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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-572

Filed 20 February 2024

Johnston County, Nos. 20 CRS 050130-31

STATE OF NORTH CAROLINA

v.

JONATHAN JAMES BLACKSHEARE, Defendant.

Appeal by Defendant from judgment entered 13 October 2022 by Judge G. Bryan Collins, Jr., in Johnston County Superior Court. Heard in the Court of Appeals 6 February 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Charles G. White, for the State.

Sarah Holladay for Defendant.

GRIFFIN, Judge.

Defendant Jonathan James Blacksheare appeals from judgment entered upon a jury verdict finding him guilty of trafficking heroin by transportation and trafficking heroin by possession. Defendant contends the trial court erred in denying his motion to dismiss as the State failed to present substantial evidence of each essential element of the crimes for which he was charged. We hold the trial court did

not err in denying Defendant's motion to dismiss.

I. Factual and Procedural Background

On 7 January 2020, Trooper Best with the State Highway Patrol was patrolling Johnston County when he observed a vehicle driving under the speed limit and weaving within its lane. Trooper Best initiated a traffic stop. When Trooper Best approached the vehicle, Defendant was sitting in the passenger seat wearing a red sweatshirt and dark pants. Trooper Best noticed Defendant was restless, visibly shaking, and breathing rapidly. Defendant also avoided eye contact with Trooper Best. Defendant reached for the car door handle, but missed twice before successfully opening the door. Defendant then ran from the car toward a wooded area. Defendant ran abnormally, with "his right-hand [] hidden within his hoodie as if he was holding something." Trooper Best called for backup and requested a K-9.

Johnston County Sheriff's Deputy Olive arrived with his K-9. The K-9 was able to pick up Defendant's odor from the disturbed vegetation where Defendant entered the woods. The K-9, followed by Deputy Olive and several other officers, began tracking Defendant. After approximately 0.3 miles, the K-9 alerted. Deputy Olive wiped back the leaves between the K-9's paws and observed an orange Gatorade bottle cap. Deputy Olive again wiped back the leaves to reveal the entire Gatorade bottle. Beside the Gatorade bottle, Deputy Olive discovered one clear plastic bag with several clear plastic bags, each containing heroin, inside. The K-9 continued tracking another 300 yards and alerted upon finding a red sweatshirt, similar to the one

Defendant had been wearing. The K-9 then tracked an additional 100 yards and located Defendant standing beside a tree. Defendant was taken into custody. Defendant gave officers several different names before disclosing his actual name.

On 27 January 2020, Defendant was indicted on charges of trafficking heroin by possession, trafficking heroin by transportation, resisting a public officer, and attaining habitual felon status. On 10 October 2022, the matter came on for trial in Johnston County Superior Court. The State voluntarily dismissed the charge of resisting a public officer and proceeded only on the two trafficking charges which were joined for trial. Defendant made a motion to dismiss at the close of the State's evidence and again at the close of all evidence, both of which were denied.

On 12 October 2022, the jury returned a verdict, finding Defendant guilty of trafficking heroin by possession and trafficking heroin by transportation. The trial court consolidated the convictions and sentenced Defendant to 225 to 282 months' imprisonment and imposed a fine.

Defendant gave notice of appeal in open court.

II. Standard of Review

A defendant's motion to dismiss is properly denied where, in viewing the evidence in the light most favorable to the State, "there is substantial evidence of: (1) each essential element of the offense charged, and (2) of [the] defendant[] being the perpetrator of the charged offense." *State v. Johnson*, 203 N.C. App. 718, 724, 693 S.E.2d 145, 148 (2010) (citations omitted); *see also State v. Crawford*, 344 N.C. 65,

73–74, 472 S.E.2d 920, 926 (1996) (“[T]he State is entitled to every reasonable inference to be drawn from [the] evidence.” (internal marks and citation omitted)); *State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992) (“[C]ontradictions and discrepancies do not warrant dismissal of the case—they are for the jury to resolve.” (internal marks and citation omitted)).

We review the trial court’s ruling on a motion to dismiss de novo. *See State v. Garrett*, 246 N.C. App. 651, 654, 783 S.E.2d 780, 783 (2016) (citation omitted); *see also State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (“Under a de novo review, the [C]ourt considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” (internal marks, emphasis, and citation omitted)).

III. Analysis

Defendant contends the trial court erred in denying his motion to dismiss as the State failed to present substantial evidence of Defendant’s possession of heroin—an essential element of both trafficking heroin by possession and trafficking heroin by transportation. We disagree.

Under North Carolina General Statutes, section 90-95(h)(4), “[a]ny person who sells, manufactures, delivers, transports, or possesses four grams or more of . . . heroin, or any mixture containing such substance, shall be guilty of . . . ‘trafficking in [] heroin[.]’” N.C. Gen. Stat. § 90-95(h)(4) (2021). Where a defendant is charged with trafficking in heroin, either by possession or transportation, the State is required to

introduce substantial evidence of the defendant having (1) knowingly possessed (2) a specified amount of heroin. *See* N.C. Gen. Stat. § 90-95(h)(4); *see also State v. Lopez*, 176 N.C. App. 538, 541, 626 S.E.2d 736, 739 (2006); *State v. Holmes*, 120 N.C. App. 54, 69, 460 S.E.2d 915, 924 (1995) (stating “sale, manufacture, delivery, transportation, and possession of . . . [heroin] are separate trafficking offenses for which a defendant may be separately convicted and punished” (internal marks and citation omitted)).

Possession, as required under N.C. Gen. Stat. § 90-95(h)(4), can be actual or constructive. *See State v. Burleson*, ___ N.C. App. ___, ___, 893 S.E.2d 264, 269 (2023); *see also State v. Tisdale*, 153 N.C. App. 294, 297, 569 S.E.2d 680, 682 (2002) (“[I]n 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.” (internal marks and citation omitted)). Actual possession of a substance occurs where the defendant has the substance “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.” *Burleson*, ___ N.C. App. at ___, 893 S.E.2d at 269 (internal marks and citation omitted). On the other hand, constructive possession “occurs when [the defendant] lacks actual physical possession, but nonetheless has the intent and power to maintain control over the disposition and use of the substance.” *Id.* (internal marks and citation omitted).

Constructive possession must be determined on a case-by-case basis upon

considering the totality of the circumstances. *Id.* Where an illicit substance is found on the premises of a place under the defendant's exclusive control, there is "an inference of knowledge and possession which may be sufficient to carry the case to the jury[.]" *Tisdale*, 153 N.C. App. at 297, 569 S.E.2d at 682 (internal marks and citation omitted). However, where the defendant did not have exclusive control over the place where the substance was found, "the State must show other incriminating circumstances before constructive possession may be inferred." *Id.* (internal marks and citation omitted). Our Courts, in determining whether other incriminating circumstances exist to support a finding of constructive possession, have considered the following factors: "[(1)] the defendant's proximity to the [substance]; [(2)] indicia of the defendant's control over the place where the [substance] is found; [(3)] the defendant's suspicious behavior at or near the time of the [substance's] discovery; and [(4)] other evidence found in the defendant's possession that links the defendant to the [substance]." *State v. Chekanow*, 370 N.C. 488, 496, 809 S.E.2d 546, 552 (2018) (citation omitted).

Here, Defendant contends the State failed to present substantial evidence of possession and cites to several cases which he argues "should guide this Court's analysis[.]" as the facts in this case are similar to those in *State v. Battle*, *State v. Chavis*, *State v. Acolatse*, and *State v. Walters*.

In *State v. Battle*, officers deployed a K-9 to help locate the defendant within a wooded area. 253 N.C. App. 141, 142, 799 S.E.2d 434, 435 (2017). While tracking the

defendant, the K-9 located an assault rifle before locating the defendant. *Id.* at 142, 799 S.E.2d at 436. On appeal, this Court held there was insufficient evidence that the defendant possessed the rifle as the K-9 was tracking an unknown human scent; the rifle was not found near the defendant; another man was present in the woods at the time; and there were no fingerprints or DNA linking the rifle to the defendant. *Id.* at 146–47, 799 S.E.2d at 438.

In *State v. Chavis*, officers observed the defendant, wearing a gray hat, talking with another individual. 270 N.C. 306, 310, 154 S.E.2d 340, 343 (1967). The officers momentarily lost sight of the defendant, then saw he was no longer wearing the gray hat. *Id.* Upon searching the area, officers found a gray hat on the ground, brim up, which contained envelopes filled with marijuana. *Id.* On appeal, our Supreme Court held, under these circumstances, there was insufficient evidence to prove the defendant had possession of the marijuana. *Id.* at 311, 154 S.E. 2d at 344.

In *State v. Acolatse*, officers were in foot pursuit of the defendant when he ran behind a nearby house. 158 N.C. App. 485, 486–87, 581 S.E.2d 807, 809 (2003). The officers lost sight of the defendant for several seconds before catching up and taking him into custody. *Id.* at 487, 581 S.E.2d at 809. On his person, the defendant had multiple cell phones and \$830. *Id.* Officers searched the area and found several bags of cocaine on the roof of a detached garage in another part of the yard. *Id.* Our Court held there was insufficient evidence to show the defendant had possession of the cocaine. *Id.* at 490–91, 581 S.E.2d at 811.

In *State v. Walters*, officers began pursuit of the defendant in his vehicle. 276 N.C. App. 267, 268, 854 S.E.2d 607, 609 (2021). The defendant drove for three to five miles before he collided with another vehicle. *Id.* The defendant then, unsuccessfully, attempted to flee on foot. *Id.* at 269, 854 S.E.2d at 609. Officers found scales, syringes, and plastic bags in the defendant's vehicle, as well as two bags of heroin on the roadside near the shopping center where the police chase ensued. *Id.* Our Court held there was insufficient evidence of the defendant having possessed the heroin. *Id.* at 274, 854 S.E.2d at 612.

We recognize Defendant did not have exclusive control over the woods where the heroin was found, which required the State to introduce evidence of other incriminating circumstances to show Defendant had constructive possession. Unlike the preceding cases cited by Defendant, the State's evidence here indicated:

- Trooper Best directly observed Defendant acting in a nervous manner as he was restless, visibly shaking, breathing heavily, and avoided eye contact.
- Defendant ran from the car with his hands in his sweatshirt pocket as if he was holding something.
- While Trooper Best did lose sight of Defendant, a K-9 arrived on scene and began tracking Defendant's odor—not the odor of an unknown human.
- There were no other individuals observed in the area at the time.
- There was dew on the ground, yet the plastic bag, which contained heroin, remained dry.

- Defendant was located only 400 yards away from the heroin.
- Defendant gave officers several fake names before disclosing his identity.

When viewed in the light most favorable to the State, this evidence of Defendant's suspicious behavior in fleeing the vehicle, close proximity to the location of the drugs, and his sole presence in the area, constitutes incriminating circumstances to support a finding of constructive possession. Therefore, the trial court did not err in denying Defendant's motion to dismiss.

IV. Conclusion

For the aforementioned reasons, we hold the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Judges STROUD and THOMPSON concur.

Report per Rule 30(e).