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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-921

Filed 5 December 2023

Wayne County, Nos. 20CRS54440 & 21CRS484

STATE OF NORTH CAROLINA

v.

AMOS LUPREE STOKES, Defendant.

Appeal by defendant from judgment entered 24 March 2022 by Judge William W. Bland in Wayne County Superior Court. Heard in the Court of Appeals 20 September 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Adrienne Bryant Clark, for the State.

Arnold & Smith, PLLC, by Paul A. Tharp, for defendant.

DILLON, Judge.

Defendant Amos Lupree Stokes appeals from judgment entered upon a jury's verdict convicting him of possession of a firearm by a felon. We conclude that Defendant received a fair trial, free of reversible error.

I. Background

On the evening of 28 November 2020, Defendant was riding as a passenger in

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a car driven by his wife. They were approached from behind by a Goldsboro police officer, who was driving in his patrol vehicle. After screening the license plate number and finding that the vehicle owner had an insurance violation and the license plate had been revoked, the officer pulled the vehicle over to the side of the road.

The officer approached the vehicle and asked Ms. Stokes for her license and vehicle registration.

During trial, the officer testified that when he returned to the vehicle after checking Ms. Stokes' license and registration, he heard what sounded like a loud object landing outside the passenger side of the vehicle. The officer gave Ms. Stokes a verbal warning and then told her she was free to go.

After Ms. Stokes drove away, the officer walked to the area where he thought he heard an object hit the ground. He noticed a black 9-millimeter Taurus handgun laying in the grass. The officer testified that the handgun was warm and dry "as if it had just been thrown from the vehicle." The gun was laying approximately one and a half feet away from where the passenger window of the vehicle had been.

The officer drove to Ms. Stokes' home, where he found her and Defendant in the front yard. The officer approached Defendant and requested his identification. After running a search, the officer learned that Defendant was a convicted felon. The officer arrested Defendant for possessing a firearm as a convicted felon.

During trial, Ms. Stokes testified that she threw the firearm out of the vehicle because she thought the officer was going to search the car, and she was fearful that

she would be arrested for carrying a concealed weapon.

After a trial on the matter, the jury returned a guilty verdict for possession of a firearm by a felon. Defendant appealed in open court.

II. Analysis

Defendant makes three arguments on appeal: (1) that the trial court erred when it denied Defendant's motion to dismiss the charge of actual or constructive possession of a firearm for insufficiency of the evidence, (2) that the evidence was insufficient to warrant a jury instruction on constructive possession of a firearm, and (3) that based on the trial court's failure to dismiss the charge, Defendant's ancillary conviction of being a habitual felon must be vacated. We discuss below whether the trial court erred when it denied Defendant's motion to dismiss.

To survive a motion to dismiss, there must be substantial evidence of each essential element of the crime and that the defendant was the perpetrator. *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015). To determine whether substantial evidence exists to survive a motion to dismiss, the evidence must be considered in the light most favorable to the State; and the State is entitled to every reasonable inference. *Id.* at 574, 780 S.E.2d 826. "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Miller*, 363 N.C. 96, 99, 678 S.E.2d 592, 594 (2009) (citations and internal quotation marks omitted). "Whether the State presented substantial evidence of each essential element is a question of law", which we review *de novo*. *State v. Phillips*,

365 N.C. 103, 133-34, 711 S.E.2d 122, 144 (2011) (citation omitted).

Here, Defendant was indicted for possession of a firearm by a felon in violation of N.C. Gen. Stat. § 14-415.1, which makes it “. . . unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm[.]” N.C. Gen. Stat. § 14-415.1(a) (2021). Therefore, the State was required to prove that (1) Defendant was previously convicted of a felony and (2) subsequently possessed a firearm. *State v. Bradshaw*, 366 N.C. 90, 93, 728 S.E.2d 345, 347-48 (2012) (quoting N.C. Gen. Stat. § 14-415.1(a)).

Defendant does not contest his status as a felon. Therefore, we only review whether the State presented sufficient evidence to support the element of possession.

Possession of a firearm may be actual or constructive. *State v. Harvey*, 281 N.C. 1, 12, 187 S.E.2d 706, 714 (1972). “Actual possession requires that a party have physical or personal custody of the item.” *State v. Malachi*, 371 N.C. 719, 730, 821 S.E.2d 407, 416 (2018). Alternatively, “a person is in constructive possession of a thing when, while not having actual possession, he has the intent and capability to maintain control and dominion over that thing.” *State v. Jones*, 369 N.C. 631, 634, 800 S.E.2d 54, 57 (2017) (citation omitted).

After careful review of the record, we conclude sufficient evidence existed to support the element of possession, under an actual or constructive possession theory.

Regarding the theory of actual possession, we conclude that the State presented sufficient evidence to allow a jury to reasonably infer that Defendant threw

the gun outside the passenger window himself. Specifically, (1) both the officer and Ms. Stokes testified that Defendant was in the passenger's seat, (2) Ms. Stokes testified that she placed the gun in the center console of the vehicle, (3) she testified that Defendant opened the center console twice, (4) the officer testified that he heard an object hit the ground on the passenger's side of the vehicle where Defendant was seated, and (5) he subsequently found the handgun on the ground by the passenger's side of the vehicle. Based on this evidence, it could be inferred that Defendant threw the firearm outside the vehicle to avoid being caught with it in the car, given his status as a convicted felon.

Regarding the theory of constructive possession, our courts have held that when a defendant is not in exclusive possession of the premises where contraband is found, to survive a motion to dismiss the State must show other incriminating circumstances, other than the presence of the contraband itself, linking the defendant to the contraband. *State v. Miller*, 363 N.C. 96, 99, 678 S.E.2d 592, 594 (2009). Whether incriminating circumstances exist to support a finding of constructive possession is a fact-specific inquiry, and include (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).

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Here, the fact that Defendant opened the center console twice allows for a reasonable inference that he was aware of the presence of the firearm. Defendant's possible awareness of the firearm, coupled with his location in the front passenger's seat of the vehicle, would likewise support the inference that he had the ability to open the console and remove the firearm. We also note Ms. Stokes' testimony that she often stored the firearm in the center console of her vehicle, and that Defendant regularly stored his personal belongings in the center console when riding with her. All of this evidence is relevant to both the second and third *Chekanow* factors discussed above. Additionally, although Defendant and Ms. Stokes were separated at the time, Ms. Stokes testified that Defendant would regularly stay with her at her home. Thus, it could reasonably be inferred that Defendant was aware that Ms. Stokes' home was recently burglarized, and that she obtained a firearm to protect herself after that event.

Also relevant is Ms. Stokes' testimony that once the officer obtained her identification and walked back to his patrol car, Defendant opened the center console to retrieve his wallet. She testified that as soon as Defendant opened the center console, she immediately realized that the firearm was inside, reached inside *at the same time* Defendant was reaching inside the center console, and threw the firearm outside. However, her affidavit indicated that Defendant reached into the center console *before* Ms. Stokes reached in to grab the firearm. The State pointed out this discrepancy during her cross-examination. Regardless, despite Ms. Stokes apparent

assumption that Defendant was retrieving his wallet, there was no evidence to support her assumption or indicate why Defendant felt he needed his wallet at the time (the officer had already obtained Ms. Stoke's information and was back at his patrol vehicle, and there was no evidence that the officer requested identification from Defendant). Thus, even if Defendant was never in actual possession of the firearm, there was sufficient evidence to support an inference that Defendant intended to have the "control and dominion" to constructively possess it. *Jones*, 369 N.C. at 634, 800 S.E.2d at 57.

Thus, we conclude that the evidence, when viewed in the light most favorable to the State, was sufficient evidence to support the element of possession. *Winkler*, 368 N.C. at 574, 780 S.E.2d at 826.

We note that based on the evidence in this case, the jury certainly could have reached the opposite conclusion regarding Defendant's guilt. However, "[w]hen considering a motion to dismiss, the trial court is concerned only with the sufficiency of the evidence to carry the case to the jury; it is not concerned with the weight of the evidence." *State v. Williams*, 185 N.C. App. 318, 328, 648 S.E.2d 896, 904 (2007). In cases, as here, "where reasonable minds can differ, the weight of the evidence is more appropriately decided by a jury." *State v. Blagg*, 377 N.C. 482, 487, 858 S.E.2d 268, 272 (2021). Accordingly, our Supreme Courts has determined that a motion to dismiss is properly denied "even if the evidence likewise permits a reasonable inference of the defendant's innocence." *State v. Butler*, 356 N.C. 141, 145, 567 S.E.2d

137, 140 (2002). *See also State v. Cox*, 367 N.C. 147, 155, 749 S.E.2d 271, 277 (2013).

Accordingly, we conclude that the trial court did not err when it denied Defendant's motion to dismiss the charge for insufficiency of the evidence.

We need not discuss Defendant's two additional arguments on appeal, as our conclusion on this issue is dispositive for the rest. Specifically, because we conclude that the State presented sufficient evidence of constructive possession, we need not consider Defendant's argument that the trial court erred when it instructed the jury on constructive possession. Finally, Defendant also argues that his conviction for possession of a firearm by a felon was erroneous, and because this conviction was ancillary to his status as a habitual felon, that his habitual felon status is erroneous. Because this argument hinges on whether there was sufficient evidence to support the charge of actual or constructive possession of a firearm, which we have concluded there was, we conclude that Defendant's argument is without merit.

III. Conclusion

For the foregoing reasons, we conclude that Defendant received a fair trial, free of reversible error.

NO ERROR.

Judges ARROWOOD and GORE concur.

Report per Rule 30(e).