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NO. COA06-86

NORTH CAROLINA COURT OF APPEALS

Filed: 19 December 2006

STATE OF NORTH CAROLINA

v.

RICHARD MICHAEL REECE

Haywood County
No. 05 CRS 50052
05 CRS 50054-55

Appeal by defendant from judgment entered 29 September 2005 by Judge Charles P. Ginn in Haywood County Superior Court. Heard in the Court of Appeals 11 December 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Kathryn Jones Cooper, for the State

Janna D. Allison for defendant-appellant.

LEVINSON, Judge.

On 28 February 2005, defendant Richard Michael Reece was indicted for felony possession of marijuana, possession of drug paraphernalia, possession with intent to sell or deliver marijuana, and maintaining a vehicle that was used for keeping or selling a controlled substance. The case was tried at the 28 September 2005 Criminal Session of Haywood County Superior Court.

The State presented evidence at trial which tended to show the following: On 6 January 2005, Detective Kenny Aldridge of the Waynesville Police Department went to the First Baptist parking lot

on South Main Street in Waynesville, North Carolina. Detective Aldridge located a red, older model Chevrolet pickup truck and ran the tag number on the vehicle. The tag came back as being registered to the defendant. Detective Aldridge looked into the vehicle and saw a white towel behind the driver's side seat with what appeared to be a "long gun on top of it." Detective Aldridge called Detective Ryan Singleton to assist him, and also called Officer Brandon Gilmore and his canine unit dog to come out and sniff the car for drugs. Officer Gilmore came out, his dog sniffed the truck but it did not "hit" for any drugs.

Detective Aldridge knew the defendant by his nickname "Daffy". Detectives Aldridge and Singleton walked across the street towards a construction site to see if they could locate the defendant. Detective Aldridge observed defendant come out of the construction site's office and head toward the site. Detective Aldridge said, "Daffy, I've got some information that there's drugs in your truck" and asked him if he could look in his vehicle for marijuana. Defendant denied having any drugs, saying, "Kenny, I haven't done that in years." Detective Aldridge replied that he still wanted to look in his truck. Defendant asked Detective Aldridge if he had a search warrant, and then took him to a truck provided to him by his employer. Detective Aldridge told defendant that was not the truck he wanted to look into, he wanted to look in his personal truck across the street. Defendant led the detectives across the street, unlocked the red truck and pushed the front seat forward so they could look inside. Detective Singleton searched defendant's

vehicle and found the white towel with the shotgun laying on top of it. Detective Singleton also found wrapped up inside the white towel a box of plastic baggies, scales, and marijuana.

Defendant was convicted of possession of drug paraphernalia, possession with intent to sell or deliver marijuana and maintaining a vehicle that was used for keeping or selling a controlled substance. The convictions were consolidated for judgment and defendant was sentenced to a term of six to eight months imprisonment. Defendant's sentence was suspended and he was placed on supervised probation for thirty-six months. Defendant appeals.

Defendant's sole argument on appeal is that there was insufficient evidence to sustain the convictions. Specifically, defendant contends that he did not have exclusive possession of the truck, and there were no incriminating circumstances to constitute constructive possession.

After careful review of the record, briefs and contentions of the parties, we find no error. To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense. *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). "'Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.'" *Id.* at 717, 483 S.E.2d at 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)).

Defendant was convicted of possession with intent to sell or deliver marijuana. Under the theory of constructive possession, a person may be charged with possession of an item such as narcotics:

when he has both the power and intent to control its disposition or use. The requirements of power and intent necessarily imply that a defendant must be aware of the presence of an illegal drug if he is to be convicted of possessing it. **When such materials are found on the premises under the control of the accused, this fact, in and of itself, gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury on a charge of unlawful possession.**

State v. Weldon, 314 N.C. 401, 403, 333 S.E.2d 701, 702-03 (1985) (internal quotation marks and citations omitted) (emphasis added). Here, the truck was registered to defendant and was located across the street from the construction site where he worked. Defendant possessed a key which he used to unlock the truck for the detectives, and then pushed the front seat forwards and gave consent to their search of the vehicle. There was no evidence presented that anybody else had access to or control of the vehicle other than the defendant. Therefore, we conclude that in the light most favorable to the State, the evidence permits an inference that defendant possessed the marijuana, baggies and scales. Accordingly, we find no error.

No error

Judges TYSON and BRYANT concur.

Report per Rule 30(e).