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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-629

Filed: 18 February 2020

Moore County, No. 16 CRS 52928, 17 CRS 83

STATE OF NORTH CAROLINA

v.

BRIAN THOMAS EVERWINE

Appeal by defendant from judgment entered 8 January 2019 by Judge James M. Webb in Moore County Superior Court. Heard in the Court of Appeals 21 January 2020.

Attorney General Joshua H. Stein, by Special Deputy Attorney General G. Mark Teague, for the State.

Sean P. Vitrano for defendant-appellant.

TYSON, Judge.

Brian Thomas Everwine (“Defendant”) appeals from a judgment entered on a jury’s verdict finding him guilty of possession of a stolen motor vehicle and a judgment ordering him to pay restitution. We find no error.

I. Background

Kevin Jordan delivered his black 2003 Chevrolet Silverado diesel-powered pickup truck (“Silverado”) to Full Throttle Performance (“FTP”) in High Point for engine repairs. On the morning of 24 October 2016, Jordan received a call informing him that his truck had been stolen from FTP. Jordan went to FTP, saw his Silverado was missing from where it was parked, and noticed divots apparently made by a ramp in the gravel.

An employee of FTP reported the theft to the High Point Police Department. High Point Police Officer Brandon Hill responded to the call and met Jordan at the scene. Jordan described his pickup truck to Officer Hill, including the carpeted bed with a fiberglass shell cover, “4 x 4” decals, and stickers on the back window of the cab.

Officer Hill also found two indentations in the ground at the scene right behind where the Silverado had been parked, which indicated a ramp could have been lowered and used to remove the truck. Officer Hill entered the Silverado’s vehicle identification number (“VIN”) and other descriptive information into a national stolen vehicle database.

Three days later, on 27 October 2016, Moore County Sheriff deputies were investigating a report of stolen property on Sheffield Lane, near Seagrove. This area was known for acts of criminal activity. While officers were investigating Lieutenant

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Josh Craven and Captain Bill Mackey remained at the entry of Sheffield Lane to watch for vehicles turning into the area.

Both officers observed a black Chevrolet pickup towing a flatbed trailer pull over to the side of the road into a driveway to allow a logging truck to pass. The officers initially believed the truck was associated with a nearby logging operation. Instead of resuming its travel, the pickup remained stationary. The officers observed a woman approach the parked pickup. Both Lieutenant Craven and Captain Mackey recognized the woman from prior investigations as Misty McBride.

Captain Mackey became suspicious of the driver and vehicle and called McBride over to inquire about the driver. McBride was evasive in her responses when questioned. These responses made Captain Mackey more suspicious of the situation and he decided to approach the driver and vehicle to investigate further.

Inside the truck, Captain Mackey found a male driver as the sole occupant and asked for identification. This male was wearing an FTP t-shirt. The man acted nervous and avoided eye contact with Captain Mackey. The driver did not have any identification, but he told Captain Mackey his name was either Brian Thomas or Thomas Everwine and provided a date of birth.

Captain Mackey obtained the registration number of the license tag and reported it to the dispatcher, along with the personal information the driver had provided. The dispatcher reported that a database search indicated the name and

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date of birth provided by the driver did not match. The dispatcher also informed Captain Mackey the registration tag number did not correspond to the year and model of the black Chevrolet pickup.

When Captain Mackey confronted the driver with these discrepancies the driver identified himself as “Brian Thomas Everwine.” Defendant told Captain Mackey he had borrowed the pickup from C.B. Dowd. Captain Mackey knew from prior investigations Dowd was involved in stolen property and narcotics.

Captain Mackey checked the vehicle’s VIN through the stolen vehicle database, which revealed it had been reported as stolen in High Point. The VIN of the black Chevrolet pickup Defendant was driving matched the VIN of Jordan’s stolen Silverado. Captain Mackey arrested Defendant. Defendant’s backpack was found inside the pickup and contained a police scanner, scale, gloves, and a night vision monocular.

The Moore County Sheriff’s Department notified Jordan that his Silverado had been recovered. Jordan went to the police impound lot in Moore County to inspect the vehicle. Jordan found the appearance of his truck was “totally changed.” Jordan reported the running boards, the fiberglass shell cover, and the bed carpet had been removed, the “4 x 4” decals had been belt sanded off of the truck body, the stickers had been removed from the rear window, and his license plate was missing.

Jordan's Silverado was not drivable from the impound lot in Moore County. The vehicle had been driven with a "blown" head gasket, the reason it was delivered to FTP for repairs. Driving the vehicle in this condition caused damage to the internal parts of the engine. The Silverado was towed from Moore County back to FTP in High Point for evaluation by FTP and the insurer. The insurance company determined the Silverado was a total loss. The insurance proceeds were insufficient to cover the \$7,484.00 Jordan owed to FTP. Jordan had taken out an \$8,000.00 loan to pay FTP's bill. At the time of trial, Jordan was still making payments on the \$8,000.00 loan.

Defendant was indicted for possession of a stolen motor vehicle and having attained the status of a habitual felon. At Defendant's trial, Jordan testified he was familiar with the Silverado and other types of pickup trucks. Jordan explained pickup trucks with diesel engines were expensive to maintain, but if properly taken care of would last for several hundred thousand miles. This enhanced longevity makes diesel trucks more highly sought after and causes them to hold their resale value more as compared to trucks with gasoline engines.

A jury found Defendant guilty of possession of a stolen motor vehicle and he pleaded guilty to attaining habitual felon status. Defendant was sentenced to a term of 96 to 128 months and ordered to pay Jordan \$10,000.00 in restitution. Defendant gave timely written notice of appeal.

II. Jurisdiction

This Court possesses jurisdiction pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2019).

III. Issues

Defendant argues the trial court erred by denying his motion to dismiss the charges and ordering him to pay \$10,000.00 in restitution.

IV. Defendant's Motion to Dismiss

Defendant argues the trial court erred in failing to dismiss the possession of a stolen motor vehicle charge due to insufficiency of the evidence.

A. Standard of Review

“When ruling on a defendant’s 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.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (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, *aff’d*, 301 N.C. 374, 271 S.E.2d 277 (1980). “[T]he evidence must be viewed in the light most favorable to the State, giving the State every reasonable inference which may be drawn therefrom.” *State v. Herring*, 322 N.C. 733, 738, 370 S.E.2d 363, 367 (1988).

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This Court reviews a trial court's denial of a motion to dismiss *de novo*. *State v. McKinnon*, 306 N.C. 288, 298, 293 S.E.2d 118, 125 (1982). Under *de novo* review we consider the matter anew and freely substitute our own judgment for that of the lower court. *Sutton v. N.C. Dep't of Labor*, 132 N.C. App. 387, 389, 511 S.E.2d 340, 341 (1999).

B. Analysis

In order to survive Defendant's motion to dismiss, the State must "produce[] sufficient evidence that [the] defendant possessed [a] stolen [motor 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) (emphasis in original). "Whether the defendant knew or had reasonable grounds to believe that the [property was] stolen must necessarily be proved through inference drawn from the evidence." *State v. Brown*, 85 N.C. App. 583, 589, 355 S.E.2d 225, 229, *disc. review denied*, 320 N.C. 172, 358 S.E.2d 57 (1987).

At trial, substantial evidence was presented from which the jury could infer Defendant knew or had reasonable grounds to believe Jordan's black Chevrolet pickup was stolen. When Captain Mackey initially approached the vehicle, Defendant appeared nervous, avoided eye contact, provided a false name, and stated he had borrowed the vehicle from a friend. *See State v. Abrams*, 29 N.C. App. 144, 146, 223 S.E.2d 516, 517 (1976) ("[The d]efendant's possession of the vehicle, his

conduct upon being approached . . . are circumstances from which a jury could infer that the defendant was guilty of the offense charged.”); *see also State v. Vaughn*, 130 N.C. App. 456, 458, 503 S.E.2d 110, 111 (1998) (“When questioned by the police, defendant lied about his name and falsely stated that the car belonged to a friend of his. Under these circumstances, defendant’s conduct was sufficiently incriminating to support a finding that he knew or had reasonable grounds to believe that the car was stolen.”).

Defendant cites *State v. Cannon* to support his contention the trial court improperly denied his motion to dismiss. In *Cannon*, this Court overruled a trial court’s determination of substantial evidence where the decals of a stolen all-terrain vehicle (“ATV”) were removed, the defendant openly used the ATV, and did not attempt to evade police. *State v. Cannon*, 216 N.C. App. 507, 512-513, 721 S.E.2d 691, 695-696 (2011), *disc. review denied*, 365 N.C. 551, 720 S.E.2d 395 (2012).

Defendant’s reliance on *Cannon* is misplaced. Factually, the instant case provides far more evidence to infer Defendant’s knowledge that the Silverado in his possession was stolen. The Silverado had been extensively modified in the six days after it was stolen from FTP. The running boards, the fiberglass shell cover, and the bed carpet had been removed, the “4x4” decals had been belt-sanded off of the vehicle’s body, the stickers were removed from the back window, and the license plate was missing. Defendant was displaying a fictitious tag on the vehicle.

When Captain Mackey approached Defendant, he was wearing an FTP t-shirt, the automotive shop from which the Silverado had been stolen the past weekend. Defendant's backpack was found inside the Silverado and contained items a thief could use: a police scanner, gloves, and a night vision monocular.

The State presented substantial evidence from which a reasonable juror could find Defendant knew or should have known the truck was stolen. The trial court did not err in denying Defendant's motion to dismiss the possession of a stolen motor vehicle charge. Defendant's argument is overruled.

V. Restitution

Defendant argues the trial court erred in ordering restitution without evidence of specific costs incurred by Jordan as a result of the theft of his vehicle.

A. Standard of Review

The "trial court's award of restitution must be supported by competent evidence in the record." *State v. Clifton*, 125 N.C. App. 471, 480, 481 S.E.2d 393, 399 (1997). The award will not be disturbed on appeal if there is "some evidence as to the appropriate amount of restitution." *State v. Hunt*, 80 N.C. App. 190, 195, 341 S.E.2d 350, 354 (1986). This Court reviews a trial court's restitution order *de novo* on appeal. *State v. Wright*, 212 N.C. App. 640, 645, 711 S.E.2d 797, 801 (2011).

B. Analysis

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In *State v. Moore*, our Supreme Court held: “when there is specific testimony or documentation to support the award, the award will not be disturbed.” *State v. Moore*, 365 N.C. 283, 285, 715 S.E.2d 847, 849 (2011). Jordan’s Silverado pickup was declared to be a “total loss” by the insurance carrier. “[T]he measure of damages for property which is destroyed and thus lacks market value is its fair market value immediately prior to destruction.” *State v. Maynard*, 79 N.C. App. 451, 452, 339 S.E.2d 666, 667 (1986).

Competent evidence was presented to support the amount of the restitution award. Jordan testified his vehicle was worth between \$12,000.00 to \$14,000.00 at the time of the theft. Jordan justified this value because the stolen pickup contained a diesel engine, which was highly sought after due to its longevity. This testimony tended to show the vehicle held its resale value more than a pickup with a conventional gasoline engine.

Defendant did not object to this testimony nor offer any evidence concerning a lower value of the Silverado. Jordan further testified the insurance proceeds did not cover the \$7,484.00 in repair bills from FTP and he had to pay for the vehicle being towed from the Moore County impound lot back to FTP in High Point. Competent evidence in the record supports the restitution award. Defendant’s argument is overruled.

VI. Conclusion

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Defendant has shown no error in the trial court's denying his motion to dismiss for insufficient evidence or in ordering him to pay \$10,000.00 to Jordan in restitution. Defendant received a fair trial, free from prejudicial errors he preserved and argued. We find no error in the jury's verdict or the judgments entered thereon. *It is so ordered.*

NO ERROR.

Judges DIETZ and INMAN concur.

Report per Rule 30(e).