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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-144

Filed 17 December 2024

Lenoir County, No. 21 CRS 50323

STATE OF NORTH CAROLINA

v.

RAHKIYA TASHUAN DAVIS

Appeal by Defendant from Judgment rendered 15 March 2023 by Judge Imelda J. Pate in Lenoir County Superior Court. Heard in the Court of Appeals 24 September 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Aymie B. Feeney, for the State.*

*Piedmont Defenders, Inc., by Reid Cater, for Defendant-Appellant.*

HAMPSON, Judge.

**Factual and Procedural Background**

Rahkiya Tashuan Davis (Defendant) appeals from a Judgment entered upon a jury verdict finding Defendant guilty of Felony Possession with Intent to Sell and Deliver Marijuana, Felony Possession of a Stolen Firearm, and Misdemeanor Carrying a Concealed Gun. The Record before us tends to reflect the following:

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On 2 March 2021, Detective McKinley Jones of the Kinston Police Department stopped a vehicle for an expired registration. Defendant was the vehicle's driver, and an adult passenger and three children were also present in the car. Defendant immediately advised Detective Jones that the vehicle belonged to her sister.

Detective Jones smelled a "very strong odor of marijuana, as if it was in the vehicle," and called for backup. Detective Jones asked Defendant if there was any marijuana in the car. Defendant denied any knowledge of the presence of marijuana. Detective Andrew Fellows arrived at the scene to assist Detective Jones, and the two conducted a vehicle search.

Upon searching the vehicle, Detective Jones found a grocery bag containing smaller baggies of marijuana totaling fifty grams under the driver's seat. After discovering the grocery bag, Detective Jones also recovered a loaded firearm under the driver's seat. Detective Jones testified the firearm was concealed from view, and that he had to "find it underneath the seat on my knees with a flashlight during the daytime." Detective Jones ran the firearm's make, model, serial number, and caliber through the Police Department's communications center and the National Crime Information Center database. Both confirmed the firearm had been reported stolen on 16 December 2020.

Detective Jones also found \$1,550.00 in cash on Defendant's person. The cash consisted of fifty-two \$20.00 bills, five \$100.00 bills, and one \$10.00 bill. He testified Defendant was trying to pass the cash off to the passenger in the vehicle upon his

discovery of it.

On or about 12 November 2021, Defendant was indicted for Possession with Intent to Sell and Deliver Marijuana, Possession of a Stolen Firearm, and Misdemeanor Carrying a Concealed Weapon. This matter came on for trial on 13 March 2023. At the close of the State's case in chief, defense counsel moved to dismiss all charges based on insufficient evidence. The trial court denied this Motion. Defense counsel renewed its Motion to Dismiss after declining to present evidence. Again, the trial court denied its Motion. On 15 March 2023, the jury returned a verdict finding Defendant guilty of all three charges. On 17 March 2023, Defendant timely filed Notice of Appeal.

### **Issue**

The sole issue on appeal is whether the trial court erred in denying Defendant's Motion to Dismiss the charge of Possession of a Stolen Firearm.

### **Analysis**

"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) (citation omitted). "Upon [a] 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) (citation omitted). "Substantial evidence is such

relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984) (citation omitted). “If the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it, the motion [to dismiss] should be allowed.” *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455 (citation omitted).

“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) (citing *State v. Sumpter*, 318 N.C. 102, 107, 347 S.E.2d 396, 399 (1986)). However, “[w]hether the State has offered such substantial evidence is a question of law for the trial court.” *State v. McKinney*, 288 N.C. 113, 119, 215 S.E.2d 578, 583 (1975) (citations omitted).

Defendant challenges the denial of her Motion to Dismiss solely with respect to the Possession of a Stolen Firearm charge. “For a defendant to be found guilty of possession of a stolen firearm, the State must present substantial evidence that (1) the defendant was in possession of a firearm; (2) which had been stolen; (3) the defendant knew or had reasonable grounds to believe the property was stolen; and (4) the defendant possessed the pistol with a dishonest purpose.” *State v. Brown*, 182 N.C. App. 277, 281, 641 S.E.2d 850, 853 (2007) (citations omitted). On appeal,

Defendant challenges only the element of knowledge that the firearm 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) (citing *State v. Allen*, 45 N.C. App. 417, 420-21, 263 S.E.2d 630, 632-33 (1980)). The State contends the “recent possession doctrine” applies and raises an inference of knowledge sufficient to withstand Defendant’s Motion to Dismiss. We note our caselaw consistently applies recent possession doctrine exclusively in cases where the charge is larceny or another taking-related offense, rather than mere possession.<sup>1</sup> Defendant in this case was not charged with larceny; rather, she was only charged with possession-related offenses: Possession with Intent to Sell and Deliver a

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<sup>1</sup> The State cites the following cases with respect to its argument on recent possession doctrine: *State v. Jackson*, 274 N.C. 594, 597, 164 S.E.2d 369, 370 (1968) (“The inference arising from the possession of recently stolen property is described as ‘the recent possession doctrine.’ Possession may be recent, but the *theft* may have occurred long before.” (emphasis added)); *State v. Maines*, 301 N.C. 669, 673, 273 S.E.2d 289, 293 (1981) (“That doctrine [of recent possession] is simply a rule of law that, upon an indictment for *larceny*, possession of recently stolen property raises a presumption of the possessor’s guilt of the larceny of such property.” (citation omitted) (emphasis added)); *State v. Hamlet*, 316 N.C. 41, 43, 340 S.E.2d 418, 419 (1986) (“In [the] instant case there was no direct evidence to support defendant’s conviction of *breaking or entering and larceny*. Consequently, the State relied solely on the doctrine of recent possession to carry the case to the jury.” (emphasis added)); *State v. Holbrook*, 223 N.C. 622, 623, 27 S.E.2d 725, 726 (1943) (“The evidence tends to connect [the defendant] with the *theft* and permit the inference that he participated therein as principal. Recent possession of stolen property has always been considered a circumstance tending to show the guilt of the possessor on his trial.” (citations omitted) (emphasis added)); and *State v. Rights*, 82 N.C. 675, 677 (1880) (“*Larceny* is a crime committed in secret, and the state in most cases is necessarily compelled to resort to circumstantial evidence to effect a conviction of the thief. And the possession of the property shortly after the theft is the circumstance most usually relied upon.” (emphasis added); *but see State v. Tindall*, 173 N.C. App. 236, 617 S.E.2d 723 (2005) (unpublished) (suggesting, without supporting authority, doctrine of recent possession “can be relevant” but was not applicable there where firearm was stolen six years prior).

Controlled Substance, Possession of a Stolen Firearm, and Misdemeanor Carrying a Concealed Weapon. However, we need not reach the issue of whether the doctrine of recent possession applies here because we conclude the State presented sufficient evidence to submit the charge to the jury.

In cases of possession of stolen property, “[t]he requisite guilty knowledge may be inferred from incriminating circumstances.” *State v. Haskins*, 60 N.C. App. 199, 200, 298 S.E.2d 188, 189 (1982) (citations omitted); *see also State v. Wilson*, 106 N.C. App. 342, 347, 416 S.E.2d 603, 606 (1992) (A “[d]efendant’s guilty knowledge can be implied from the circumstances.” (citing *State v. Parker*, 316 N.C. 295, 303, 341 S.E.2d 555, 560 (1986))).

Defendant points to *State v. Weakley*, 176 N.C. App. 642, 627 S.E.2d 315 (2006), and *State v. Brown*, 182 N.C. App. 277, 641 S.E.2d 850 (2007), in support of her argument. These cases are distinguishable. In *Weakley*, the only evidence presented at trial regarding the defendant’s knowledge the firearms in question were stolen was the defendant’s own testimony stating he had taken the firearms as collateral for a loan without knowing they were stolen. 176 N.C. App. at 653, 627 S.E.2d at 322. The State, in turn, argued the defendant’s constructive possession of the stolen firearms in his residence was sufficient to survive the defendant’s motion to dismiss. *Id.* This Court agreed with the defendant that that evidence alone was insufficient to establish that the defendant knew or should have known the firearms were stolen. *Id.* Similarly, in *Brown*, this Court concluded the evidence was insufficient as to the

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defendant's knowledge a firearm was stolen. 182 N.C. App. at 282, 641 S.E.2d at 853. There, law enforcement discovered a bag containing six handguns in the defendant's bedroom closet, as well as two additional guns elsewhere in his residence. *Id.* at 279, 641 S.E.2d at 851. This Court observed the evidence presented at trial showed the defendant always slept with a gun; however, there were multiple guns in the defendant's residence and no evidence was presented tending to show the defendant had any knowledge about where any of the guns came from. *Id.* at 282, 641 S.E.2d at 853. Indeed, in that case, there was conflicting testimony regarding whether the defendant asked another person to tell law enforcement a story about finding the bag of guns. *Id.*

In contrast to *Weakley* and *Brown*, where there was no evidence or only evidence favorable to the defendant as to the knowledge element, the State in this case presented sufficient evidence of other incriminating circumstances from which a jury could reasonably infer Defendant knew the firearm was stolen. Upon searching the vehicle, Detective Jones also discovered a grocery bag containing smaller baggies of marijuana totaling fifty grams hidden under the driver's seat with the firearm. He also found \$1,550.00 in cash on Defendant's person in specific denominations: fifty-two \$20.00 bills, five \$100.00 bills, and one \$10.00 bill. Detective Jones testified: "Fifty-two \$20 bills is a – we don't see that a lot. A lot of people sell marijuana \$20 for a bag, \$40. From my training and experience, that money was consistent with the sale and distributing of the marijuana." Further, Detective Fellows expressly

testified that, based on his experience, the individual packets of marijuana, “plus the cash money and the firearm typically go hand-in-hand with selling markets.” Additionally, Detective Jones observed Defendant trying to pass off the money to the passenger.

Detective Jones also testified that the firearm itself was concealed under the driver’s seat with the marijuana such that he had to “find it underneath the seat on my knees with a flashlight during the daytime.” The hidden firearm had been reported stolen less than three months prior to it being discovered concealed under the driver’s seat.

As such here, the evidence—taken in the light most favorable to the State—reflects Defendant was trying to conceal, hide, or dispose of contraband, including marijuana and the firearm along with the cash.<sup>2</sup> These incriminating circumstances indicate Defendant was aware the stolen firearm was not legally in her possession.<sup>3</sup> *See State v. Ricks*, 232 N.C. App. 186, 754 S.E.2d 259 (2014) (unpublished) (hiding firearm after breaking and entering evidence of guilty knowledge); *Wilson*, 106 N.C. App. at 347-48, 416 S.E.2d at 606 (circumstances supported knowledge firearm was stolen when thrown from car following robbery); *State v. Taylor*, 64 N.C. App. 165,

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<sup>2</sup> Defendant has not challenged her conviction for Possession With Intent to Sell and Deliver Marijuana on appeal.

<sup>3</sup> In fact, there was evidence from Detective Jones that he would expect one in lawful possession of a firearm—either as open-carry or concealed—to make him aware of its presence in the vehicle upon the initiation of the traffic stop.



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166, 169, 307 S.E.2d 173, 174, 176 (1983), *aff'd in part and rev'd in part on other grounds*, 311 N.C. 380, 317 S.E.2d 369 (1984) (disposing of weapon was evidence of knowledge it had been stolen).

Thus, taken together and viewing the evidence in the light most favorable to the State, the evidence was sufficient to establish Defendant's knowledge the firearm was stolen for the purposes of overcoming Defendant's Motion to Dismiss. Therefore, the trial court did not err in denying Defendant's Motion to Dismiss. Consequently, the trial court did not err in entering judgment on the jury verdict.

**Conclusion**

Accordingly, for the foregoing reasons, we conclude there was no error in Defendant's trial and affirm the Judgment.

NO ERROR.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).