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NO. COA06-96

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

STATE OF NORTH CAROLINA

v.

Forsyth County
No. 05 CRS 50267

CHRISTOPHER LAMONT CHAPLIN

Appeal by defendant from judgment entered 8 September 2005 by Judge John O. Craig in Forsyth County Superior Court. Heard in the Court of Appeals 11 October 2006.

Attorney General Roy Cooper, by Assistant Attorney General Daniel P. O'Brien, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Constance E. Widenhouse, for defendant.

LEVINSON, Judge.

Christopher Lamont Chaplin (defendant) appeals judgment entered upon his convictions for trafficking in cocaine by possession and possession with intent to sell or deliver cocaine. We find no error.

The pertinent facts may be summarized as follows: On 7 January 2005, Lauren Abrahams went to a girlfriend's house to wait for defendant to pick her up. Abrahams testified that defendant called her at 10:00 p.m. and apologized for being late, and stated that he was in the process of acquiring lodging for the two of them for the night. When defendant arrived at Abraham's girlfriend's

home, he informed Abrahams that he had to go somewhere and would return in 30-45 minutes. When defendant returned, he and Abrahams decided to take Abraham's vehicle, as defendant's friend planned to borrow his Ford Explorer. When defendant and Abrahams got to a motel room at the Crosslands Economy Studios in Winston-Salem, they had a sexual encounter; thereafter, Abrahams asked defendant to bring her food from a nearby Taco Bell. Abrahams testified that she and defendant had been in the room for approximately 20-25 minutes. Abrahams also testified that she did not know if defendant had been in the room before he came to pick her up. It was later determined that the room had been rented in the name of another individual.

In the early morning of 8 January 2005, Officer T.A Blevins and Corporal Ronald Beasley responded to a report of a break-in near the Crosslands Economy Studios. Because defendant's vehicle matched the description of the suspects, Blevins stopped defendant as he was parking the car behind the motel upon his return from Taco Bell. Blevins determined that defendant was not involved with the reported break-in. However, Blevins ascertained that there was an outstanding warrant for defendant's arrest on an unrelated matter, and informed defendant he was going to take him into custody. While patting down defendant, Blevins found three large bundles of cash in three separate pockets: his right front pants pocket, his left front pants pocket, and his coat pocket. There was one large bundle of one dollar bills; a bundle of hundreds; and a large bundle made up of smaller groups of 20's, 10's and 5's.

The cash totaled \$2109, and fell into the following denominations: \$600 in 100 dollar bills, \$780 in 20 dollar bills, \$160 in 10 dollar bills, \$395 in 5 dollar bills, and \$174 in one dollar bills. One of the three bundles consisted mainly of twenties, folded distinctively in groups. Even though they were in the same pocket, the groups of bills could be distinguished from one another. Specifically, one group of bills was folded in half horizontally, and the next group vertically. These groups could therefore be distinguished visibly. Based upon his law enforcement training, Beasley testified that bundling cash in these ways is typically associated with the manner drug dealers handle money.

Defendant subsequently gave his consent to a search of the motel room. Inside a kitchen cabinet, in a pot covered with a lid, Beasley found what was later determined to be 86 grams of cocaine and a set of digital scales. Having found a large quantity of cocaine, Beasley instructed Blevins to place Abrahams under arrest. Defendant was calm during the encounter, and had no reaction when informed that cocaine was located in the motel room. In addition, at the magistrate's office, defendant told law enforcement that Abrahams did "not have anything to do with it" and asked the police to release Abrahams.

Defendant was convicted of trafficking in cocaine by possession in violation of N.C. Gen. Stat. § 90-95(h)(3) (2005), and possession with intent to sell and deliver cocaine in violation of N.C. Gen. Stat. § 90-95(a) (2005). Defendant appeals.

Defendant first contends that the trial court erred by denying his motion to dismiss the charges because the State failed to present substantial evidence that defendant had actual or constructive possession of the cocaine. We disagree.

When ruling on a motion to dismiss, "the trial court must determine only whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense." *State v. Crawford*, 344 N.C. 65, 73, 472 S.E.2d 920, 925 (1996).

Evidence is substantial if it is relevant and adequate to convince a reasonable mind to accept a conclusion. In considering a motion to dismiss, the trial court must analyze the evidence in the light most favorable to the State and give the State the benefit of every reasonable inference from the evidence. The trial court must also resolve any contradictions in the evidence in the State's favor. The trial court does not weigh the evidence, consider evidence unfavorable to the State, or determine any witness' credibility.

State v. Robinson, 355 N.C. 320, 336, 561 S.E.2d 245, 255-56 (2002) (internal citations and quotation marks omitted). "[T]he rule for determining the sufficiency of evidence is the same whether the evidence is completely circumstantial, completely direct, or both." *State v. Crouse*, 169 N.C. App. 382, 389, 610 S.E.2d 454, 459 (2005) (quoting *State v. Wright*, 302 N.C. 122, 126, 273 S.E.2d 699, 703 (1981)).

Defendant was convicted of trafficking in cocaine by possession, in violation of G.S. § 90-95, which provides in relevant part that "[a]ny person who . . . transports, or possesses

28 grams or more of cocaine . . . shall be guilty of a felony . . . known as 'trafficking in cocaine.'" G.S. § 90-95(h)(3). Accordingly, the State must prove that defendant: (1) knowingly (2) possessed or transported a given controlled substance, and that (3) the amount transported was greater than the statutory threshold amount. *State v. Shelman*, 159 N.C. App. 300, 307-08, 584 S.E.2d 88, 94 (2003). Defendant was also convicted of possession with intent to sell or deliver cocaine. In this regard, the State must prove that defendant possessed a controlled substance and that defendant had the intent to sell or deliver the same. See N.C. Gen. Stat. § 90-95(a)(1) (2005); *State v. Carr*, 122 N.C. App. 369, 372, 470 S.E.2d 70, 72-73 (1996).

"An accused's possession of narcotics may be actual or constructive." *State v. Harvey*, 281 N.C. 1, 12, 187 S.E.2d 706, 714 (1972). "A person has actual possession of a substance if it is on his person, he is aware of its presence, and either by himself or together with others he has the power and intent to control its disposition or use." *State v. Reid*, 151 N.C. App. 420, 428-29, 566 S.E.2d 186, 192 (2002). However, the State is not required to prove actual physical possession of the controlled substance; proof of constructive possession by defendant is sufficient to carry the issue to the jury. *State v. Perry*, 316 N.C. 87, 96, 340 S.E.2d 450, 456 (1986). Consequently, "[c]onstructive possession exists when a person, while not having actual possession, has the intent and capability to maintain control and dominion over a controlled substance." *State v.*

Williams, 307 N.C. 452, 455, 298 S.E.2d 372, 374 (1983). Where a controlled substance is found on premises under the defendant's control, this fact alone may be sufficient to overcome a motion to dismiss and to take the case to the jury. *Harvey*, 281 N.C. at 12, 187 S.E.2d at 714. Nevertheless, if a defendant does not maintain exclusive control of the premises, "other incriminating circumstances" must be established for constructive possession to be inferred. *State v. Alston*, 91 N.C. App. 707, 710, 373 S.E.2d 306, 309 (1988). Our determination then "'depends on the totality of the circumstances in each case. No single factor controls, but ordinarily the questions will be for the jury.'" *State v. Butler*, 147 N.C. App. 1, 11, 556 S.E.2d 304, 311 (2001) (quoting *State v. Jackson*, 103 N.C. App. 239, 243, 405 S.E.2d 354, 357 (1991)).

In the instant case, as the cocaine was not found in defendant's actual possession, we evaluate defendant's argument in the context of constructive possession. Additionally, we consider whether defendant's non-exclusive control of the motel room was coupled with other incriminating circumstances sufficient to show constructive possession of the narcotics.

Here, evidence of other incriminating circumstances included: \$2109 in defendant's pockets folded alternatively horizontally and vertically in groups, such that the groups of bills could be visibly distinguished from one another; evidence that bundling cash is typically associated with how drug dealers handle money; and defendant's statement that Abrahams did "not have anything to do with it" - a statement jurors could reasonably infer concerned the

cocaine. Taken in the light most favorable to the State, we conclude there was sufficient record evidence to show that defendant had the intent and capability to maintain control and dominion over the cocaine. This assignment of error is overruled.

In defendant's next argument on appeal, he contends that the trial court committed reversible error by excluding evidence of his hearsay statement to Blevins that he intended to use the \$2109 to pay off a mortgage. This, defendant contends, would have countered the State's evidence that the money was related to illegal narcotics trade.

Even assuming, *arguendo*, that the court erred by excluding this evidence, we are unpersuaded that its admission would have changed the outcome of the trial. See N.C. Gen. Stat. § 15A - 1443(a) (2005) ("A defendant is prejudiced by errors relating to rights arising other than under the Constitution of the United States when there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises"). We first observe that the intended use of the \$2109 has little or no relationship with its origin, and little to do with the State's theory that how one bundles his cash can suggest whether he is involved in narcotics trade. Moreover, defendant did present some evidence suggesting that the money was not related to narcotics. Specifically, on cross-examination by defense counsel, Officers Beasley and Blevins testified that the drug trade is not ordinarily marked by the use of single dollar bills, and acknowledged that

defendant had 174 single dollar bills in his possession. This assignment of error is overruled.

In defendant's next argument on appeal, he contends that the trial court erred by allowing a substitute chemical analyst to testify for the State. Specifically, while the State listed Agent "R.W. Evans, SBI or any other Chemical Analyst from the SBI" on the its list of prospective witnesses, it called Agent Sheila Baylor to testify regarding the analysis of the cocaine. Therefore, defendant argues the State violated N.C. Gen. Stat. § 15A-903(a)(2) (2005) by not providing a separate report and opinion prepared by Agent Baylor, and by failing to identify Agent Baylor and provide her Curriculum Vitae (CV) before trial.

"The purpose of discovery under our statutes is to protect the defendant from unfair surprise by the introduction of evidence he cannot anticipate.'" *State v. Patterson*, 335 N.C. 437, 455, 439 S.E.2d 578, 589 (1994) (quoting *State v. Payne*, 327 N.C. 194, 202, 394 S.E.2d 158, 162 (1990)). A trial court's order regarding matters of discovery is reviewed for an abuse of discretion. *Morin v. Sharp*, 144 N.C. App. 369, 374, 549 S.E.2d 871, 874 (2001).

N.C. Gen. Stat. § 15A-903(a)(2) sets forth particular items the State must provide to a defendant regarding an expert witness. Specifically, the statute provides, in pertinent part, that:

Upon motion of the defendant, the court must order the State to . . . [g]ive notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State

shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court.

Additionally, once the State has provided discovery, there is a continuing duty to provide discovery and disclosure. N.C. Gen. Stat. § 15A-907 (2005).

Assuming *arguendo* that the State committed a technical violation of G.S. § 15A-903(a)(2) by failing to provide certain documents, including the CV of Agent Baylor, until the morning of trial, we conclude such error would not constitute reversible error. See G.S. § 15A-1443(a).

As a preliminary matter, we observe that the record on appeal did not include the CV of either Agent Evans or Agent Baylor - something that would have assisted this Court's evaluation of this issue. In addition, the "State's List of Prospective Witnesses" noted that "R.W. Evans, SBI or any other Chemical Analyst from the SBI" would appear to testify. Defendant was therefore notified that someone other than Evans might testify at trial. In his testimony, Baylor relied largely on the reports and opinion of Evans, which were already provided to defendant. Finally, defendant had a full and fair opportunity to cross-examine Baylor to expose weaknesses or inconsistencies in her testimony. Consequently, because the record does not support a conclusion that a different result would have occurred at trial had defendant received additional materials regarding Agent Baylor before the day

of trial, defendant is not entitled to a new trial. This assignment of error is overruled.

We have considered defendant's remaining arguments and conclude they are without merit.

No error.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).