like this Court in *Webb*, we find the evidence supporting the knowledge element in the present matter to be less than the evidence present in *Bizzell*.

(3) *Additional Incriminating Evidence*

In cases that have upheld convictions of possession of stolen property when the knowledge element has been challenged, there has been sufficient evidence of *additional* incriminating behavior – beyond the fact that stolen property was found in the defendant's possession soon after it was stolen – to support a reasonable inference of guilt. *Allen*, 79 N.C. App. at 284-85, 339 S.E.2d at 79. In *State v. Haskins*, 60 N.C. App. 199, 298 S.E.2d 188 (1982), the defendant and his companion attempted to sell guns on the day they were stolen, for considerably less than their true value, and they gave conflicting stories as to how they came to possess the guns. *Id.* at 202, 298 S.E.2d at 190.

In *State v. Taylor*, 311 N.C. 380, 317 S.E.2d 369 (1984), a man observed the defendant acting suspiciously in front of a liquor store. *Id.* at 381, 317 S.E.2d at 370. While waiting for police to arrive, the defendant's behavior caused the man to yell at him. The defendant then removed a firearm — stolen earlier that same day— from his coat, stooped near a car, and tried to hide the gun by throwing it into nearby bushes. *Id.* at 382, 317 S.E.2d 370.

In *State v. Walker*, 86 N.C. App. 336, 357 S.E.2d 384 (1987), police observed the defendant apparently attempting to sell a compact disc player — that had been stolen two days prior — from the trunk of his associate's automobile. *Id.* at 337-38, 357 S.E.2d 385. The serial number had been scratched off of the disc player between

the time it was stolen and when it was found in the defendant's possession. *Id.* at 341, 357 S.E.2d at 387.

In the present case, there was no such additional incriminating evidence. Mhana testified there was nothing unusual about the sale of the phones and headsets at his store. In fact, Mhana testified there was a sign in his store that solicited for the purchase of cell phones, and he further testified that he purchased cell phones on a daily basis. The items were still in their original packaging with serial numbers intact. Defendant's possession of multiple phones and headsets on the same day they were stolen was "'sufficient only to raise a suspicion or conjecture as to'" Defendant's knowledge that the cell phones and headsets were stolen. *Golphin*, 352 N.C. at 458, 533 S.E.2d at 229 (citation omitted). Therefore, Defendant's motion to dismiss the charge of felony possession of stolen property should have been allowed. *Id.* at 458, 533 S.E.2d at 229-30.

B. *Conclusion*

Though the State argues that the element of knowledge in this case can be inferred by application of the doctrine of recent possession, we have held that the doctrine of recent possession does not apply to this case. Further, we find that the totality of the evidence, when viewed in the light most favorable to the State, is insufficient to raise more than a suspicion or conjecture that Defendant knew or had reasonable grounds to believe the property were stolen. Because the evidence was

insufficient to establish a necessary element of felony possession of stolen property, the trial court erred when it denied Defendant's motion to dismiss. The judgment of the trial court is reversed, and this matter is remanded to the trial court for further action consistent with this opinion.

REVERSED AND REMANDED.

Judges GEER and McCULLOUGH concur.

Report per Rule 30(e). ____