IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-594

Filed: 31 December 2020

McDowell County, Nos. 15 CRS 430, 50498-50501, 50522

STATE OF NORTH CAROLINA

v.

JEFFREY SCOTT THOMAS

Appeal by defendant by writ of certiorari from judgments entered 6 November 2018 by Judge Alan Z. Thornburg in McDowell County Superior Court. Heard in the Court of Appeals 5 February 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Andrew L. Hayes, for the State.

Richard J. Costanza for defendant-appellant.

ZACHARY, Judge.

Defendant Jeffrey Scott Thomas was convicted by a jury of multiple counts of larceny after breaking or entering; breaking or entering; and felonious possession of stolen goods. Following the jury's verdicts, Defendant pleaded guilty to one count of obtaining property by false pretenses, two additional counts of felonious possession

of stolen goods, and attaining the status of a habitual felon. For the reasons that follow, we conclude that Defendant received a fair trial, free from prejudicial error.

I. Background

Over the course of ten days in March of 2015, the owners of two vacation homes reported numerous pieces of property from the homes as stolen. Items from the first home were reported as stolen on 2 March 2015. The second home was subject to two separate break-ins, which were reported on 2 March and 12 March 2015. Neither of the homeowners lived in the targeted residences year-round, and both homes were unoccupied during the break-ins.

Defendant's parents owned a parcel of land in McDowell County, hereinafter referred to as the "Thomas Property" or the "Property." Defendant lived in a trailer on the Property. The parents' home was also situated on the Property, together with an outbuilding that a detective characterized as "a storage building," but Defendant's mother described as a garage.

On 16 March 2015, while investigating the thefts, detectives visited the Thomas Property, after which they sought and obtained a warrant to search the Property. A search of the house, storage building, and trailer uncovered many of the stolen items: a brown chair, a set of lamps, a gold chair, an oval braided rug, a set of fire logs, two leather recliners, a love seat, a rug, a Tonka truck, an antique lamp, an antique mirror, and a four-poster bedroom suite with vanity. Law enforcement

officers confiscated the stolen items, which were then returned to the victims. Defendant was not present at the Thomas Property during the search; after months of searching, officers located Defendant and arrested him.

On 21 July 2015, a grand jury returned separate bills of indictment, charging Defendant with (1) felonious breaking or entering and felonious possession of stolen goods, in 15 CRS 50498; (2) obtaining property by false pretenses and felonious possession of stolen goods, in 15 CRS 50499; (3) felonious breaking or entering, larceny after breaking or entering, and felonious possession of stolen goods, in 15 CRS 50500; (4) felonious breaking or entering, larceny after breaking or entering, and felonious possession of stolen goods, in 15 CRS 50501; (5) larceny after breaking or entering, in 15 CRS 50522; and (6) misdemeanor injury to personal property, in 15 CRS 50523. The grand jury also returned separate bills of indictment, charging Defendant with four corresponding counts of attaining the status of a habitual felon in 15 CRS 429-32. On 23 October 2017, the grand jury returned superseding indictments, again charging Defendant with four counts of attaining the status of a habitual felon in 15 CRS 429-32.

On 1 November 2018, Defendant was tried by a jury in McDowell County Superior Court, the Honorable Alan Z. Thornburg presiding. At trial, the victims identified items that were stolen from their homes and found on the Thomas Property. Defendant's mother testified that, at some point in time, "two boys" arrived

in a white truck with "a bunch of stuff on it," and she loaned Defendant $500 so that he could purchase the truck's contents. She also testified that she had never been in the garage and rarely left her home, so she had never seen many of the stolen items. Defendant's father testified that a white truck carrying items arrived one day, but he did not see what was on the truck, nor did he see any "money change hands."

One of the detectives testified that Defendant's father never mentioned a white truck when law enforcement officers searched the Thomas Property. Instead, Defendant's parents told two detectives that Defendant personally brought the items to the Property. Additionally, both detectives testified that although they investigated one other person of interest in the case, that person's home was not searched; Defendant was the only genuine suspect.

At the close of the State's case-in-chief, Defendant moved to dismiss the charges against him, which the trial court denied. Defendant did not offer any evidence, and renewed his motion to dismiss. The trial court granted the motion to dismiss the misdemeanor charge of injury to personal property in 15 CRS 50523, but denied Defendant's motion as to the remaining charges.

On 6 November 2018, the jury found Defendant guilty of (1) breaking or entering and felonious possession of stolen goods, in 15 CRS 50498; (2) breaking or entering, larceny after breaking or entering, and felonious possession of stolen goods, in 15 CRS 50500; (3) breaking or entering, larceny after breaking or entering, and

felonious possession of stolen goods, in 15 CRS 50501; and (4) larceny after breaking or entering, in 15 CRS 50522. Defendant then pleaded guilty to (1) attaining the status of a habitual felon, in 15 CRS 430; and (2) obtaining property by false pretenses and felonious possession of stolen goods, in 15 CRS 50499. As part of the plea agreement, the State dismissed the charges against Defendant of attaining the status of a habitual felon in 15 CRS 429 and 431-32.

Defendant entered written notice of appeal dated 12 November 2018, which was not file-stamped by the clerk of court. As a result of the ineffective filing, Defendant petitioned this Court to issue a writ of certiorari to review the merits of his case. In our discretion, we allowed Defendant's petition.

II. Witness Impeachment

Defendant argues that the trial court erroneously allowed the State to impeach the testimony of his parents "by offering extrinsic evidence that contradicted their sworn trial testimony." We disagree.

A. Chronological Sequence of Witnesses' Testimonies

As relevant to this issue on appeal, the State called Defendant's mother, father, and two detectives to testify at trial. Each of these witnesses testified to his or her knowledge of how the stolen items arrived at the Thomas Property. To focus our analysis, we now provide an overview of these witnesses' testimonies in the order of the witnesses' appearances at trial.

Defendant's mother testified first that "two boys" arrived at the Thomas Property in a white truck with "a bunch of stuff on it." She did not specify who they were or when they arrived, only that "[t]here was two boys that brought some stuff out there and sold it to" Defendant. Defendant's mother further testified that when law enforcement officers arrived to search the Thomas Property, Detective Billie Brown said, "Well that's the two lamps there that's missing." Defendant's mother recalled telling the detective that she had the lamps for a long time, but she nonetheless allowed the officers to remove the lamps from her home. She explained at trial that her sister had given her the lamps. Later, before the completion of her testimony, Defendant's mother began struggling to breathe, and EMTs transported her to the hospital for examination. Defendant's father, who was also scheduled to testify, accompanied her. At the trial court's direction, the State proceeded with its case-in-chief, pending Defendant's parents' return to court.

The State then called Detective Andy Manis to the stand. He testified that Defendant's mother had, in fact, previously informed him that Defendant personally brought the items in question to the Thomas Property.

Defendant's father testified next. Like Defendant's mother, he also stated that a white ton truck arrived at their property with "a bunch of stuff" in it. Defendant's father testified that he did not see Defendant bring the stolen items to the Thomas Property. When asked if he "recall[ed] [Defendant] loading property and taking it to

[his] residence," Defendant's father answered in the negative. He testified that although he remembered speaking with Detective Brown, he did not remember speaking with her about how the stolen items came to be at the Property. He provided brief responses to many of the prosecutor's questions, and testified that he could not recall the substance of his conversation with the detectives.

Finally, Detective Brown testified immediately after Defendant's father. Like Detective Manis, she also testified that Defendant's mother had previously informed her that Defendant personally brought the items to their property. She also testified that Defendant's father had previously stated that Defendant brought the stolen items to the Property.

The following business day, Defendant's mother felt well enough to resume her testimony. However, she contradicted her earlier testimony. Specifically, Defendant's mother testified that Defendant bought the recliner and pair of lamps and brought them home as gifts for her, which differed from her prior testimony that her sister had given her the lamps and that the "two boys" might have brought the recliner to the property.

B. Analysis

Defendant asserts that "[t]he State should have been precluded from contradicting [his parents'] answers with extrinsic evidence," and that because of this asserted error, the State "completely discredited [his parents'] testimony regarding

how the stolen property arrived at their residence, and . . . the jury received evidence showing . . . Defendant's own parents implicated him in the . . . thefts."

While Defendant objected to the testimony of Detective Brown, he failed to object to Detective Manis's earlier testimony that Defendant's mother told him that Defendant brought the stolen items to the Thomas Property. It is well settled that "[t]he admission of evidence without objection *waives prior or subsequent objection to the admission of evidence of a similar character*." *State v. Walters*, 357 N.C. 68, 104, 588 S.E.2d 344, 365 (emphasis added) (citation omitted), *cert. denied*, 540 U.S. 971, 157 L. Ed. 2d 320 (2003). Thus, in that Detective Manis and Detective Brown both testified to Defendant's mother's prior statements regarding how the stolen items arrived at their property, Defendant's failure to object to Detective Manis's testimony waived his subsequent objection to Detective Brown's testimony "of a similar character." *Id.*

Moreover, much of the testimony that Defendant now claims as error was elicited on cross-examination by his trial counsel. "A defendant is not prejudiced by the granting of relief which he has sought or by error resulting from his own conduct." N.C. Gen. Stat. § 15A-1443(c). "Statements elicited by a defendant on cross-examination are, even if error, invited error, by which a defendant cannot be prejudiced as a matter of law." *State v. Carter*, 210 N.C. App. 156, 166, 707 S.E.2d 700, 707–08 (citation omitted), *disc. review denied*, 365 N.C. 202, 710 S.E.2d 9 (2011).

For example, during cross-examination, defense counsel questioned Detective Manis on the origin of the stolen property:

> [Defense Counsel:] Okay. And you met with [Defendant's mother]. Did you speak with her on the phone or meet with her face-to-face?
>
> [Detective Manis:] It was face-to-face.
>
> Q. And you spoke with [Defendant's father], correct?
>
> A. Yes, sir.
>
> Q. A question a moment ago was asked to you regarding the property at the Thomases' residence. My understanding of your testimony is [Defendant's mother] said [Defendant] gave it to her, correct?
>
> A. *My recollection was she said it came from* [*Defendant*].
>
> Q. [*Defendant*] *got it for her is what you said, right?*
>
> A. *That it came from* [*Defendant*]*, yeah*.
>
> Q. *She told you, did she not, that two other individuals brought that property to their residence on a truck?*
>
> A. *No, sir*.

(Emphases added).

Defense counsel's cross-examination of Detective Brown elicited similar testimony:

> [Defense Counsel:] And you mentioned -- when you spoke to [Defendant's mother], you talked to her about some lamps that you saw, right?

> [Detective Brown:] Yes.
>
> Q. And you asked [Defendant's mother] about those lamps, correct?
>
> A. Yes.
>
> Q. And you testified earlier that -- you testified that [Defendant's mother] told you that [Defendant] had brought them, correct?
>
> A. Right.

Indeed, defense counsel refreshed Detective Brown's recollection on this issue by allowing her to review her felony investigation report:

> [Defense Counsel:] Okay. So you recall, then, in writing in that document, [Defendant's mother] reported to you that [Defendant] gave her this table and chair?
>
> [Detective Brown:] Can I see it?
>
> Q. Can I approach?
>
> THE COURT: Yes.
>
> Q. It's this paragraph right in here. I'm assuming you need your memory refreshed?
>
> A. Yes. Thank you.
>
> Q. And will this help refresh your memory?
>
> A. It will. Thank you so much. Okay. Thank you.
>
> Q. Now, to those two items, you report that [Defendant's mother] said, "He gave them to me," right?
>
> A. It says --

Q. He didn't --

A. -- [Defendant] gave them to her, yes.

Accordingly, if the trial court erred by allowing the State to impeach Defendant's parents' sworn testimony, any such error was invited. Defendant's argument lacks merit.

III. Motions to Dismiss

In his remaining argument, Defendant asserts that the trial court erred in denying Defendant's motions to dismiss because the State "only showed [Defendant] had nonexclusive possession of stolen property," thereby precluding application of the doctrine of recent possession. We disagree.

A. Standard of Review

This Court reviews the denial of a motion to dismiss de novo. *State v. McDaniel*, 372 N.C. 594, 603, 831 S.E.2d 283, 289 (2019). Upon a criminal defendant's motion to dismiss, "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 [the] defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002) (citation omitted). The trial court must "consider the evidence in the light most favorable to the State[,]" which is accorded "every reasonable intendment and every reasonable inference to be drawn from the evidence; contradictions and discrepancies

do not warrant dismissal of the case—they are for the jury to resolve." *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649, 652–53 (1982).

B. Doctrine of Recent Possession

"The doctrine of recent possession allows the jury to infer that the possessor of certain stolen property is guilty of larceny" and other property theft crimes. *State v. Pickard*, 143 N.C. App. 485, 487, 547 S.E.2d 102, 104, *disc. review denied*, 354 N.C. 73, 553 S.E.2d 210 (2001). *See generally State v. Street*, 254 N.C. App. 214, 217, 802 S.E.2d 526, 529 (providing examples of the doctrine's applicability to various offenses), *disc. review denied*, 370 N.C. 220, 804 S.E.2d 529 (2017). "The inference derived from recent possession is to be considered by the jury merely as an evidentiary fact," and viewed in tandem with "other evidence in the case." *Street*, 254 N.C. App. at 216–17, 802 S.E.2d at 529 (citation omitted); *see also State v. Fair*, 291 N.C. 171, 173, 229 S.E.2d 189, 190 (1976) (noting that the inference "is one of fact and not of law").

For the doctrine of recent possession to apply, the State must show "(1) that the property was stolen; (2) that [the] defendant had possession of this same property; and (3) that [the] defendant had possession of this property so soon after it was stolen and under such circumstances as to make it unlikely that he obtained possession honestly." *State v. Friend*, 164 N.C. App. 430, 438–39, 596 S.E.2d 275, 282 (2004) (citation omitted). We address each element in turn.

1. *Stolen Property*

The first element requires that the State's evidence show that the property was "identified as stolen." *State v. Lee*, 213 N.C. App. 392, 395, 713 S.E.2d 174, 177 (2011). "[T]he property need not be unique to be identified." *Id.* Indeed, "[n]on-unique property may be identified by reference to characteristics other than its appearance: the assemblage or combination of items recovered, the quantity of items recovered, and the stamps and marks on items recovered." *Id.* (citation and internal quotation marks omitted).

Here, one of the victims provided a list of stolen property to law enforcement, which enabled the detectives to recognize the stolen items at the Thomas Property. In addition, both victims readily identified the confiscated items as among those stolen from their homes. Thus, the first element of the doctrine of recent possession was satisfied.

2. *Exclusive Possession*

The second element addresses whether the "defendant had possession of this same property" that was identified as stolen. *Friend*, 164 N.C. App. at 438, 596 S.E.2d at 282 (citation omitted). The State must demonstrate that "the stolen goods were found in [the] defendant's custody and subject to his control and disposition to the exclusion of others[.]" *State v. Maines*, 301 N.C. 669, 674, 273 S.E.2d 289, 293 (1981). However, the property need "not necessarily [be] found in [the] defendant's hands or

on his person so long as he had the power and intent to control the goods[.]" *Id.* The State may satisfy the element of possession with evidence of the defendant's constructive possession of the property; constructive possession of an item may be established with evidence that the defendant "has both the power and intent to control its disposition or use, even though he does not have actual possession." *State v. Davis*, 325 N.C. 693, 697, 386 S.E.2d 187, 190 (1989) (internal citation and quotation marks omitted).

In addition, "the evidence must show the person accused of the theft had complete dominion, *which might be shared with others*, over the property which sufficiently connects the accused person to the crime." *McDaniel*, 372 N.C. at 604–05, 831 S.E.2d at 290 (citation omitted); *see also State v. Wilson*, 313 N.C. 516, 536, 330 S.E.2d 450, 464 (1985) ("It is not always necessary that the stolen property be actually in the hands of the defendant in order to trigger the inference that he is the thief.").

Taken in the light most favorable to the State, the evidence at trial tended to show that (1) law enforcement officers discovered items reported as missing by the victims in Defendant's trailer and in other buildings on the Property that were not accessed by his parents; (2) although Defendant was in the business of buying and selling used goods, Defendant's mother testified that this was the most furniture that Defendant had ever brought to their property; and (3) Defendant's parents testified that they had never seen, and did not recognize, most of the stolen furniture.

Defendant asserts that "[t]o the extent [he] had constructive possession of stolen property, his possession was shared by his parents" because they lived on the Property as well. This contention lacks merit. Indeed, a defendant may have constructive possession of property even if the property in question is in another person's *actual possession*. *See, e.g.*, *Wilson*, 313 N.C. at 535, 330 S.E.2d at 463–64 (concluding that the defendant had custody and control of a stolen watch, which "was seen on the person of the defendant's girlfriend two or three weeks after the crimes were committed," but was seen with the defendant one week later). The mere fact that Defendant's parents lived on the same parcel of land as Defendant is immaterial to our inquiry.

Viewing the substantive evidence presented in the light most favorable to the State, and affording the State every reasonable inference taken therefrom, *Earnhardt*, 307 N.C. at 67, 296 S.E.2d at 652–53, we conclude that there was substantial evidence of Defendant's exclusive possession of the property, and thus, the second element of the doctrine of recent possession was satisfied.

3. *Recency of Possession*

The third element of the doctrine of recent possession concerns "the recency of [the] defendant's possession of the property at issue[.]" *McDaniel*, 372 N.C. at 606, 831 S.E.2d at 291. The long-recognized rationale for this element is "to rule out the possibility of a transfer of the stolen property from the thief to an innocent party."

State v. Hamlet, 316 N.C. 41, 43, 340 S.E.2d 418, 420 (1986). "There is no specific period . . . beyond which possession can no longer be considered 'recent.' Rather, the term is a relative one and will depend on the circumstances of each case." *Wilson*, 313 N.C. at 536, 330 S.E.2d at 464. As a general matter, however, the inference that the possessor stole the property "becomes weaker the more distant in time the possession is from the commission of the offense." *Id.* at 535, 330 S.E.2d at 463.

Whether possession is "recent" is relative to the characteristics of the stolen property, and is a factual inquiry:

> [I]f the stolen article is of a type normally and frequently traded in lawful channels, then only a relatively brief interval of time between the theft and finding a defendant in possession may be sufficient to cause the inference of guilt to fade away entirely. In the alternative, if the stolen article is of a type not normally or frequently traded, then the inference of guilt would survive a longer time period.

Pickard, 143 N.C. App. at 488, 547 S.E.2d at 105 (internal citations and quotation marks omitted).

In the present case, the indictments alleged a range of dates during which the offenses purportedly occurred. One home was broken into sometime between 8 February 2015 and 2 March 2015; the other home was broken into twice: once between 15 December 2014 and 2 March 2015, and again between 4 March and 12 March 2015. On 16 March 2015, law enforcement officers discovered numerous stolen items from the victims' homes at the Thomas Property, where Defendant resided. The

stolen items included a brown chair, a gold chair, an oval braided rug, a set of fire logs, two leather recliners, a love seat, a pink rug, a Tonka truck, an antique lamp, an antique mirror, and a four-poster bedroom suite with dresser and vanity.

Given the facts of the instant case, particularly the quantity and unique assemblage of items recovered from Defendant, the possession is sufficiently recent. "While not all of the stolen property was recovered, [D]efendant's possession of part of the property under these circumstances" and at the time that officers searched the Thomas Property on 16 March 2015 "warrants the inference that [D]efendant stole all of it." *State v. Washington*, 86 N.C. App. 235, 250, 357 S.E.2d 419, 429 (1987), *cert. denied*, 322 N.C. 485, 370 S.E.2d 235 (1988). Under our case law, and given our standard of review, the State put forth sufficient evidence to demonstrate the recency of Defendant's possession, the third element of the doctrine of recent possession.

C. Summary

In sum, the State's evidence adduced at trial was sufficient to satisfy the elements of the doctrine of recent possession. Here, "every reasonable intendment and every reasonable inference to be drawn from the evidence" must be viewed in the light most favorable to the State. *Earnhardt*, 307 N.C. at 67, 296 S.E.2d at 652–53. The State presented sufficient evidence to survive Defendant's motions to dismiss, especially in that the inference generated by the doctrine of recent possession is a "question [that] is ordinarily a question of fact for the jury." *State v. Blackmon*, 6 N.C.

App. 66, 77, 169 S.E.2d 472, 479 (1969). Thus, the trial court did not err in denying Defendant's motions to dismiss.

IV. Conclusion

For the reasons stated herein, we conclude that Defendant received a fair trial, free from prejudicial error.

NO ERROR.

Judges MURPHY and ARROWOOD concur.

Report per Rule 30(e).