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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-217

Filed 5 December 2023

Craven County, No. 18CRS053598

STATE OF NORTH CAROLINA

v.

SHARAIL MYQUAIL SWINDELL

Appeal by Defendant from judgments entered 13 January 2022 by Judge Clint D. Rowe in Craven County Superior Court. Heard in the Court of Appeals 20 November 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Sage A. Boyd, for the State-Appellee.

R. Daniel Gibson for Defendant-Appellant.

COLLINS, Judge.

Defendant Sharail Swindell appeals from judgments entered upon guilty verdicts of possession with intent to sell or deliver methamphetamine and possession of drug paraphernalia. Defendant argues that the trial court erred by denying his motion to dismiss. We find no error.

I. Background

The evidence at trial tended to show the following: Defendant lived with his mother, sister, and four young children in a single-story home. At approximately 8:45 p.m. on 26 November 2018, officers went to Defendant's house to conduct a warrantless search as a condition of his supervised probation.

Defendant directed the officers to a bedroom at the end of the hallway where he was staying. The bedroom contained a mattress, a mini refrigerator, and men's clothing and shoes. Defendant stated that the mattress belonged to him, and that he had bought it two weeks prior. Defendant stated that the mini refrigerator belonged to him as well. A watch, a knife, and Defendant's birth certificate were found on top of the mini refrigerator. A hoodie was found on top of Defendant's bed, and Defendant stated that it belonged to him. An officer moved Defendant's hoodie and discovered a bag containing smaller bags of a white crystalline substance. The white crystalline substance was later chemically analyzed and determined to be methamphetamine. A backpack was found in the closet, and Defendant stated that it belonged to him. The backpack contained Defendant's credit card, several small bags, and two digital scales used for "weighing small amounts of narcotics or drugs."

Defendant was indicted for possession with intent to sell or deliver methamphetamine and possession of drug paraphernalia. The matter came on for trial on 12 January 2022. Defendant moved to dismiss at the close of the State's evidence, and the trial court denied the motion. The jury returned guilty verdicts on

both charges. The trial court sentenced Defendant to 10 to 21 months of imprisonment for possession with intent to sell or deliver methamphetamine, and a consecutive term of 120 days of imprisonment for possession of drug paraphernalia. Defendant appealed.

II. Discussion

Defendant argues that the trial court erred by denying his motion to dismiss at the close of the State's evidence.

We review a trial court's denial of a motion to dismiss de novo. *State v. Chavis*, 278 N.C. App. 482, 485, 863 S.E.2d 225, 228 (2021). "In ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator." *State v. Chekanow*, 370 N.C. 488, 492, 809 S.E.2d 546, 549 (2018) (quotation marks and citations omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Rivera*, 216 N.C. App. 566, 568, 716 S.E.2d 859, 860 (2011) (quotation marks and citation 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." *Chekanow*, 370 N.C. at 492, 809 S.E.2d at 549-50 (quotation marks and citation omitted).

Under North Carolina law, it is unlawful for any person to manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, methamphetamine. N.C. Gen. Stat. § 90-95(a)(1) (2021). Furthermore, “[i]t is unlawful for any person to knowingly use, or to possess with intent to use, drug paraphernalia[.]” *Id.* § 90-113.22(a) (2021).

Possession may be either actual or constructive. *State v. Nettles*, 170 N.C. App. 100, 103, 612 S.E.2d 172, 174 (2005). “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. Ferguson*, 204 N.C. App. 451, 459, 694 S.E.2d 470, 477 (2010) (quotation marks and citations omitted). “Constructive possession occurs when a person lacks actual physical possession, but nonetheless has the intent and power to maintain control over the disposition and use of the substance.” *State v. Acolatse*, 158 N.C. App. 485, 488, 581 S.E.2d 807, 810 (2003) (quotation marks and citation omitted).

“Constructive possession depends on the totality of the circumstances in each case.” *State v. Taylor*, 203 N.C. App. 448, 459, 691 S.E.2d 755, 764 (2010) (citation omitted). “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.” *State v. Miller*, 363 N.C. 96, 99, 678 S.E.2d 592, 594 (2009) (citation omitted).

Here, Defendant directed the officers to the bedroom at the end of the hallway where he was staying. An officer asked Defendant “if it was someone else’s room, and he stated, no, it was not.” The bedroom contained a mattress, a mini refrigerator, and men’s clothing and shoes. Defendant stated that these items belonged to him. Defendant’s birth certificate was found on top of the mini refrigerator. A hoodie was found on top of Defendant’s bed, and Defendant stated that it belonged to him. An officer moved Defendant’s hoodie and discovered a bag containing smaller bags of a white crystalline substance. The white crystalline substance was later chemically analyzed and determined to be methamphetamine.

Defendant stated that the backpack found in the closet belonged to him. The backpack contained Defendant’s credit card, several small blue bags, and two digital scales used for “weighing small amounts of narcotics or drugs.”

This evidence was sufficient evidence of other incriminating circumstances from which the jury could find that Defendant constructively possessed the contraband in the bedroom; thus, the trial court did not err by denying Defendant’s motion to dismiss. *See id.* at 100, 678 S.E.2d at 595 (holding that there was sufficient evidence from which the jury could find that defendant constructively possessed cocaine where defendant “was sitting on the same end of the bed where cocaine was recovered” and his “birth certificate and state-issued identification card were found on top of a television stand in that bedroom”).

III. Conclusion

Because there was sufficient evidence of other incriminating circumstances from which the jury could find that Defendant constructively possessed the contraband in the bedroom, the trial court did not err by denying Defendant's motion to dismiss.

NO ERROR.

Judges CARPENTER and WOOD concur.

Report per Rule 30(e).