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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-831

No. COA22-338

Filed 6 December 2022

Cleveland County, No. 20 CRS 53738

STATE OF NORTH CAROLINA

v.

EDITH JOSETTE WALKER

Appeal by Defendant from Judgment entered 15 September 2021 by Judge Lisa Bell in Cleveland County Superior Court. Heard in the Court of Appeals 1 November 2022.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Melody Hairston, for the State.

Stephen G. Driggers for defendant-appellant.

HAMPSON, Judge.

Factual and Procedural Background

¶ 1 Edith Josette Walker (Defendant) appeals from Judgment entered 15 September 2021 upon her conviction for Possession with the Intent to Manufacture, Sell, or Deliver Methamphetamine. The Record before us—including evidence presented at trial—tends to reflect the following:

¶ 2 On 16 September 2020, Narcotics Investigators Jonathan Spiering (Investigator Spiering) and Derek Toney (Investigator Toney) with the Cleveland County Sheriff's Department conducted surveillance of a residence in response to complaints alleging methamphetamine was being sold out of the residence. When driving by the residence in an unmarked car, the Investigators observed a white Ford Taurus in the driveway of the residence, which they had not seen at the residence in the past. Upon this observation, the Investigators noted the vehicle's registration tag and also observed a white female sitting in the driver's seat. Investigator Toney testified he observed a white female exit the passenger seat of the vehicle and walk towards the residence. The Investigators then parked their unmarked vehicle at an Ingles grocery store and watched the residence until the Ford Taurus left. Defendant testified she was inside the residence when the vehicle was observed in the driveway.

¶ 3 When the Ford Taurus left the residence, the Investigators followed the vehicle, and after the vehicle rolled through a stop sign, Investigator Spiering initiated a traffic stop. Investigator Spiering approached the driver's side of the vehicle, and Investigator Toney approached the passenger's side. Investigator Spiering asked both the driver and passenger for identification. Defendant was identified as the passenger of the vehicle. Investigator Spiering testified during the stop, Defendant kept staring at her pocketbook, which was located on the floorboard of the vehicle, and failed to make eye contact with either Investigator. Investigator

Spiering asked the driver where she was traveling from, to which the driver responded she was coming from the Ingles parking lot. When Investigator Spiering confronted the driver and told her he knew she did not come from Ingles, the driver told Investigator Spiering she came from the residence the Investigators were surveilling. The driver and Defendant were both asked to exit the vehicle, and they both complied. Investigator Toney testified Defendant was clutching her pocketbook very tightly when exiting the vehicle. Defendant was asked to leave her pocketbook inside the vehicle, and she declined to do so. Investigator Toney testified he then asked Defendant if there was anything illegal inside her pocketbook, and she responded she had methamphetamine and marijuana inside her pocketbook.

¶ 4 Investigator Toney then seized and searched the pocketbook. Investigator Toney found marijuana and a white crystal-like substance in a Crown Royal bag. He testified the substance was packaged in three individual bags, with two to three grams in each bag. Investigator Toney and Investigator Spiering both testified the packaging of the crystal-like substance in this manner was not common for personal use but was common for packaging of methamphetamine for sale. The Investigators further testified the substance was consistent with methamphetamine. The narcotics were placed inside the patrol vehicle and transported to the Cleveland County Sheriff's Office, where it was issued an identification number, weighed, and placed in an evidence vault. Investigator Spiering testified the total weight of the crystal-like

substance was 7.5 grams and the marijuana weighed 6.2 grams.

¶ 5 The suspected methamphetamine and marijuana were submitted to the North Carolina State Crime Laboratory, where they were tested by forensic chemist Thomas Rockhold, Jr. (Rockhold). Rockhold testified the white crystal-like substance was contained in three different bags. Rockhold testified he analyzed one of the bags, which revealed the substance was methamphetamine with a net weight of 2.02 grams, "plus or minus 0.06 grams." Rockhold did not test the two remaining bags but testified "they appeared similar."

¶ 6 On 5 October 2020, a Cleveland County Grand Jury indicted Defendant for Possession with Intent to Manufacture, Sell, and Deliver Methamphetamine. The matter came on for trial on 13 September 2021. At the close of the State's evidence, Defendant moved to dismiss the charge, arguing the State did not meet its burden with respect to proving Defendant's intent was to manufacture, sell, or deliver methamphetamine. The trial court denied the Motion. After the close of all the evidence, Defendant moved to dismiss the charge, renewing the same argument. Again, the trial court denied Defendant's Motion to Dismiss.

¶ 7 On 14 September 2021, the jury returned a verdict finding Defendant guilty of Possession with Intent to Manufacture, Sell, or Deliver Methamphetamine. The trial court sentenced Defendant to a minimum of six months to a maximum of seventeen months in custody, suspended, subject to twenty-four months of supervised probation.

Defendant timely filed written Notice of Appeal on 24 September 2021.[1]

Appellate Jurisdiction

¶ 8 Recognizing Defendant's Notice of Appeal filed by her trial counsel, although timely, may contain a technical defect precluding appellate review of the Judgment entered in this case, Defendant's appellate counsel has filed a Petition for Writ of Certiorari with this Court requesting this Court accept jurisdiction of Defendant's appeal. Specifically, Defendant's Notice of Appeal failed to specify the appeal was to be taken to this Court. *See* N.C.R. App. P. 4(b). Instead, the written Notice of Appeal utilized indicates it was an appeal from District Court to Superior Court. For its part, the State acknowledges whether to allow the Petition is within our discretion. It is clear Defendant—through counsel—intended to timely give Notice of Appeal to this Court from the Judgment entered in Superior Court on the jury verdict. Moreover, on several occasions, this Court has acknowledged this defect is "not the sort[] of defect[] requiring dismissal of an appeal on a jurisdictional basis." *State v. Baungartner*, 273 N.C. App. 580, 583, 850 S.E.2d 549, 551 (2020) (citation omitted). *See also State v. Gardner*, 225 N.C. App. 161, 164-65, 736 S.E.2d 826, 829 (2013);

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[1] Although timely filed, Defendant's trial counsel inadvertently used a form document intended for appeal from district court to superior court. Thus, Defendant's Notice of Appeal was defective as it did not correctly designate the court to which appeal was taken. *See* N.C.R. App. P. 4(b) (2021) ("The notice of appeal required to be filed . . . shall designate the judgment or order from which appeal is taken and the court to which appeal is taken[.]").

State v. Rouse, 234 N.C. App. 92, 94, 757 S.E.2d 690, 692 (2014) ("Furthermore, while the notice of appeal fails to designate the court to which appeal is taken, as required by Rule 4(b), 'defendant's intent to appeal is plain, and since this Court is the only court with jurisdiction to hear defendant's appeal, it can be fairly inferred defendant intended to appeal to this Court.' " (quoting *State v. Ragland*, 226 N.C. App. 547, 553, 739 S.E.2d 616, 620, *disc. review denied*, 367 N.C. 220, 747 S.E.2d 548 (2013)). Nevertheless, for purposes of ensuring our appellate jurisdiction over Defendant's appeal, in our discretion, we allow Defendant's Petition for Writ of Certiorari.

Issue

¶ 9 The sole issue on appeal is whether the trial court erred in denying Defendant's Motions to Dismiss the charge of Possession with Intent to Manufacture, Sell, or Deliver Methamphetamine.

Analysis

¶ 10 "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) (citation and quotation marks omitted); *State v. Brown*, 310

N.C. 563, 566, 313 S.E.2d 585, 587 (1984) ("Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (citation omitted)). "If the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it, the motion [to dismiss] should be allowed." *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455 (citation and quotation marks omitted). "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) (citation omitted).

¶ 11 Defendant contends the trial court erred in denying her Motions to Dismiss the charge of Possession with the Intent to Manufacture, Sell, or Deliver Methamphetamine. N.C. Gen. Stat § 90-95(a)(1) makes it unlawful to "possess with intent to manufacture, sell or deliver, a controlled substance." N.C. Gen. Stat. § 90-95(a)(1) (2021). The offense of possession with intent to manufacture, sell, or deliver has three elements: (1) possession; (2) of a controlled substance; (3) with intent to manufacture, sell, or deliver the controlled substance. *See id.* Specifically, Defendant argues the State failed to demonstrate the third element—intent. Because Defendant does not challenge the remaining elements of this offense, we limit our analysis to whether the State presented sufficient evidence of intent.

¶ 12 "While intent may be shown by direct evidence, it is often proven by circumstantial evidence from which it may be inferred." *State v. Nettles*, 170 N.C. App. 100, 105, 612 S.E.2d 172, 175-76 (2005) (citation omitted). "Although quantity of the controlled substance alone may suffice to support the inference of an intent to transfer, sell, or deliver, it must be a substantial amount." *Id.* at 105, 612 S.E.2d at 176 (citation and quotation marks omitted). Our Supreme Court has recognized the intent to sell or deliver may be inferred from " '(1) the packaging, labeling, and storage of the controlled substance, (2) the defendant's activities, (3) the quantity [of the controlled substance] found, and (4) the presence of cash or drug paraphernalia.' " *State v. Blagg*, 377 N.C. 482, 490, 2021-NCSC-66, ¶ 15 (alteration in original) (citing *State v. Coley*, 257 N.C. App. 780, 788-89, 810 S.E.2d 359, 363 (2018) (quoting *Nettles,* 170 N.C. App. at 106, 612 S.E.2d at 176)). "Moreover, our case law demonstrates that this is a fact-specific inquiry in which the totality of the circumstances in each case must be considered unless the quantity of drugs found is so substantial that this factor—by itself—supports an inference of possession with intent to sell or deliver." *Coley*, 257 N.C. App. at 788-89, 810 S.E.2d at 365. "In 'borderline' or close cases, our courts have consistently expressed a preference for submitting issues to the jury[.]" *State v. Hamilton*, 77 N.C. App. 506, 512, 335 S.E.2d 506, 510 (1985) (citations omitted); *see also State v. Everhardt*, 96 N.C. App. 1, 11, 384 S.E.2d 562, 568 (1989) ("If there is more than a scintilla of competent evidence to support allegations in the

warrant or indictment, it is the court's duty to submit the case to the jury." (citation and quotation marks omitted)), *aff'd*, 326 N.C. 777, 392 S.E.2d 391 (1990).

¶ 13 Here, the evidence, in the light most favorable to the State, reveals Defendant was in possession of three individual bags of methamphetamine, weighing 7.5 grams in total. One of the bags was tested and confirmed to contain 2.02 grams of methamphetamine. While the other two bags were not tested, Rockhold testified the substance in the other two bags was consistent with the methamphetamine in the bag he tested and weighed. "Although 'quantity of the controlled substance alone may suffice to support the inference of an intent to transfer, sell, or deliver,' it must be a substantial amount." *Nettles*, 170 N.C. App. at 105, 612 S.E.2d at 176 (quoting State v. Morgan, 329 N.C. 654, 659-60, 406 S.E.2d 833, 835-36 (1991)). This Court previously held "a controlled substance's substantial amount may be determined by comparing the amount possessed to the amount necessary to constitute a trafficking offense." *Id.* at 106, 612 S.E.2d at 176. Possession of methamphetamine rises to the level of a trafficking offense where the amount possessed is at least twenty-eight grams. *See* N.C. Gen. Stat. § 90-95(h)(3b) (2021).

¶ 14 The amount of methamphetamine at issue in this case is thus less than half of the amount giving rise to a trafficking offense. Assuming, without deciding, the amount of methamphetamine in Defendant's possession in this case was not such a substantial amount standing alone to support an inference of Defendant's intent to

sell or deliver, the amount of methamphetamine possessed by Defendant remains a significant amount and much more than has been typically recognized as for personal use. *See generally Blagg*, ¶ 23. Thus, in weighing the totality of the circumstances in this case, the evidence Defendant possessed over seven grams of methamphetamine is nevertheless an important circumstance.

¶ 15 Moreover, evidence of the packaging also supports an inference of an intent to sell or deliver. The evidence reflects the methamphetamine was divided into three individual bags, each containing approximately two to three grams in each bag. Both Investigators testified the packaging was consistent with the sale of a controlled substance. Defendant's activity further supports an inference of an intent to sell or deliver. Defendant was observed entering and exiting a residence under the surveillance of law enforcement Investigators for suspected illegal drug sales activity and was engaged in transporting the three bags of methamphetamine. Defendant was also observed staring at her pocketbook—where the narcotics were found—to avoid making eye contact with the Investigators. Defendant clutched her pocketbook tightly as she exited the vehicle and declined to leave the pocketbook inside the vehicle when asked to do so. This evidence, taken in the light most favorable to the State, could support an inference of Defendant's intent to sell or deliver methamphetamine. *See Blagg*, ¶ 21 (concluding the defendant's activities of driving a vehicle to a residence under surveillance of law enforcement for suspected illegal

drug activity, entering said residence, and remaining inside the residence for approximately ten minutes, among other factors, contributed to the existence of substantial evidence of an inference of the defendant's intent to sell or deliver methamphetamine).

¶ 16 We acknowledge there is no evidence of any cash, other drug paraphernalia, or tools of the drug trade—such as scales or additional baggies or containers—which have otherwise generally supported a conviction for Possession with Intent to Manufacture, Sell, or Deliver Methamphetamine. However, when viewed in its entirety, the amount of methamphetamine, the packaging of methamphetamine divided into multiple personal-use size bags, and Defendant's actions establish, at a minimum, a borderline case to support submission to the jury. Thus, there was "more than a scintilla of competent evidence to support [the] allegations in the . . . indictment". *Everhardt*, 96 N.C. App. at 11, 384 S.E.2d at 568 (citation and quotation marks omitted). Therefore, "it [was] the [trial] court's duty to submit the case to the jury." *Id.* Consequently, the trial court did not err in denying Defendant's Motions to Dismiss.

Conclusion

¶ 17 Accordingly, for the foregoing reasons, we conclude there was no error at trial and affirm the Judgment of the trial court.

NO ERROR.

Chief Judge STROUD and Judge JACKSON concur.

Report per Rule 30(e).