IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1288

Filed: 4 June 2019

Cherokee County, No. 16 CRS 50067

STATE OF NORTH CAROLINA

v.

RICHARD ALLAN CSEH, Defendant.

Appeal by defendant from judgment entered 28 March 2018 by Judge Bradley B. Letts in Cherokee County Superior Court. Heard in the Court of Appeals 8 May 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Kyu-Eun ("Dana") Lee, for the State.

William D. Spence for defendant-appellant.

YOUNG, Judge.

Where the State presented sufficient evidence that defendant knew or should have known that he was driving a stolen vehicle, the trial court did not err in denying defendant's motion to dismiss. We find no error.

I. Factual and Procedural Background

In the early morning of 16 January 2016, the Cherokee County Sheriff's Department received a report of a suspicious vehicle. Officers were informed that the vehicle in question was a white truck, which was speeding toward Hyatt's Creek Road. Deputies Mitchell Morgan and Timothy Howe spotted the truck, and pursued the vehicle. During the chase, the truck churned up debris, damaging the patrol car.

After a brief chase, the vehicle became stuck, and the deputies were able to approach. Deputy Howe ordered the driver, Richard Allan Cseh (defendant), to get out of the car. Defendant admitted there was another person with him, but did not disclose that person's identity. Officers found no one else in the area. Deputy Morgan subsequently learned that the vehicle was stolen.

Defendant was indicted for possession of a stolen motor vehicle, failure to heed police lights and sirens, fleeing to elude arrest with a motor vehicle, and the related misdemeanor of injury to personal property, namely the patrol car. The State subsequently dismissed the charge of failure to heed lights or sirens.

At trial, Defendant presented evidence that another man, Russell West (West), had driven the vehicle to the house where defendant was staying, had forced defendant into the white truck, had driven the truck, and, when the vehicle became stuck, had fled, leaving defendant behind.

At the close of all the evidence, defendant moved to dismiss the charge of possession of a stolen vehicle, on the grounds that the State had failed to prove (1)

that defendant knew or should have known the vehicle was stolen, and (2) that defendant was driving the vehicle. The trial court denied this motion.

The jury returned verdicts finding defendant guilty of possession of a stolen motor vehicle, misdemeanor operation of a motor vehicle to elude arrest, and injury to personal property valued at more than $200. Defendant stipulated to his prior record, and the trial court found defendant to have a prior misdemeanor conviction level of III and a prior felony record level of III. The trial court consolidated the three verdicts for judgment, and sentenced defendant to a minimum of 10 months and a maximum of 21 months, in the presumptive range, in the custody of the North Carolina Department of Adult Correction.

Defendant filed written notice of appeal. However, this notice was deficient, as it did not indicate the court to which appeal was to be taken, nor did it contain a certificate of service upon the State. Defendant therefore filed a petition for writ of certiorari. In our discretion, we grant this petition.

II. Standard of Review

"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 (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). "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), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

III. Motion to Dismiss

In his sole argument on appeal, defendant contends that the trial court erred in denying his motion to dismiss the charge of possession of a stolen motor vehicle at the close of all the evidence. We disagree.

"The elements of possession of a stolen vehicle 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). On appeal, defendant does not challenge the fact that he was found in possession of the stolen truck. The only element he challenges is whether the State presented sufficient evidence that he knew or reasonably should have known that the truck was stolen.

"Whether the defendant knew or had reasonable grounds to believe that the [property was] stolen must necessarily be proved through inferences drawn from the evidence." *State v. Brown*, 85 N.C. App. 583, 589, 355 S.E.2d 225, 229 (1987). In the instant case, the evidence presented at trial showed that defendant's feet were in the driver's side floorboard when deputies approached the vehicle, and that defendant was the only person in or around the vehicle when it was stopped. Additionally, although defendant contended that another person had been present, he refused to name West at the time. This Court has previously held that this is an example of evidence that a defendant knew or had reasonable grounds to know that the vehicle was stolen. *See State v. Bailey*, 157 N.C. App. 80, 84, 577 S.E.2d 683, 686-87 (2003). Further, the State also presented evidence that defendant attempted to evade officers by driving erratically and at a high rate of speed, running a stop sign and churning debris up from the road, damaging the officers' patrol car. This Court has also held that an attempt to flee could support a determination that a defendant knew his vehicle was stolen. *State v. Lofton*, 66 N.C. App. 79, 84, 310 S.E.2d 633, 636 (1984).

We hold that all of this evidence, taken in the light most favorable to the State and giving the State the benefit of every reasonable inference, tended to show that defendant was aware of the criminality of his actions, specifically that the vehicle was stolen. As such, we hold that the trial court did not err in denying defendant's motion to dismiss the charge of possession of a stolen motor vehicle.

NO ERROR.

Judges STROUD and HAMPSON concur.

Report per Rule 30(e).