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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-972

Filed: 6 June 2017

Catawba County, No. 15 CRS 5540

STATE OF NORTH CAROLINA

v.

JAMES DOUGLAS GRIFFIN

Appeal by defendant from judgment entered 26 May 2016 by Judge Eric L. Levinson in Catawba County Superior Court. Heard in the Court of Appeals 8 May 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General B. Carrington Skinner, IV, for the State.

Stephen G. Driggers for defendant-appellant.

ZACHARY, Judge.

James Douglas Griffin (defendant) appeals from the judgment entered upon a jury verdict finding him guilty of possession of a stolen motor vehicle. Defendant argues that the trial court erred by denying his motion to dismiss the charge, on the grounds that there was insufficient evidence that he should have known the vehicle

was stolen. After review of defendant's argument in light of the record and the applicable law, we conclude that the trial court did not err.

I. Factual and Procedural Background

On 7 December 2015, defendant was indicted for the offense of possession of a stolen motor vehicle, a Class H felony. The charge against defendant was tried before a jury on 23 May 2016, before the Honorable Eric L. Levinson. Defendant did not testify or present evidence at trial. The State's evidence, as relevant to the issue raised on appeal, is summarized as follows.

On 21 March 2015, Scott Burg reported that his burgundy 1999 Jeep Cherokee had been stolen. Officer Isaiah Matthews of the Lincolnton Police Department entered the Vehicle Identification Number of the stolen Jeep into a national crime database. On 15 June 2015, North Carolina Highway Patrol Trooper Brian Lee Albert observed defendant driving a white Ford Taurus. Trooper Albert entered the license plate number of the Taurus into his computer, and was informed that the plate had been lost or stolen. While he was waiting for the results of the computer search, Trooper Albert saw defendant pull the Taurus into the driveway of a nearby house. Trooper Albert went to the residence and asked defendant about the license tag on the Taurus. Defendant directed Trooper Albert to the back of the residence, where Burg's Jeep Cherokee was parked in the yard. The Jeep had been partially

spray-painted black and the steering column had been damaged, so that the vehicle could not be started with a key.

At the close of the State's evidence and at the close of all evidence, defendant made a motion to dismiss. The trial court denied both motions. On 25 May 2016, the jury returned a verdict finding defendant guilty, and on 26 May 2016, the trial court sentenced defendant to 6 to 17 months' imprisonment, suspended the sentence, and placed defendant on supervised probation for 16 months. The following morning, defendant's counsel gave oral notice of appeal in defendant's absence and also filed a written notice of appeal.

II. Notice of Appeal

As an initial matter, we must determine if defendant gave proper notice of appeal. N.C. R. App. 4(a) (2015), which governs appeals in criminal cases, states:

Any party entitled by law to appeal from a judgment or order . . . in a criminal action may take appeal by

(1) giving oral notice of appeal at trial, or

(2) filing notice of appeal with the clerk of superior court and serving copies thereof upon all adverse parties within fourteen days after entry of the judgment or order[.]

Defendant concedes that his counsel did not give oral notice of appeal "at trial," and that the record is silent as to whether his written notice of appeal was served upon the State. Defendant has filed a petition for writ of certiorari in the event his notice of appeal is deemed defective.

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However, upon review of the record, we conclude that the State has waived its objection to any possible defect in the service of process of defendant's notice of appeal. In *Hale v. Afro-American Arts Int'l*, 110 N.C. App. 621, 623, 430 S.E.2d 457, 458 (1993), this Court held that we lacked subject matter jurisdiction over the defendants' appeal "absent proof of service of defendants' notice of appeal on plaintiff." The dissent argued that

[W]hile the timely filing of the Notice is necessary to grant this Court subject matter jurisdiction over the appeal, the service of the Notice may be waived by the appellee without depriving this Court of subject matter jurisdiction. . . . [I]n the case at hand, where the appellee failed, by motion or otherwise, to raise the issue as to service of notice in either the trial court or in this Court and has proceeded to file a brief arguing the merits of the case, I vote to hold that he has waived service of notice and, thus, the failure to include the proof of service in the Record is inconsequential.

Hale v. Afro-American, 110 N.C. App. at 625-26, 430 S.E.2d at 460 (Wynn, J., dissenting). In *Hale v. Afro-American Arts Int'l*, 335 N.C. 231, 436 S.E.2d 588 (1993), our Supreme Court reversed this Court's decision for the reasons cited in the dissent. *See also, e.g., State v. Williams*, 235 N.C. App. 201, 204, 761 S.E.2d 662, 664 (2014) (following *Hale* and holding, on the facts of the case, that appellee had waived service of the notice of appeal). In the present case, defendant's handwritten notice of appeal appears timely filed if not properly served. However, the State has not raised the issue of the service of defendant's notice of appeal, either at the trial level or in this Court, and has filed a brief addressing the issues raised on appeal. Therefore, we

conclude that defendant's appeal is properly before this Court, and dismiss defendant's petition for writ of certiorari as moot.

III. Sufficiency of the Evidence

Defendant's sole argument is that the trial court erred by denying his motion to dismiss. He contends that the State presented insufficient evidence that he knew or had reason to know that the Jeep was stolen. We disagree.

"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). "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) (internal quotation omitted). "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).

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“A defendant charged with . . . possession of a stolen vehicle under G.S. 20-106 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. Bailey*, 157 N.C. App. 80, 83-84, 577 S.E.2d 683, 686 (2003). In this case, defendant contends that the State failed to present sufficient evidence that he knew or should have known that the Jeep was stolen. This Court has previously held that:

Because the purpose of this statute is to discourage the possession of stolen vehicles, the State need only prove that the defendant knew or [had] reason to believe that the vehicle in his possession was stolen. No felonious intent is required. Whether the defendant knew or should have known that the vehicle was stolen must necessarily be proved through inferences to be drawn from the evidence.

State v. Baker, 65 N.C. App. 430, 436, 310 S.E.2d 101, 107 (1983) (internal quotations omitted).

The evidence at trial, taken in the light most favorable to the State, tended to show the following: (1) defendant was driving a Ford Taurus onto which he had attached the license plate belonging to the stolen Jeep; (2) the Jeep’s exterior was partially defaced with black spray paint; and (3) the Jeep’s steering column had been cracked open so that the Jeep could no longer be started with a key. This evidence is circumstantial. However, “[t]he rule for determining the sufficiency of evidence is the same whether the evidence is completely circumstantial, completely direct, or both.”

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State v. Wright, 302 N.C. 122, 126, 273 S.E.2d 699, 703 (1981). We conclude that the State produced sufficient evidence to support an inference that defendant knew or should have known that the vehicle was stolen, and that the trial court did not err by denying defendant's motion to dismiss. As defendant has raised no other issues on appeal, we conclude that defendant received a fair trial, free from error.

NO ERROR.

Judges BRYANT and DAVIS concur.

Report per Rule 30(e).