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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-558

Filed: 15 January 2019

Cabarrus County, Nos. 14CRS051843, 17CRS000473

STATE OF NORTH CAROLINA

v.

RODDARIUS MARKEE HOPPER, Defendant.

Appeal by Defendant from judgment entered 31 October 2017 by Judge Martin B. McGee in Cabarrus County Superior Court. Heard in the Court of Appeals 28 November 2018.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Kimberley A. D'Arruda, for the State.

Michael E. Casterline, for defendant-appellant.

HUNTER, JR., Robert N., Judge.

Roddarius Markee Hopper[1] ("Defendant") appeals following jury verdicts convicting him of felonious trafficking in cocaine, possession with the intent to sell and deliver controlled substances within 1,000 feet of a building primarily used as an

[1] We note in the documents filed below and at this Court, Defendant's name is spelled as "Roddarius." At trial, Defendant clarified he spelled his name as "Roderia."

elementary school, and being a habitual felon. On appeal, Defendant argues the trial court erred in denying his motion to dismiss because the State failed to present substantial evidence he possessed cocaine. We find no error.

I. Factual and Procedural Background

On 28 July 2014, a Cabarrus County Grand Jury indicted Defendant for trafficking in cocaine and possession with the intent to sell and deliver controlled substances within 1,000 feet of a building primarily used as an elementary school. On 6 March 2017, another Cabarrus County Grand Jury indicted Defendant with being a habitual felon.

The court called Defendant's case for trial on 30 October 2017. The State called Jimmy Hughes, a major with the Concord Police Department. On 14 March 2014, Hughes worked as a patrol captain. Hughes and other officers patrolled near an apartment complex on Ray Suggs Road because they "had been receiving drug complaints[.]" At 11:15 p.m., Hughes saw three people in a stairwell. Hughes continued driving, but then turned around and headed back to where the three people stood. As Hughes neared, the three people "started to flee on foot." Hughes caught two of the people, but one escaped.[2] Hughes and other officers tried to find the third person, setting up a perimeter and a K-9 track.

[2] Hughes did not arrest the two people officers caught.

Officers went to a neighboring subdivision to search for the third person. While watching the perimeter, Hughes spoke with another officer, Tracy Law. A Chevy Impala drove past Hughes and Law. Not even a minute later, the car turned around, and drove back past Hughes and Law. Hughes thought "maybe this is the vehicle that's trying to pick that suspect up that ran on foot" and decided to follow the car. Hughes followed the car to a cul-de-sac. The car stopped "in the middle of the cul-de-sac." Hughes thought this was suspicious because "[t]hat's not a place that a person would normally park their vehicle to leave it."

The driver, Defendant, got out of the car and walked to a home. Hughes backed into a driveway across the street and watched Defendant. Defendant knocked for a "[f]ew minutes." Hughes thought Defendant was nervous because "he was hurriedly knocking on the door, looking over his shoulder, knocking on the door, looking over his shoulder[.]" Hughes described it as "hey, let me in. The police are out here." He suspected "there may be drug activity involved."

Defendant turned around and walked back toward his car. Hughes got out of his car and started walking toward Defendant. The two met near the trunk of the car. When Hughes began to speak to Defendant, Defendant already had his license in his hand. Having a license out is "not something that folks typically do[,]" and Hughes thought it was suspicious. From Hughes's experience "when someone already has something that [he's] going to ask them for in their hands, that's because

they don't want [him] checking their person to make sure they don't have anything on 'em."

Hughes radioed to headquarters for a check of Defendant's name and date of birth. While headquarters ran Defendant's information, Hughes and Defendant spoke. Hughes asked him what he was doing at the home. Defendant replied he was picking up a friend of his brother. However, Defendant did not know the name of his brother's friend. Law arrived and walked up to the Impala's passenger door. Headquarters informed Hughes that Defendant had two arrest warrants. Hughes and Law arrested Defendant. Hughes searched Defendant and found $1,521 in cash. Hughes thought the amount of cash was significant because "[m]ost folks don't carry that type of cash[,]" and he has seen that large amount of cash in narcotic sales.

Law spoke with the passenger, Jerome Johnson. Initially, Johnson gave Law a fake name. While Law placed Defendant in her police car, Hughes spoke with Johnson. Johnson consented to a search. He wore two layers of pants and had clear packing tape around his ankles. He said he wore this to "keep the bugs out." This "heightened [Hughes's] awareness of potential drugs on this individual" because there was not "a lot of bug activity going on[.]" When Hughes "patted him down[,]" he felt "what [he] immediately knew to be crack cocaine." Hughes asked Johnson to remove the packing tape from his ankle, but Johnson "didn't want to remove the packing tape himself." Hughes asked Johnson to put his hands on top of the car.

Johnson "took off running on foot." Johnson got around the car, and Hughes "tackle[d]" him on the driver's side of the car. As Hughes and Law tried to detain Johnson, "everything had come loose . . . and crack cocaine fell out of his pants leg." Officers arrested Johnson. Johnson also ingested some cocaine and "ended up discarding about another 14 grams" in the police car.

Hughes and Law searched the Impala. They found "a plastic baggie with about .01 grams of cocaine in it" in the center console. They also found a Walmart bag behind the passenger's seat, containing "a box of baggies, digital scales and a glass, Pyrex-type measuring cup that had cocaine residue on it." The cocaine officers found on Johnson fit the glass measuring cup. Hughes described the items as a "mobile drug operation[.]"[3]

Considering the cash Hughes found on Defendant, the "large amount" of cocaine officers found on Johnson, "the fact that it was separated,"[4] the scale, and the baggies, Hughes concluded "they were working together to facilitate a drug sale." Officers weighed the cocaine and determined the cocaine from Johnson's pant leg was 41.5 grams and the amount in the baggie left in Law's car was 14 grams.

[3] This wording is from counsel's question, to which Hughes answered affirmatively.

[4] This wording is also from counsel's question, to which Hughes answered affirmatively.

Through Hughes's testimony, the State introduced a map into evidence. The map showed the 1,000 foot radius around a nearby elementary school. The road Defendant drove down was within the 1,000 foot radius.

The State called Tracy Law, an officer with the Concord Police Department. On 15 March 2014, Law went to help Hughes search for a suspect. After officers "called off the K-9[,]" Hughes parked on one side of the road, and Law parked on the other. Both had their windows down, and they talked across the road. A Chevy Impala drove between Law and Hughes. The Impala then "came right back" and "wasn't gone very long[.]" Law told Hughes, "That's doesn't seem right[.]" Hughes agreed and followed the car. Law initially stayed behind, but once she saw Hughes get out and speak with Defendant, she "came on down to see if [she] could help him."

Law walked up to the car from which Defendant exited to see if there were any passengers. Johnson was in the front passenger seat. When Law asked for his name and date of birth, Johnson told Law a fake name. When headquarters informed officers that Defendant had two active arrest warrants, Law left Johnson and assisted Hughes in arresting Defendant. Law went to put Hughes in her police car and "heard a commotion." She saw Hughes chasing Johnson. Law put Hughes in her car and then went to assist securing Johnson. Law searched the car and found the Walmart bag behind the front passenger seat, with the glass measuring cup and baggies.

The State rested. Defendant moved to the dismiss the charges. The court denied his motion. Defendant did not present any evidence and renewed his motion to dismiss. The court denied the motion. The jury found Defendant guilty of felonious trafficking in cocaine and possession with intent to sell and deliver controlled substances within 1,000 feet of a building primarily used as an elementary school.

The State called Paula Fougere, a deputy clerk for the Clerk of Court. Through Fougere's testimony, the State admitted three certified judgments for other felonies Defendant committed. The State rested.

The jury found Defendant guilty of being a habitual felon. The court sentenced Defendant to 96 to 128 months imprisonment. Defendant gave oral notice of appeal.

II. Jurisdiction

Defendant has an appeal of right to this Court pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2017).

III. 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) (citation omitted). "Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526

S.E.2d 451, 455 (2000) (quoting *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980)). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980) (citations omitted).

> Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence. If the evidence presented is circumstantial, the court must consider whether a reasonable inference of defendant's guilt may be drawn from the circumstances. Once the court decides that a reasonable inference of defendant's guilt may be drawn from the circumstances, then it is for the [fact finder] to decide whether the facts, taken singly or in combination, satisfy [it] beyond a reasonable doubt that the defendant is actually guilty.

Fritsch, 351 N.C. at 379, 526 S.E.2d at 455 (internal citations, quotation marks, and italics omitted) (second alteration in original). "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, 192-93, 451 S.E.2d 211, 223 (1994) (citation omitted).

IV. Analysis

Possession of contraband can be actual or constructive. *State v. Harvey*, 281 N.C. 1, 12, 187 S.E.2d 706, 714 (1972). "Evidence of constructive possession is sufficient if it would allow a reasonable mind to conclude that the defendant had the intent and capability to maintain control and dominion over the contraband." *State*

v. Earhart, 134 N.C. App. 130, 136, 516 S.E.2d 883, 888 (1999) (citing *State v. Beaver*, 317 N.C. 643, 346 S.E.2d 476 (1986)). Mere proximity to contraband in a vehicle is insufficient for constructive possession. *State v. Weems*, 31 N.C. App. 569, 571, 230 S.E.2d 193, 194 (1976) (citation omitted). Thus, when a person does not have exclusive possession of the place or vehicle, the State must show "other incriminating circumstances" for constructive possession. *State v. Davis*, 325 N.C. 693, 697, 386 S.E.2d 187, 190 (1989) (citation omitted).

Recently, our State Supreme Court summarized what our Courts consider, *inter alia*, for other incriminating circumstances:

> (1) the defendant's ownership and occupation of the property . . . ; (2) the defendant's proximity to the contraband; (3) indicia of the defendant's control over the place where the contraband is found; (4) the defendant's suspicious behavior at or near the time of the contraband's discovery; and (5) other evidence found in the defendant's possession that links the defendant to the contraband.

State v. Chekanow, 370 N.C. 488, 496, 809 S.E.2d 546, 552 (2018) (citations omitted).

Upon a review of the totality of the circumstances, and viewing the evidence in the light most favorable to the State, we conclude the State presented substantial evidence Defendant possessed cocaine. Defendant and Johnson co-occupied the car. Hughes testified as to Defendant's suspicious behavior, including the way he knocked on the door of the home and looked over his shoulder and had his license in his hand to give to Hughes. Hughes found a large amount of cash on Defendant, evidence of a

narcotics sale. Hughes concluded the way Defendant and Johnson split the cash and cocaine indicated "they were working together to facilitate a drug sale." Therefore, the State presented substantial evidence of constructive possession, beyond mere proximity to the cocaine, and the trial court did not err in denying Defendant's motion to dismiss.

V. Conclusion

For the foregoing reasons, we find no error in the judgment.

NO ERROR.

Judges DAVIS and BERGER concur.

Report per Rule 30(e).