STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Steven H. John, Circuit Court Judge

Appellate Case No. 2012-213300

THE STATE, ...RESPONDENT

v.

PATRICK D. LOWRANCE, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly denied Appellant's motion for a directed verdict on the charge of possession of a stolen vehicle where the State presented substantial direct and circumstantial evidence from which the jury could fairly and logically find Appellant was not entitled to possession of the vehicle because the vehicle was stolen?

STATEMENT OF THE CASE

Appellant was indicted at the March, 2012 term of the grand jury for Greenville County for possession of a stolen motor vehicle (2012-GS-23-1422), failure to stop for a blue light (2012-GS-23-1423), two counts of attempted murder (2012-GS-23-1425 & -1426), and possession of a weapon during the commission of a violent crime (2012-GS-23-1427). He was represented by Brian Johnson, Esquire, and John Crangle, Esquire, of Greenville. (R.p.1). On October 8-11, 2012, Appellant proceeded to trial by jury pursuant to which he was found guilty of possession of a stolen vehicle. The trial court declared a mistrial on the four remaining charges because the jury was unable to reach a verdict. Appellant was sentenced by the Honorable Steven H. John to three years' imprisonment suspended upon the service of one year's probation. (R.p.255, line 10-p.259, line 18). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

STATEMENT OF FACTS

On October 28, 2011, Officer Brittany Cruell of the Greenville City Police Department was working patrol and checking license plates on vehicles in a Comfort Inn parking lot when she came across a Chevy Tahoe[1] that had the wrong tag. She tried to check the vehicle identification number (VIN) in the windshield but it was completely covered by an air freshener. Suspicious the vehicle might be stolen, Cruell called Officer Lane to join her and ask the hotel clerk if he or she knew who the vehicle was registered to, or who had been driving the vehicle. While talking to the hotel employees, Cruell noticed what she described as a thirty-five to forty-year-old black male wearing a gray shirt walk past. Shortly thereafter, one of the employees told the officers the vehicle was leaving. (R.p.7, line 5-p.11, line 6). Cruell went immediately to her patrol car in an attempt to stop the vehicle. She followed it onto I-85 south but terminated her pursuit after it made a series of evasive maneuvers, exited the highway, and ran through a red light. (R.p.11, line 5-p.13, line 18). Cruell testified she was subsequently able to confirm the make and model of the vehicle as a 2005 GMC Yukon with a value of $20,000. She further testified she confirmed the vehicle was stolen. (R.p.14, lines 12-19). Appellant did not object or otherwise challenge Cruell's testimony. Cruell later identified Appellant as the person who walked past her in the lobby of the Comfort Inn which led her to sign warrants charging him with failure to stop for a blue light and possession of a stolen motor vehicle greater than $10,000. (R.p.15, lines 5-23).

[1] Subsequent testimony clarified the vehicle was a GMC Yukon. The Chevrolet Tahoe and the GMC Yukon are nearly identical full-sized sport utility vehicles manufactured by General Motors Corporation and sold under their respective "Chevy" and GMC brands.

Officers Taci Cobb and Charles Lane were also working patrol on October 28, 2011. Cobb responded to a "BOLO"[2] call from officer Cruell in regard to the vehicle that fled from the Comfort Inn. Cobb located a vehicle that looked like a match at a nearby apartment complex and confirmed the license tag number with Cruell. Cobb got out of her car and began walking up the sidewalk toward the apartment building when she saw a muzzle flash and heard at least two gunshots. She saw a person standing on the stairwell and was able to tell it was a black male because she briefly saw his face from the muzzle flash. Cobb drew her service weapon, began returning fire, and took cover. She exchanged shots with the gunman in two distinct bursts, but did not return fire the third time she heard him shooting. At some point Cobb was joined by Officer Lane but could not tell if he fired his weapon. Cobb did not see anyone leave the building after the shooting stopped. (R.p.25, line 12-p.42, line 4).

Officer Lane responded to Cruell's initial request for assistance at the Comfort Inn. He first looked at the GMC Yukon in the parking lot and noticed the air freshener covering the VIN as well as a radar detector on the dashboard. Lane then went inside with Cruell where he heard a hotel employee say the person who drives that car just walked out. He noticed a male driver as the vehicle drove away and, after telling Cruell the direction that vehicle was going, got in his own patrol car and attempted to join her in pursuit. Shortly after terminating the chase, Lane responded to a call about a suspicious person in the same general area where they lost track of the vehicle. He drove through nearby apartment complexes and discovered Cobb's car parked in front of an apartment building near the GMC Yukon he had seen at the Comfort Inn. It had the same air freshener, same radar detector, and same vehicle tag. Lane spoke briefly to Cobb and

[2] "Be on the look-out."

was standing near the back of the vehicle when he heard shots fired. He heard two exchanges of gunfire between Cobb and the shooter, drew his weapon, and began calling for Cobb. Lane did not fire his weapon because he did not know if Cobb might be in his line of fire. He saw a silhouette of the person shooting at Cobb, but never saw a face or anything specific about that person. (R.p.44, line 12-p.55, line 23).

During the subsequent investigation the police found a duffle bag in the apartment complex breezeway which held a wallet with Appellant's health card, social security card, and his pawn shop ticket inside. They then went to the Comfort Inn and searched a room that had been registered to "Dean Lowrance." There the police found a backpack with Appellant's driver's license. (R.p.63, line 15-p.69, line 21). The police tracked down Appellant and arrested him at a friend's house where they discovered a firearm and a sweatshirt with what appeared to be a bloodstain. Appellant was suffering from a gunshot wound and was taken to the hospital. (R.p.69, line 22-p.76, line 14).

The police processed the GMC Yukon for fingerprints and DNA. They also processed the gun and sweatshirt, as well as bullet casings and droplets of blood found at the scene, and a box of ammunition found in the vehicle. A qualified fingerprint expert was able to identify Appellant's fingerprints on the box of ammunition and several places on the exterior of the vehicle. A qualified expert in forensic DNA analysis was able to identify Appellant as the major DNA contributor on the gun found at the place of Appellant's arrest, and as the source of the blood on the sweatshirt and the ground where the shootout took place. A qualified expert in firearms identification was able to match numerous shell casings as having been fired by either Cobb's service weapon, or the gun discovered after Appellant's arrest. (R.p.80, line 7-p.84, line 17; p.85, line 12-p.96, line

1; p.105, line 7-p.106, line 24; p.138, line 19-p.141, line 2; p.146, line 12-p.155, line 10; p.166, line 2-p.171, line 11).

Norman Pearson testified he and Appellant were like cousins and had grown up together, and that on the morning of the incident he received a phone call from Appellant. Appellant said he needed a ride because he had run from the police and had been shot. Pearson testified he saw Appellant with the magazine from the gun the day before the incident. (R.p.115, line 1-p.124, line 16). William Brockman testified he and Appellant are neighborhood acquaintances and that on the day of the incident he picked up Appellant from the side of the road to give him a ride. Appellant was wearing a black hoodie and had a bullet hole in his shoulder. (R.p.125, line 1-p.131, line 8).

At the conclusion of the State's case, Appellant moved for a directed verdict on the failure to stop and possession of a stolen vehicle charges arguing: "I do not believe Officer Cruell or the other officer testified that they saw my client get into said vehicle." He acknowledged the existence of fingerprints on the vehicle, but argued this did not prove he was in the vehicle during the chase. (R.p.187, lines 15-25). The trial court cited the proper standard of review and denied Appellant's motion. The judge said: "Regarding the possession of a stolen vehicle, again, I find there's substantial circumstantial evidence. It's clear from the testimony provided that the vehicle as testified to was a stolen vehicle." (R.p.189, lines 4-15).

The following morning, after an evening recess, the trial judge announced he had been thinking about Appellant's motion for a directed verdict on the possession of a stolen vehicle charge, and was concerned there was "no testimony from anyone saying that the vehicle was stolen." The judge further commented: "There's not testimony

before the court of the person that owned the vehicle, whoever that person may be, saying it is their car, that defendant did not have permission of [sic] the vehicle." Based on this concern, the court offered to let the State re-open its case to present further evidence, and noted if the State declined to do so, "the court will grant the defendant's motion for a directed verdict as to the possession of a stolen vehicle." (R.p.193, lines 1-18).

Accepting the court's offer, the solicitor re-opened the State's case and re-called detective Tim Conroy to the stand. He testified he confirmed the owner of the GMC Yukon by speaking to her and by matching her name with the VIN and her driver's license and registration. The solicitor asked if the owner indicated whether or not anyone had permission to drive her vehicle. Conroy answered: "She stated no one had permission;" however, Appellant objected on hearsay grounds and the trial court struck the answer and instructed the jury to disregard it. (R.p.195, line 10-p.196, line 15). The State rested. (R.p.197, line 8). Appellant argued there was still no testimony on the record in regard to whether anyone had permission to drive the vehicle, and renewed his motion for a directed verdict on the possession of a stolen vehicle charge. The trial court described the evidence, including the additional evidence from Conroy, and denied the motion finding: "The substantial circumstantial evidence reasonably tends to prove the guilt of the defendant of the crime of possession of a stolen vehicle." (R.p.198, line 3-p.199, line 7).

Appellant testified in his own defense. He admitted driving the Yukon but claimed he thought the vehicle belonged to his friend "Meat." Appellant testified he did not know the Yukon was stolen until after he was in custody. (R.p.201, line 1-p.214, line 9). He claimed Meat was driving when they left the Comfort Inn and that he argued with

Meat about stopping the car when the police were in pursuit. Appellant admitted he was present during the shootout, but provided an explanation for each piece of forensic evidence presented by the State and maintained he did not do anything wrong. (R.p.214, line 10-p.224, line 18). After the defense rested, Appellant renewed his motion for a directed verdict on all charges, specifically mentioning the possession of a stolen vehicle charge and the lack of testimony from the vehicle's owner. The trial judge denied the motion. (R.p.240, line 13-p.241, line 25).

Thereafter, the trial judge charged the jury on the applicable law including credibility of witnesses, direct and circumstantial evidence, the burden of proof, the presumption of innocence, and the elements of the charged crimes. (R.p.242-p.254). Specifically in regard to possession of a stolen vehicle, the judge instructed:

> A person is not entitled to possess a vehicle knowing it to be stolen or converted under circumstances constituting a crime. To prove possession the State has to prove to you beyond a reasonable doubt that the defendant had both the power and the intent to control the disposition or the use of the vehicle. It could be actual possession, meaning that he was in actual, physical custody of the vehicle. Or he had constructive possession, he had the dominion and control, or the right to exercise the dominion and control over the vehicle. The State, therefore, has to prove to you beyond a reasonable doubt he possessed the vehicle, it was a stolen vehicle and he knew it to be stolen.

(R.p.250, lines 11-19).

At the conclusion of trial, Appellant was found guilty of possession of a stolen motor vehicle; however, the trial court declared a mistrial on the four remaining charges because the jury was unable to reach a verdict. Appellant was sentenced by the Honorable Steven H. John to three years' imprisonment suspended upon the service of one year's probation. (R.p.255, line 10-p.259, line 18).

ARGUMENT

The trial court properly denied Appellant's motion for a directed verdict on the charge of possession of a stolen vehicle where the State presented substantial direct and circumstantial evidence from which the jury could fairly and logically find Appellant was not entitled to possession of the vehicle because the vehicle was stolen.

Appellant argues the trial court erred in refusing to grant a directed verdict on the charge of possession of a stolen vehicle because the State failed to present any substantial evidence beyond a reasonable doubt that the vehicle was stolen, other than objected to hearsay. He contends: "The State simply failed to prove that appellant was not entitled to possession of the vehicle as the indictment charged." The State disagrees and submits Appellant's argument is without merit. The unchallenged testimony of Greenville Police Officer Brittany Cruell provided direct evidence the vehicle in question was stolen. Additionally, substantial circumstantial evidence reasonably supports the conclusion it was stolen. The State submits the trial judge properly considered the existence of evidence as opposed to its weight in denying Appellant's motion for a directed verdict and in submitting the case to the jury. Therefore, Appellant's conviction and sentence should be affirmed.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If there is any direct

evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 477-78 (2004). Critically, the appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). Indeed, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

Pursuant to the South Carolina Code: "A person not entitled to the possession of a vehicle who . . . possesses . . . it, knowing it to be stolen or converted under circumstances constituting a crime," is guilty of possession of a stolen vehicle. S.C. Code Ann. § 16-21-80 (Supp. 2012). Thus: "There are five elements to the offense of possession of a stolen vehicle: (1) there must be a vehicle; (2) it must be stolen; (3) a person must possess the vehicle; (4) the person must not be one entitled to its possession; and (5) the person possessing the vehicle must know it was stolen." State v. Williams, 350 S.C. 172, 175, 564 S.E.2d 688, 690 (Ct. App. 2002).

Contrary to Appellant's assertions, the evidence presented at his trial did more than merely raise a suspicion the vehicle was stolen.[3] Indeed, the State presented

[3] At trial, Appellant did not argue he was entitled to a directed verdict on grounds the State failed to present sufficient evidence of either his possession of the vehicle or his knowledge it was stolen. Instead, he limited his argument to a claim that the State failed to present sufficient evidence the vehicle was in fact stolen. The same argument is presented on appeal; therefore, possession and knowledge are not at issue.

substantial evidence to support a finding that Appellant was guilty of possession of a stolen vehicle. Officer Cruell's testimony alone provided direct evidence that the 2005 GMC Yukon described in the indictment was stolen. Cruell testified she was able to confirm the make and model of the vehicle as a 2005 GMC Yukon with a value of $20,000. She further testified she confirmed the vehicle was stolen. (R.p.14, lines 12-19). Appellant did not object to or otherwise challenge Cruell's testimony.

Beyond this direct evidence, the conclusion that the vehicle was stolen and Appellant was not entitled to possession was supported by substantial circumstantial evidence presented during trial. Cruell discovered the Yukon in the Comfort Inn parking lot with an improper tag and an obscured VIN. She subsequently saw Appellant walk past her in the hotel lobby immediately before the hotel clerk noticed the Yukon driving away from the parking lot. Cruell attempted to stop the vehicle, following it onto I-85 with her blue lights activated, but terminated her pursuit after it made a series of evasive maneuvers, exited the highway, and ran through a red light. (R.p.7, line 5-p.13, line 18). Shortly thereafter, in response to a BOLO for the vehicle, Cobb discovered the Yukon at a nearby apartment complex. As Cobb approached the apartment building, someone started shooting and Cobb returned fire. (R.p.25, line 12-p.42, line 4).

Appellant's health card, social security card, and his pawn shop ticket were discovered in a duffle bag at the scene of the shootout, and his driver's license was found in a backpack in a room registered in Appellant's name at the Comfort Inn. (R.p.63, line 15-p.69, line 21). When Appellant was arrested at a friend's house he was suffering from

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Nevertheless, the State notes Appellant's testimony provided direct evidence he had possession of the stolen vehicle, and that possession along with other circumstantial evidence provided substantial proof Appellant knew the vehicle was stolen at the time he had possession. See Williams, 350 S.C. at 175-76, 564 S.E.2d at 690-91 (finding circumstantial evidence was sufficient from which a jury could reasonably infer the defendant knew the vehicle was stolen).

a gunshot wound, and a gun and a bloodstained sweatshirt were found nearby. (R.p.69, line 22-p.76, line 14). Appellant's fingerprints were discovered on the Yukon and a box of ammunition in the car, his DNA was found on the gun used in the shootout, and his blood was found both at the scene of the shootout and on the sweatshirt. (R.p.80, line 7-p.84, line 17; p.85, line 12-p.96, line 1; p.105, line 7-p.106, line 24; p.138, line 19-p.141, line 2; p.146, line 12-p.155, line 10; p.166, line 2-p.171, line 11). Appellant later admitted both being in the Yukon during the chase and being at the scene during the shootout. (R.p.214, line 10-p.224, line 18).[4]

Viewing the evidence in a light most favorable to the State, the evidence presented established issues requiring jury resolution. There was ample evidence for the jury to reasonably infer the vehicle was stolen and that Appellant was not entitled to its possession. Therefore, the evidence was sufficient, as a matter of law, to submit the case to the jury. See State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury."). The trial judge committed no error in denying the directed verdict motion, and Appellant's conviction should be affirmed.

[4] To the extent Appellant asserts the testimony presented in his defense should not be considered in reviewing the denial of his directed verdict motion, the State submits a reviewing court must consider all the evidence presented during trial and not just the evidence presented by the State. See State v. Harry, 321 S.C. 273, 277, 468 S.E.2d 76, 79 (Ct. App. 1996) ("When the defendant presents testimony, he loses the right to have the court review the sufficiency of the evidence based on the state's evidence alone.").

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
October 4, 2013

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Angela Bennett, Executive Legal Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated October 4, 2013, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 4th, day of October, 2013.

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