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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-152

Filed: 6 November 2018

Johnston County, No. 15 CRS 053962

STATE OF NORTH CAROLINA

v.

LAMONT ANDRE MCKOY

Appeal by defendant from judgment entered 23 March 2017 by Judge Thomas H. Lock in Johnston County Superior Court. Heard in the Court of Appeals 17 October 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General James D. Concepción, for the State.

Julie C. Boyer, for Defendant-Appellant.

CALABRIA, Judge.

Lamont Andre McKoy ("defendant") appeals from a judgment entered after a jury found him guilty of possession of a stolen vehicle, attempting to obtain property by false pretense, and attaining habitual felon status. Defendant argues (1) there is a fatal defect in the indictment, which prevented the trial court from becoming vested

with subject matter jurisdiction, and (2) the trial court erred in denying defendant's motion to dismiss for insufficient evidence.

After careful review, we find no error.

I. Factual and Procedural History

On 23 July 2015, Jody Standley ("Mr. Standley"), owner and manager of Wise Recycling I, LLC, received a call from a gentleman identifying himself as defendant inquiring about Wise Recycling's interest in purchasing a refrigerated trailer for scrap metal. Wise Recycling is in the scrap metal business, and Mr. Standley provided defendant with a quote based on defendant's description of the trailer.

The following day, 24 July 2015, defendant arrived with the described trailer at Wise Recycling, which is located in Clayton, North Carolina. Defendant spoke with Joanna Jaramillo ("Ms. Jaramillo") at the front desk and completed the necessary paperwork, including his name, signature, and the VIN number from the trailer. Although Ms. Jaramillo submitted the VIN number to the DMV database several times, she was unable to verify it.

Following protocol, Ms. Jaramillo contacted her manager Mr. Standley, who subsequently contacted Officer Brian Temple ("Officer Temple") with the Clayton Police Department. When law enforcement arrived, they questioned defendant. He responded that he purchased the trailer from a gentleman in Lumberton, North Carolina, but that he had left the paperwork at home. Officer Temple repeated asking

defendant for the contact information for the gentleman from whom he purchased the truck, but defendant responded only with "Man, I just got it from a guy in Lumberton[,]" and then did not wish to discuss the issue further.

When Officer Temple tried to verify ownership by entering the trailer's license plate number, he discovered the trailer was registered to Joseph Cope ("Mr. Cope"), in South Carolina. Officer Temple contacted Mr. Cope, who was in the process of reporting the trailer as stolen to law enforcement agencies in South Carolina. Following this conversation, Officer Temple placed defendant under arrest for possession of a stolen vehicle and attempting to obtain property by false pretenses.

Defendant was subsequently indicted on 8 September 2015 for possession of a stolen vehicle, attempting to obtain property by false pretenses, and attaining habitual felon status. Defendant stood trial on 24 January 2017. The first trial resulted in a deadlocked jury and the trial court ordered a mistrial, which commenced on 20 March 2017. Following the second trial, the jury returned verdicts finding defendant guilty of possession of a stolen vehicle, attempting to obtain property by false pretense, and attaining habitual felon status. The trial court sentenced defendant to 128 to 166 months in the custody of the North Carolina Department of Adult Corrections. Defendant gave notice of appeal in open court.

II. Fatal Variance

Defendant argues a fatal defect exists in the indictment because the stolen property for which defendant was charged as possessing does not fall within the definition of "vehicle" as defined under the statute. We disagree.

A. Standard of Review

It is well established that a defendant may challenge a trial court's subject matter jurisdiction, even for the first time on appeal. *See State v. Wilson*, 128 N.C. App. 688, 691, 497 S.E.2d 416, 419 (1998). We review the sufficiency of an indictment *de novo*. *State v. Marshall*, 188 N.C. App. 744, 748, 659 S.E.2d 709, 712 (2008). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (internal quotation marks and citation omitted).

B. Discussion

"It is elementary that a valid bill of indictment is essential to the jurisdiction of the trial court to try an accused for a felony." *State v. Sturdivant*, 304 N.C. 293, 308, 283 S.E.2d 719, 729 (1981) (citations omitted). Defendant was indicted for possession of a stolen vehicle in violation of N.C. Gen. Stat. § 20-106, the elements of which are: "(1) possession; (2) of a vehicle; (3) while having knowledge or reason to believe that the vehicle has been stolen or unlawfully taken." *State v. Robinson*, 368 N.C. 402, 407, 777 S.E.2d 755, 758 (2015) (citations omitted). N.C. Gen. Stat. § 20-

4.01 provides the definitions applicable to the delineated offense, including the definition of a vehicle:

> *Every device* in, upon, or *by which any* person or *property* is or *may be transported or drawn upon a highway*, excepting devices moved by human power or used exclusively upon fixed rails or tracks . . . .

N.C. Gen. Stat. § 20-4.01(49) (2015) (emphasis added). Subsection 31 further provides a definition for "Property-Hauling Vehicles," in which the legislature has specified "semitrailers" as "[*v*]*ehicles* without motive power designed for carrying property or persons and for being drawn by a motor vehicle," and "trailers" as "[*v*]*ehicles* without motive power designed for carrying property or persons wholly on their own structure and to be drawn by a motor vehicle[.]" N.C. Gen. Stat. § 20-4.01(31) (emphasis added).

Defendant argues the statute requires possession of a "motor vehicle" as opposed to merely a "vehicle," and because the trailer at issue is not self-propelled it does not fall within the appropriate definition; however, defendant is mistaken. Pursuant to N.C. Gen. Stat. § 20-106, a person "who has in his possession any *vehicle* which he knows or has reason to believe has been stolen or unlawfully taken . . . " is guilty of a Class H Felony. N.C. Gen. Stat. § 20-106 (emphasis added). As discussed above, N.C. Gen. Stat. § 20-4.01(49) defines a "vehicle" as "[e]very device . . . by which any . . . property . . . may be transported or drawn upon a highway . . . ." N.C. Gen. Stat. § 20-4.01(49). It is apparent from the indictment that the "1999 Great

Dane Reefer *Trailer*" falls within this definition of "vehicle" provided for in N.C. Gen. Stat. § 20-4.01, which in turn applies to N.C. Gen. Stat. § 20-106. N.C. Gen. Stat. § 20-4.01 ("Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates."). Accordingly, we overrule defendant's argument.

III. Motion to Dismiss

Defendant next argues the trial court erred in denying his motions to dismiss for insufficient evidence. We disagree.

A. Standard of Review

The standard of review from the denial of a motion to dismiss is *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). When ruling on a motion to dismiss, the trial court must "determine whether there is substantial evidence (1) of each essential element of the offense charged, and (2) that the defendant is the perpetrator of the offense." *Id.* at 62, 650 S.E.2d at 33 (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Cummings*, 46 N.C. App. 680, 683, 265 S.E.2d 923, 925 (1980) (internal quotation marks and citations omitted).

B. Discussion

As discussed above, for a defendant to be found guilty of possession of a stolen vehicle pursuant to N.C. Gen. Stat. § 20-106, the State must prove: "(1) possession;

(2) of a vehicle; (3) while having knowledge or reason to believe that the vehicle has been stolen or unlawfully taken." *Robinson*, 368 N.C. at 407, 777 S.E.2d at 758 (citations omitted). Defendant re-asserts his argument that the trailer does not fall within the definition of "vehicle" and therefore the State failed to present evidence of the second element. Because we held this argument was without merit, we will address only defendant's argument as to the third element—evidence of defendant's knowledge or reason to know of the trailer's stolen nature.

The North Carolina Supreme Court has explained the test for the sufficiency of the evidence is the same whether "the evidence is direct, circumstantial, or both." *State v. Bullard*, 312 N.C. 129, 160, 322 S.E.2d 370, 388 (1984) (citation omitted). "If the evidence presented is circumstantial, the question for the court is whether a reasonable inference of [the] defendant's guilt may be drawn from the circumstances." *State v. Thomas*, 296 N.C. 236, 244, 250 S.E.2d 204, 209 (1978) (internal quotation marks and citation omitted). If such inferences may be drawn, the defendant's motion to dismiss should be denied and the issue of the defendant's guilt should be left to the jury. *Id.* at 244, 250 S.E.2d at 209.

At trial, the State presented sufficient evidence from which a reasonable juror could infer defendant knew or should have known the trailer was stolen while it was in his possession. Among the testimony presented by the State, Mr. Standley stated that on 23 July 2015, he received a call from a gentleman who identified himself as

defendant, calling from South Carolina, and who was seeking a quote on the salvage price for a refrigerated trailer. Mr. Cope, the owner of the refrigerated trailer, explained that in the early morning hours on 24 July 2015, he spotted a Freightliner truck with North Carolina tags—which he later identified as defendant's truck—parked next to his truck in a Markette Fuel stop in Society Hill, South Carolina. Later that morning after Mr. Cope returned from a delivery, he arrived back at the Markette Fuel stop and found the Freightliner and his refrigerated trailer, which was parked there, missing. Ms. Jaramillo testified that defendant arrived at Wise Recycling in Clayton, North Carolina, on 24 July 2015 with the trailer, completed paperwork identifying himself as the owner, and then sought to sell the trailer to Wise Recycling. This testimony is more than sufficient to allow a reasonable juror to infer that defendant knew at the time of his completing the paperwork that the trailer was stolen, and therefore, we overrule defendant's argument.

Defendant also argues the trial court erred by denying his motion to dismiss the charge of attempt to obtain property by false pretenses, based on the State's failure to present evidence that defendant took steps in furtherance of the crime. We disagree.

The North Carolina Supreme Court has explained that with regard to attempt crimes, the State must prove two elements: "first, the intent to commit the substantive offense; and, second, an overt act done for that purpose which goes

beyond mere preparation but falls short of the completed offense." *State v. Smith*, 300 N.C. 71, 79, 265 S.E.2d 164, 169-70 (1980) (citation omitted). As described above, defendant took overt actions, supported by testimonial evidence, that went beyond mere preparation. This same evidence is sufficient for a reasonable juror to infer defendant intended to commit the crime of obtaining property by false pretenses. Accordingly, we reject defendant's argument.

IV. Conclusion

For the foregoing reasons, we hold defendant received a trial free from error and affirm his judgment.

NO ERROR.

Judges TYSON and ZACHARY concur.

Report per Rule 30(e).