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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-87

Filed: 3 April 2018

Person County, No. 15CRS050275

STATE OF NORTH CAROLINA

v.

CHADWICK LATRICE RICHMOND, Defendant.

Appeal by defendant from judgment entered on or about 27 July 2016 by Judge W. Osmond Smith III in Superior Court, Person County. Heard in the Court of Appeals 8 August 2017.

Attorney General Joshua H. Stein, by Assistant Attorney General David L. Gore III, for the State.

Sean P. Vitrano, for defendant-appellant.

STROUD, Judge.

Defendant appeals from his conviction of possession of a firearm by a felon. On appeal, defendant argues that the trial court erred in denying his motion to dismiss because the evidence was insufficient to establish his constructive possession of the firearm. We find no error in the trial court's denial of defendant's motion to dismiss.

I. Background

The State's evidence showed that on 25 February 2015, law enforcement executed a search warrant at a home¹ in Roxboro, North Carolina. Upon entering the home, Sergeant Mark Massey found defendant and a woman in a bedroom. Sergeant Massey asked if there were "any knives, needles, guns, bombs, thing like that in the house that [the law enforcement officers] need[ed] to know about[.]" Defendant told Sergeant Massey there was a black .22 rifle in the closet of the bedroom. The closet had no door and was approximately three or four steps away from defendant. Sergeant Massey secured the gun and also found 25 bullets for the .22 rifle on top of the refrigerator in the kitchen.

Defendant was indicted for possession of a firearm by a convicted felon. The jury found defendant guilty. The trial court entered judgment, and defendant appeals.

II. Motion to Dismiss

Defendant's only argument on appeal is that the trial court erred in denying his motion to dismiss "because the evidence was insufficient to establish his constructive possession of the firearm." (Original in all caps.)

When ruling on a defendant's motion to dismiss, the trial court must determine whether there is substantial evidence (1) of each essential element of the offense

¹ In defendant's brief he contends that the address officers searched was not definitively established to be his home, but the evidence shows the home was the address defendant had provided on his driver's license, and defendant had been observed there, including on the day the search warrant was executed. In defendant's brief to this Court he has not argued he did not reside at the address searched but simply that the State could have done more to prove it was his residence.

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charged, and (2) that the defendant is the perpetrator of the offense. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. 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) (citations and quotation marks omitted).

Under N.C. Gen. Stat. § 14-415.1, it is unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm. Thus, the State need only prove two elements to establish the crime of possession of a firearm by a felon: (1) defendant was previously convicted of a felony; and (2) thereafter possessed a firearm.

State v. Wood, 185 N.C. App. 227, 235, 647 S.E.2d 679, 686 (2007) (citation, quotation marks, and brackets omitted).

Defendant stipulated that he had previously been convicted of a felony; thus the only issue is defendant's possession of the firearm. Defendant contends only that the State failed to prove possession of the firearm because his "control over the bedroom containing the rifle was nonexclusive" since the woman was also in the room.

In *State v. Bradshaw*, our Supreme Court explained:

It is well established that possession may be actual or constructive. Here, the State proceeded on the theory that defendant constructively possessed the firearm and cocaine.

A defendant constructively possesses contraband when he or she has the intent and capability to maintain control and dominion over it. The defendant may have the power to

control either alone or jointly with others. Unless a defendant has exclusive possession of the place where the contraband is found, the State must show other incriminating circumstances sufficient for the jury to find a defendant had constructive possession.

The State concedes that defendant's control of the bedroom in which the cocaine and firearm were found was nonexclusive. Therefore, to have the charges submitted to a jury, the State must have introduced evidence of other incriminating circumstances sufficient to support a reasonable inference that defendant constructively possessed the contraband found in the room. This inquiry is necessarily fact specific; each case will turn on the specific facts presented, and no two cases will be exactly alike.

This Court has considered a broad range of other incriminating circumstances to determine whether an inference of constructive possession was appropriate when a defendant exercised nonexclusive control of contraband. Two of the most common factors are the defendant's proximity to the contraband and indicia of the defendant's control over the place where the contraband is found.

State v. Bradshaw, 366 N.C. 90, 93–94, 728 S.E.2d 345, 348 (2012) (citations, quotation marks, and brackets omitted).

Here, the gun was found in the home where defendant resides; defendant was found in the same room as the gun which was only three or four steps away from him in a closet with no door. Defendant described the gun specifically as a black .22 rifle and told Sergeant Massey the location of the gun. Bullets for the gun were found on top of the refrigerator. Prior to the search, Sergeant Massey had been conducting surveillance of the home and saw defendant engage in behavior “indicative of the

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involvement of drug sales” and testified that “weapons and drugs go hand in hand.” We conclude the State presented “evidence of other incriminating circumstances sufficient to support a reasonable inference that defendant constructively possessed the contraband found in the room.” *Id.* at 94, 728 S.E.2d at 348.

III. Conclusion

We conclude there was no error.

NO ERROR.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).