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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-638

No. COA20-749

Filed 16 November 2021

Lincoln County, Nos. 19-CRS-428-29; 19-CRS-50711-712

STATE OF NORTH CAROLINA

v.

STANCHUN MARQUIS BROOKS, defendant.

Appeal by defendant from judgment entered 12 March 2020 by Judge Marvin P. Pope, Jr. in Lincoln County Superior Court. Heard in the Court of Appeals 24 August 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Lewis W. Lamar, Jr., for the State-appellee.

Ward, Smith & Norris, P.A., by Kirby H. Smith, III, for defendant-appellant.

GORE, Judge.

¶ 1 Defendant Stanchun Marquis Brooks appeals from his conviction of Felony Carrying Concealed Gun, Possession of Firearm by a Felon, misdemeanor Possession of Marijuana up to One-Half ounce, and misdemeanor Possession of Drug Paraphernalia. We hold the trial court erred and defendant was prejudiced by the failure to arraign defendant at trial pursuant to N.C. Gen. Stat. § 15A-928. We

accordingly reverse defendant's conviction and remand for a new trial.

I. Background

¶ 2 On 6 March 2019, defendant was pulled over while driving a 2006 Dodge Magnum Station Wagon with one other passenger in the car, his twenty-year-old niece. The car was registered primarily in the name of Felicia Shaunae LaSalle, though defendant was registered as a second owner. A subsequent search of the car, originating when law enforcement smelled the odor of marijuana upon approaching the car, resulted in the discovery of a 9 mm pistol and a pill bottle in the car's locked glovebox, as well as marijuana and a blunt. Defendant had previously been convicted of a felony, which he admitted to police officers when he was pulled over. As a result, defendant was arrested and charged with Possession of a Firearm by a Felon and Possession of a Schedule VI Controlled Substance. On 20 March 2019, defendant was indicted for Felony Carrying a Concealed Gun, Possession of a Firearm by a Felon, Possession of Marijuana up to One-Half Ounce, and Possession of Drug Paraphernalia.

¶ 3 Defendant's case came on for trial on 12 March 2020. At the opening of its case, the State moved to admit two exhibits, certified true copies of defendant's prior convictions for felonious Carrying a Concealed Gun and misdemeanor Carrying a Concealed Gun. The remainder of the State's case consisted of testimony from two witnesses, both of whom were law enforcement officers present when defendant was

arrested. Following the conclusion of the State's evidence, defendant moved to dismiss all charges against him for lack of sufficient evidence. The trial court denied defendant's motion. Following the conclusion of defendant's evidence, defendant renewed his motion to dismiss all charges against him. The trial court again denied his motion.

¶ 4 The trial court instructed the jury on felony Carrying a Concealed Gun, Possession of a Firearm by a Felon, Possession of Marijuana up to One-Half Ounce, and Possession of Drug Paraphernalia. The trial court did not give any limiting instructions relating to the evidence of defendant's prior convictions. The jury returned a guilty verdict on all charges. At sentencing, defendant stipulated to his habitual felon status. The trial court sentenced defendant to a minimum of 72 months and a maximum of 99 months imprisonment, which was within the presumptive range. On 19 March 2020, defendant filed written notice of appeal.

II. Discussion

¶ 5 On appeal defendant argues that (1) the trial court erred in denying his motions to dismiss, both at the close of State's evidence and at the close of all evidence; (2) the trial court erred by failing to arraign defendant pursuant to N.C. Gen. Stat. § 15A-928; and (3) the trial court erred in sentencing defendant.

A. Motions to Dismiss

¶ 6 Defendant asserts that because the State failed to produce substantial evidence of incriminating circumstances to show he constructively possessed the firearm at issue, the trial court should have granted his motions to dismiss all charges against him. Defendant relies on *State v. Matias*, which states that "unless the person has exclusive possession of the place where the narcotics are found, the State must show other incriminating circumstances before constructive possession may be inferred." 354 N.C. 549, 552, 556 S.E.2d 269, 271 (2001) (citations omitted). Defendant contends that because the State relied exclusively on the theory of constructive possession, and defendant did not have exclusive possession of the car, due to the presence of other passengers in the car, the State must have shown incriminating circumstances before constructive possession can be relied on, which it did not. Thus, defendant claims, the trial court should have dismissed the charges against him due to the lack of evidence of incriminating circumstances.

¶ 7 We review a trial court's ruling on a motion to dismiss *de novo*. *State v. Blagg*, 377 N.C. 482, 488, 2021-NCSC-66, ¶ 10 (citation omitted). 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 charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense." *State v. Scott*, 356 N.C. 591, 595, 573 S.E.2d 866, 868 (2002).

¶ 8 "In a prosecution for possession of contraband materials, the prosecution is not required to prove actual physical possession of the materials. Proof of nonexclusive, constructive possession is sufficient." *State v. McNeil*, 359 N.C. 800, 809, 617 S.E.2d 271, 277 (2005) (cleaned up). Constructive possession exists when a person who does not have actual possession of contraband has the "intent and capability to maintain control and dominion over [it]." *State v. Williams*, 307 N.C. 452, 455, 298 S.E.2d 372, 374 (1983). Constructive possession may be found when contraband is discovered on a premises under the exclusive control of the defendant or "within such close juxtaposition" to the defendant as to justify a conclusion that the item was in the defendant's possession. *State v. Harvey*, 281 N.C. 1, 12, 187 S.E.2d 706, 714 (1972).

¶ 9 "Our cases addressing constructive possession have tended to turn on the specific facts presented." *State v. Miller*, 363 N.C. 96, 99, 678 S.E.2d 592, 594 (2009). However, cases finding sufficient proof of constructive possession frequently include evidence of one or more of the following: (1) evidence that the defendant had a "specific or unique connection to the place" where contraband was found (i.e., ownership of the premises or close proximity to the place where contraband was found); (2) evidence that the defendant "behaved suspiciously, made incriminating statements admitting involvement with [contraband], or failed to cooperate with law enforcement;" and (3) "other incriminating evidence in addition to the fact that

[contraband was] found near the defendant." *State v. Ferguson*, 204 N.C. App. 451, 460-61, 694 S.E.2d 470, 477-78 (2010).

¶ 10 "[W]here contraband material is found in a vehicle under the control of an accused, even though the accused is the borrower of the vehicle, 'this fact is sufficient to give rise to an inference of knowledge and possession which *may* be sufficient to carry the case to the jury.'" *State v. Tisdale*, 153 N.C. App. 294, 298, 569 S.E.2d 680, 682 (2002) (citing *State v. Glaze*, 24 N.C. App. 60, 64, 310 S.E.2d 124, 127 (1974)) (emphasis in original). "This inference is rebuttable and if the accused offers evidence rebutting the inference, the State must show other incriminating circumstances before constructive possession may be inferred." *Id.* at 298, 569 S.E.2d at 682 (citation omitted).

¶ 11 In the present case, the firearm and a prescription pill bottle were found in the locked glovebox of the car defendant was driving. Felicia LaSalle, the primary owner of the vehicle, testified that Mario Maddox, defendant's brother, owned the gun. Mario Maddox's name was also the name on the pill bottle found with the gun. Ms. LaSalle testified that Mr. Maddox had cancer and she would use the vehicle where the gun was found to transport him to his cancer treatments. According to Ms. LaSalle, Mr. Maddox would always bring the 9 mm pistol with him to the treatments and lock the pistol in the car's glovebox while he was receiving treatment. Ms. LaSalle testified that following Mr. Maddox's last appointment, he was so weak she did not

pay attention to whether he retrieved the pistol from the glove box. Additionally, Ms. LaSalle testified that defendant's name was on the registration for the car because he helped her by cosigning the loan for the car. Defendant would borrow the car to help Ms. LaSalle by picking up her kids from school when she worked late, about four times a week. Ms. LaSalle testified that defendant was borrowing the car on 6 March 2019.

¶ 12 Further, the evidence indicates that defendant cooperated with law enforcement during the traffic stop. Defendant admitted to law enforcement that he did not have a driver's license, and that there was marijuana in the car.

¶ 13 The evidence presented in this case does not support a finding that defendant was in exclusive possession of the vehicle because another person was present in the vehicle. However, when all the evidence is examined in a light most favorable to the State, as it must be on a motion to dismiss, we conclude that the evidence was sufficient to go to the jury on the issue of defendant's constructive possession of the firearm in the vehicle's glovebox. Two of the three forms of evidence typically present when constructive possession is found, as discussed above, were present in the case *sub judice*. Here, there is no evidence defendant did not cooperate with law enforcement or otherwise acted nervous. However, there is evidence that defendant had a "specific or unique" connection to the vehicle, and he was a secondary owner of

the car and borrowed the car multiple times a week. Thus, we find this evidence was sufficient to submit the issue of constructive possession to the jury.

B. Arraignment Pursuant to N.C. Gen. Stat. § 15A-928

¶ 14 Defendant contends that admission of certified copies of his prior convictions for possession of a firearm during the State's case-in-chief violated N.C. Gen. Stat. § 15A-928. Section 15A-928 provides the procedures to be followed in cases in which "the fact that the defendant has been previously convicted of an offense raises an offense of lower grade to one of higher grade and thereby becomes an element of the latter . . . ." N.C. Gen. Stat. § 15A-928(a) (2019).

i. Preservation

¶ 15 Defendant asserts his argument on this issue is preserved for appellate review, despite his failure to object before the trial court. *State v. Braxton*, 352 N.C. 158, 177, 531 S.E.2d 428, 439 (2000), *cert. denied*, 531 U.S. 1130, 148 L. Ed. 2d 797 (2001) ("When a trial court acts contrary to a statutory mandate, the defendant's right to appeal is preserved despite the defendant's failure to object during trial."). The State argues that because of the reasoning in *State v. Brice*, 370 N.C. 244, 806 S.E.2d 32 (2017), and its progeny, the failure by the trial court to arraign defendant under § 15A-928 does not require reversal of defendant's convictions, because defendant did not object to the introduction of evidence of those charges at trial and circumstances indicate he was aware of the prior convictions.

¶ 16 The State's arguments pertaining to *Brice* are not persuasive. The North Carolina Supreme Court in *Brice* specifically analyzed the indictment provisions of § 15A-928(b), finding that the indictment provision was not a jurisdictional mandate. The analysis and rule in *Brice* stems from the rule that indictment-related errors involving deficiencies in jurisdiction "must be brought to the trial court's attention as a prerequisite for the assertion of that indictment-related claim on appeal." *Brice*, 370 N.C. at 254, 806 S.E.2d at 39 (citations omitted).

¶ 17 However, the present case stems from the trial court's failure to comply with the arraignment requirement of § 15A-928(c). Here, the controlling rule can be found in *State v. Ashe*, where the North Carolina Supreme Court found "when a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court's action is preserved, notwithstanding defendant's failure to object at trial." 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985). Section 15A-928 provides a mandate to trial courts to conduct an arraignment at trial in certain cases, to afford the defendant an opportunity to preclude the presentation of potentially prejudicial but relevant evidence. *See* § 15A-928(c). As we will discuss below, the trial court's failure to arraign defendant at trial, and thus allow the introduction of evidence of defendant's prior convictions, prejudiced the defendant. Therefore, this argument is preserved for appellate review.

ii. Analysis

¶ 18 Section 15A-928 governs the method of proof of previous convictions in Superior Court when the fact that "the defendant has been previously convicted of an offense raises an offense of lower grade to one of higher grade and thereby becomes an element of the latter . . . ." § 15A-928(a). The statute applies to prosecutions for Possession of a Firearm by a Felon, pursuant to § 14-269, and, in relevant part, provides:

> (c) After commencement of the trial and before the close of the State's case, the judge in the absence of the jury must arraign the defendant upon the special indictment or information, and must advise him that he may admit the previous conviction alleged, deny it, or remain silent. Depending upon the defendant's response, the trial of the case must then proceed as follows:
>
> > (1) *If the defendant admits the previous conviction*, that element of the offense charged in the indictment or information is established, *no evidence in support thereof may be adduced by the State*, and the judge must submit the case to the jury without reference thereto and as if the fact of such previous conviction were not an element of the offense.

§ 15A-928 (emphasis added). "The purpose of this procedure is to afford the defendant an opportunity to admit the prior convictions which are an element of the offense and prevent the State from presenting evidence of these convictions before the jury." *State v. Burch*, 160 N.C. App. 394, 397, 585 S.E.2d 461, 463 (2003).

¶ 19 In the present case, the trial court did not arraign defendant upon the special indictment. At trial, the State opened its case by offering, and the trial court admitting into evidence, certified copies of defendant's prior convictions for possessing a firearm. This contravened the purpose of § 15A-928(c) to ensure "that the defendant is informed of the previous convictions the State intends to use and is given a fair opportunity to either admit or deny them or remain silent." *State v. Jernigan*, 118 N.C. App. 240, 244, 455 S.E.2d 163, 166 (1995) (citation omitted).

¶ 20 "If there is no doubt that defendant was fully aware of the charges against him and was in no way prejudiced by the omission of the arraignment required by [S]ection 15A-928(c), the trial court's failure to arraign defendant is not reversible error." *Id.* at 244, 455 S.E.2d at 166. A careful review of the case law surrounding § 15A-928(c) reveals that cases where the defendant was not prejudiced by the omission of the arraignment required occur when evidence of the defendant's prior convictions was not introduced at trial, such as when the defendant stipulates before trial to his prior convictions. *See id.* at 244, 455 S.E.2d at 166; *State v. McDonald*, 165 N.C. App. 237, 240, 599 S.E.2d 50, 52, *disc. rev. denied*, 359 N.C. 195, 608 S.E.2d 60, *disc. rev. denied*, 359 N.C. 195, 608 S.E.2d 60 (2004), *cert. denied*, 544 U.S. 988, 161 L. Ed. 2d 748 (2005).

¶ 21 In contrast, in the present case the trial court did admit evidence of his prior convictions at trial. Defendant did not stipulate to his prior convictions before the

evidence of those convictions was admitted (defendant did stipulate to his habitual felon status, but this occurred at sentencing after the jury had already returned a guilty verdict). The trial court instructed the jury to consider the evidence of defendant's prior convictions in its weighing of the elements for Possession of a Firearm by a Felon. The purpose of § 15A-928(c) is to provide the defendant with the opportunity to admit his prior convictions and prevent potentially prejudicial evidence of such from being presented to the jury. Defendant was deprived of the opportunity to admit to his prior convictions and receive the protections of § 15A-928(c). As a result, we cannot say the jury probably would have returned the same result had the proper procedure been followed. Thus, we conclude defendant was prejudiced by the trial court's failure to follow the procedure required by § 15A-928(c) and is entitled to a new trial.

C. Sentencing

¶ 22 Defendant also argues the trial court erred by consolidating his sentence for the Class 3 Misdemeanor of Possession of Marijuana into his active felony sentence and by imposing a Class 1 judgment for the Class 3 offense of Possession of Marijuana Paraphernalia. We decline to consider these remaining contentions on appeal because defendant is entitled to a new trial.

III. Conclusion

¶ 23 For the foregoing reasons, we find that the trial court did not err in denying defendant's motions to dismiss. However, the trial court prejudicially erred by failing to arraign defendant pursuant to § 15A-928(c) and subsequently admitting evidence of defendant's prior convictions. Thus, defendant is entitled to a new trial.

NEW TRIAL.

Judges ZACHARY and MURPHY concur.

Report per Rule 30(e).