An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1141

Filed: 15 May 2018

Johnston County, No. 15 CRS 054562

STATE OF NORTH CAROLINA

v.

TRISTAN PHILIP HINES

Appeal by defendant from judgment entered 14 April 2017 by Judge Reuben F. Young in Johnston County Superior Court. Heard in the Court of Appeals 1 May 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Lisa B. Finkelstein, for the State.

Mary McCullers Reece, for defendant-appellant.

CALABRIA, Judge.

Where the State presented sufficient evidence that defendant possessed methamphetamine precursor chemicals, the trial court did not err in denying defendant's motion to dismiss. Where the verdict sheet clearly indicated to the jury that defendant was to be found either guilty or not guilty of possession of methamphetamine precursor chemicals, there was no ambiguity with respect to the

jury's unanimous verdict, and the trial court did not err in sentencing defendant for a Class F felony. We find no error.

I. Factual and Procedural Background

On 21 August 2015, Jamie Zackeroff ("Zackeroff") and Tristan Hines ("defendant"), along with two friends, Christopher Whitley ("Whitley") and Gina (collectively, "the four"), went to purchase the ingredients necessary to manufacture methamphetamine. Zackeroff did not recall who purchased what items, but testified that she believed defendant purchased Sudafed, a pseudoephedrine. That evening, Zackeroff prepared the methamphetamine and the four divided it amongst themselves. The four attempted to prepare another batch, but it caught fire, and the chemicals were ruined. Zackeroff placed the unused pills in her purse, and the four cleaned up from the fire. The next day, the four went to a GameStop to sell some video game paraphernalia for money to purchase more drugs. However, an officer from the Smithfield Police Department ("SPD") approached their vehicle, and arrested the four for possession of precursor chemicals. Zackeroff acknowledged that she had some unused Claritin-D and an open cold pack in her purse, which she stated were hers.

Defendant was arrested and indicted for possession of an immediate precursor chemical to methamphetamine, and for attaining habitual felon status. At trial, at

the close of the State's evidence and again at the close of all of the evidence, defendant moved to dismiss the charges against him. The trial court denied these motions.

The jury returned verdicts finding defendant guilty of possessing a methamphetamine precursor chemical and of attaining habitual felon status. The trial court then sentenced defendant for possession of a methamphetamine precursor chemical, a Class F felony, as an habitual felon, to a minimum of 146 months and a maximum of 188 months in the custody of the North Carolina Department of Adult Correction.

Defendant appeals.

II. Motion to Dismiss

In his first argument, defendant contends that the trial court erred in denying his motion to dismiss. We disagree.

A. Standard of Review

"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).

"In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995).

B. Analysis

Defendant contends that the State failed to produce evidence of either actual or constructive possession of a methamphetamine precursor chemical by defendant, and that therefore the State's evidence was insufficient to support the charge against defendant, and the trial court should have granted defendant's motion to dismiss.

> Possession of a controlled substance may be actual or constructive. *State v. McLaurin,* 320 N.C. 143, 146, 357 S.E.2d 636, 638 (1987). "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). In contrast, constructive possession exists when the defendant, " 'while not having actual possession, . . . has the intent and capability to maintain control and dominion over' the narcotics." *State v. Matias,* 354 N.C. 549, 552, 556 S.E.2d 269, 270 (2001) (quoting *State v. Beaver,* 317 N.C. 643, 648, 346 S.E.2d 476, 480 (1986)). When a defendant does not have exclusive possession of the location where the drugs are found, the State is required to show "other incriminating circumstances" in order to establish constructive possession. *Id.* at 552, 556 S.E.2d at 271.

State v. Steele, 201 N.C. App. 689, 692, 689 S.E.2d 155, 158-59 (2010).

Defendant notes that the SPD officer found the crushed pills in Zackeroff's purse, and that the car belonged to Gina. He argues that he therefore did not have actual possession of the chemicals, and further argues that his control was not sufficient to support constructive possession.

Defendant's contentions are misplaced. The State presented evidence that defendant possessed a methamphetamine precursor chemical. For example, when asked whether defendant was one of those who purchased Sudafed, the precursor chemical in question, on 21 August 2015, Zackeroff responded in the affirmative. Detective Joey Wheeler, a narcotics detective with the SPD, testified that defendant purchased Sudafed at 1:39 p.m. on 21 August 2015. Officer David Sholes, a patrol officer with the SPD who was present at defendant's arrest, also testified at trial. He noted that, during the arrest, he asked defendant when the last time was that he had purchased pseudoephedrine, to which defendant responded that "he had bought it recently, that he had bought it last night," referring to 21 August 2015.

All of this evidence, taken in the light most favorable to the State and giving the State the benefit of every reasonable inference, supports a determination that defendant purchased Sudafed, a precursor chemical, and provided it to Zackeroff for the express purpose of the manufacture of methamphetamine. Defendant's arguments about who controlled the chemicals *in the car* are of no consequence; it is clear that defendant purchased, possessed, and provided the chemicals *the day prior*. We therefore hold that the State presented sufficient evidence of possession, and that the trial court did not err in denying defendant's motion to dismiss.

III. Sentencing

In his second argument, defendant contends that the trial court erred in sentencing him for a Class F felony. We disagree.

A. Standard of Review

"We review *de novo* whether the sentence imposed was authorized by the jury's verdict." *State v. Lail*, ___ N.C. App. ___, ___, 795 S.E.2d 401, 408 (2016), *disc. review denied,* 369 N.C. 524, 796 S.E.2d 927 (2017).

B. Analysis

Defendant contends that the trial court's instructions created an ambiguity. Specifically, defendant contends that, while he was charged with possession of a precursor chemical for methamphetamines, a Class F felony, the trial court's instructions to the jury described possession of a precursor chemical for a controlled substance, which is merely a Class H felony. Defendant contends that because of this confusion, it was "unclear whether the jury unanimously found that [defendant] was guilty of the class F offense."

Defendant's argument overlooks the verdict sheet. This Court has held that, when the issue of ambiguity as to a unanimous jury verdict is raised, " 'we must examine the verdict, the charge, the jury instructions, and the evidence to determine whether any ambiguity as to unanimity has been removed.' " *State v. Brewer*, 171 N.C. App. 686, 692, 615 S.E.2d 360, 364 (2005) (quoting *State v. Petty,* 132 N.C. App. 453, 461-62, 512 S.E.2d 428, 434, *disc. review denied,* 350 N.C. 598, 537 S.E.2d 490

(1999)). We have further held that "there is no unanimity problem if it is possible to match a jury's verdict of guilty with a specific incident after reviewing the evidence, indictment, jury charge, and *verdict sheets*." *State v. Bates*, 179 N.C. App. 628, 633, 634 S.E.2d 919, 922 (2006) (citations and quotation marks omitted, emphasis added). Here, the verdict sheet explicitly stated that the jury returned a unanimous verdict finding defendant "Guilty of Possessing and/or Distributing Meth Precursor Chemical[.]"

In reviewing the evidence, charge, instructions, and verdict sheet, the facts are clear. Any potential ambiguity raised by the jury instructions was addressed by the specificity of the verdict sheet. No juror could have looked at that verdict sheet and mistakenly believed that they were finding defendant guilty of possessing a precursor chemical for a controlled substance generally; the presence of the word "Meth" specified the offense with particularity. We therefore hold that there was no ambiguity in the jury's unanimous decision, and that the trial court did not err in sentencing defendant for the Class F felony of possession of a methamphetamine precursor chemical.

NO ERROR.

Judges BRYANT and HUNTER concur.

Report per Rule 30(e).