

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR09-1077

STEVIE JAMES HOWARD
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered MAY 5, 2010

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR-08-3133]

HONORABLE HERBERT THOMAS
WRIGHT JR., JUDGE

AFFIRMED

M. MICHAEL KINARD, Judge

Stevie James Howard appeals from his conviction by the Pulaski County Circuit Court, sitting without a jury, on one count each of simultaneous possession of drugs and firearms, possession of a controlled substance with intent to deliver (marijuana), and possession of a firearm by certain persons. On appeal, appellant argues that the findings made by the trial court are inconsistent. We affirm the judgment of the trial court.

On August 1, 2008, the State filed a felony information charging appellant with one count each of simultaneous possession of drugs and firearms, possession of a controlled substance with intent to deliver (marijuana), theft by receiving, and possession of a firearm by certain persons. At trial, Jeff Thompson, an officer with the Little Rock Police Department, testified that on June 13, 2008, while on patrol, he pulled in behind a vehicle that had a strong odor of marijuana coming from it. When the vehicle stopped, appellant got out of the

vehicle and fled on foot. Officer Thompson testified that there were no other people in the vehicle. Appellant was apprehended by other officers. Officer Thompson testified that a gun was in plain view in the vehicle between the console and the driver's seat. There were three small bags of marijuana in the driver's side door and a plastic bag containing marijuana in the passenger's side door. According to Officer Thompson, the gun was reported stolen out of North Little Rock.

After the close of all of the evidence, the trial court found appellant guilty of the charges of simultaneous possession of drugs and firearms, possession of a controlled substance with intent to deliver (marijuana), and possession of a firearm by certain persons, and not guilty of the charge of theft by receiving. In a judgment and commitment order entered on July 7, 2009, the trial court sentenced appellant to 420 months' imprisonment in the Arkansas Department of Correction as a habitual offender. Appellant filed a timely notice of appeal on July 23, 2009.

Appellant's sole argument on appeal is that the judgment entered by the trial court is inconsistent. This issue presents a question of law, and we review questions of law de novo. *Scissom v. State*, 367 Ark. 368, 240 S.W.3d 100 (2006). The State argues that appellant failed to raise his inconsistency argument before the trial court and that failure precludes him from raising the issue now on appeal. Appellant never raised the inconsistency issue at trial, nor did he file any post-trial motions before the trial court. It is unclear, based upon the case law from our supreme court, whether appellant's argument is properly before us. In *Meadows v.*

State, 360 Ark. 5, 199 S.W.3d 634 (2004), the supreme court discussed the issue of preservation of a claim that a jury verdict was inconsistent. In that case, after the jury verdicts were first read, the defendant's counsel stated: "I think they've got inconsistent verdicts." No express objection was made, and there was no motion for a mistrial until after the jury returned its verdict on sentencing. In its opinion, our supreme court stated that the mistrial motion was not made at the first opportunity and that defense counsel merely stating his belief that the verdicts were inconsistent was not enough to preserve the issue for review. Nevertheless, our supreme court then proceeded to decide the case on the merits.

Regardless of whether appellant's argument was properly preserved, it is without merit. Appellant's argument fails for one simple reason: the trial court's findings are consistent. Inconsistent verdicts are those verdicts with some logical impossibility or improbability implicit in the findings. See *Meadows, supra*; *United States v. Maybury*, 274 F.2d 899 (2d Cir. 1960). Appellant argues that the trial court's findings of guilty on the charges of simultaneous possession of drugs and firearms and possession of a firearm by certain persons, and not guilty on the charge of theft by receiving are inconsistent. A review of the applicable statutes demonstrates that appellant is mistaken.

Arkansas Code Annotated section 5-74-106 (Supp. 2009) states, in relevant part, that no person shall unlawfully commit a felony violation of section 5-64-401 or unlawfully attempt, solicit, or conspire to commit a felony violation of section 5-64-401 while in possession of a firearm. Arkansas Code Annotated section 5-73-103 (Supp. 2009) states, in

relevant part, that, subject to certain limitations that are not applicable in this case, no person shall possess or own a firearm who has been convicted of a felony. Arkansas Code Annotated section 5-36-106 (Repl. 2006) states that a person commits the offense of theft by receiving if he or she receives, retains, or disposes of stolen property of another person either knowing that the property was stolen, or having good reason to believe the property was stolen.

Appellant was found guilty of the first two offenses and not guilty of the third. The first two statutes merely require that the person alleged to have violated the statutes possess the firearm, either along with a controlled substance or as a convicted felon. There is no requirement that the person have any particular knowledge about the firearm itself. The theft-by-receiving statute, however, requires that the person possess the property, in this case a firearm, *either knowing that the property was stolen or having good reason to know it was stolen*. That distinction is the key. The State produced evidence to prove that the gun was stolen, but there is not any evidence in the record indicating that appellant knew or should have known that the gun was stolen. It is perfectly plausible that the trial court determined that appellant possessed the firearm, which, combined with his simultaneous possession of a controlled substance and his prior felony convictions, would place him in violation of sections 5-74-106 and 5-73-103, but that appellant neither knew nor had good reason to know that the firearm was stolen, which would make him not guilty of the offense of theft by receiving. Therefore, the findings made by the trial court are consistent, and appellant's argument fails. The judgment of conviction is affirmed.

Cite as 2010 Ark. App. 382

Affirmed.

ROBBINS and MARSHALL, JJ., agree.