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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-668

Filed 21 May 2024

McDowell County, Nos. 21 CRS 134–35

STATE OF NORTH CAROLINA

v.

JOE TRAVIS WATROUS, Defendant.

Appeal by Defendant from judgment entered 2 September 2022 by Judge Athena Fox Brooks in McDowell County Superior Court. Heard in the Court of Appeals 24 January 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Christopher James Stipes, for the State.

Blass Law PLLC, by Danielle Blass, for Defendant-Appellant.

CARPENTER, Judge.

Joe Travis Watrous (“Defendant”) appeals from judgment after a jury convicted him of trafficking in methamphetamine by possession, possessing drug paraphernalia, keeping or maintaining a vehicle in order to keep or sell a controlled substance, and possessing methamphetamine with the intent to sell and deliver. On appeal, Defendant argues that the trial court erred by: (1) denying his motion to

dismiss all charges; and (2) admitting Sergeant Huggins' testimony concerning constructive possession. After careful review, we conclude that the trial court did not err by denying Defendant's motion to dismiss, and the trial court did not plainly err by admitting Sergeant Huggins' testimony concerning constructive possession.

I. Factual & Procedural Background

On 1 March 2021, a McDowell County grand jury indicted Defendant for trafficking in methamphetamine by possession, possessing drug paraphernalia, keeping or maintaining a vehicle in order to keep or sell a controlled substance, and possessing methamphetamine with the intent to sell and deliver. On 29 August 2022, the State began trying Defendant in McDowell County Superior Court. Trial evidence tended to show the following.

On 29 November 2020, an unidentified witness called the Marion Police Department about a possible larceny at a hardware store. The caller claimed that the two alleged thieves left the store and went to a U-Haul truck in an adjoining parking lot. Shortly after receiving the complaint, Sergeant Matthew Huggins of the Marion Police Department arrived on the scene and approached the U-Haul.

Sergeant Huggins found Defendant in the driver's seat of the U-Haul and another individual (the "Passenger") in the passenger's seat. Defendant told Sergeant Huggins that he was borrowing the U-Haul, and that he had possessed the U-Haul "for about a week." Sergeant Huggins said that Defendant appeared "very nervous," was "sweating quite a bit," and was "having a hard time speaking in full

sentences.” Upon requesting identification, Sergeant Huggins discovered that the Passenger had an outstanding arrest warrant.

After asking the Passenger to exit the U-Haul, Sergeant Huggins saw, in plain view, a “small, clear baggie with a crystal-like substance in it that [he] believed to be methamphetamine.” Sergeant Huggins asked Defendant if he knew anything about the bag; Defendant denied any knowledge but became “more visibly nervous, shaking, sweating.” Sergeant Huggins then detained Defendant and the Passenger before searching the U-Haul.

Sergeant Huggins found two more bags of methamphetamine, totaling more than 119 grams. The two additional bags were concealed in a “safe like” device (the “Safe”). The Safe was in a three-ring binder, which was located on the bench seat of the U-Haul. The Safe had a combination lock but was designed to look like a dictionary. In addition to the methamphetamine, Sergeant Huggins discovered a pipe and a hypodermic needle, both of which contained methamphetamine residue.

Concerning Defendant’s alleged possession of the methamphetamine and paraphernalia, Sergeant Huggins testified as follows:

Sergeant Huggins: You know, in a vehicle setting, possession within the vehicle in, you know, especially a common area of the vehicle, that typically meets the elements of a crime. Whether someone says it’s theirs or not, they’re within reaching distance of it, both parties, that’s possession

The State: So your testimony is basically the position of Marion Police Department is two people are in a vehicle

and y'all—your testimony is that basically the position of the Marion Police Department is that if two or more people are in a vehicle and y'all find drugs in it, everybody possesses it automatically?

Sergeant Huggins: It's not the position of the police department. It's law.

At the close of the State's evidence, Defendant moved to dismiss all charges, and the trial court denied the motion. Defendant renewed his motion to dismiss all charges at the close of all evidence; the trial court again denied the motion. Before jury deliberations, the trial court properly instructed the jury on the law of possession. On 1 September 2022, the jury found Defendant guilty of all charges. Defendant gave notice of appeal in open court.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b)(1) (2023).

III. Issues

The issues on appeal are whether the trial court erred by: (1) denying Defendant's motion to dismiss all charges; and (2) admitting Sergeant Huggins' testimony concerning constructive possession.

IV. Analysis

A. Motion to Dismiss Charges

In his first argument, Defendant asserts that the trial court erred by denying his motion to dismiss all charges. Specifically, Defendant argues that: (1) concerning his charge of keeping or maintaining a vehicle in order to keep or sell a controlled

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substance, the State presented insufficient evidence that Defendant “kept or maintained a vehicle” for the purpose of “keeping or selling controlled substances”; and (2) concerning his possession charges, the State presented insufficient evidence of constructive possession. We disagree.

We review a denial of a motion to dismiss de novo. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citing *State v. McKinnon*, 306 N.C. 288, 298, 293 S.E.2d 118, 125 (1982)). Under a de-novo review, this Court “considers the matter anew and freely substitutes its own judgment’ for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (quoting *In re Greens of Pine Glen, Ltd. P’ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003)).

“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) (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78–79, 265 S.E.2d 164, 169 (1980).

In evaluating the sufficiency of the evidence concerning a motion to dismiss, the evidence must be considered “in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be

drawn therefrom” *State v. Winkler*, 368 N.C. 572, 574–75, 780 S.E.2d 824, 826 (2015) (quoting *State v. Powell*, 299 N.C. 95, 99, 261 S.E.2d 114, 117 (1980)). In other words, if the record developed at trial contains “substantial evidence, whether direct or circumstantial, or a combination, ‘to support a finding that the offense charged has been committed and that the defendant committed it, the case is for the jury and the motion to dismiss should be denied.’” *Id.* at 575, 780 S.E.2d at 826 (quoting *State v. Locklear*, 322 N.C. 349, 358, 368 S.E.2d 377, 383 (1988)).

1. N.C. Gen. Stat. § 90-108(a)(7).

It is unlawful to knowingly keep or maintain a vehicle in order to keep or sell a controlled substance. *See* N.C. Gen. Stat. § 90-108(a)(7) (2023). This crime contains two elements: (1) keeping or maintaining a vehicle; and (2) using that vehicle to keep or sell a controlled substance. *See id.*

In the first element, “keeping” a vehicle means “possessing something for at least a short period of time—or intending to retain possession of something in the future—for a certain use.” *State v. Weldy*, 271 N.C. App. 788, 790–91, 844 S.E.2d 357, 361 (2020) (quoting *State v. Rogers*, 371 N.C. 397, 402, 817 S.E.2d 150, 154 (2018)). This determination depends on the totality of the circumstances. *Id.* at 791, 844 S.E.2d at 361. “Although occupancy of the vehicle is a relevant circumstance, occupancy alone will not support the element of keeping or maintaining.” *Id.* at 792, 844 S.E.2d at 361 (citing *State v. Spencer*, 192 N.C. App. 143, 148, 664 S.E.2d 601, 605 (2008)).

In the second element, “keeping” drugs “means ‘the storing of drugs.’” *Id.* at 794, 844 S.E.2d at 363 (quoting *Rogers*, 371 N.C. at 405, 817 S.E.2d at 155). The second element also “depend[s] on the totality of the circumstances.” *State v. Dudley*, 270 N.C. App. 775, 782, 842 S.E.2d 615, 620 (2020) (quoting *State v. Mitchell*, 336 N.C. 22, 34, 442 S.E.2d 24, 30 (1994)). “Circumstances our courts have considered relevant to this determination include: the amount of controlled substances found, the presence of drug paraphernalia, the presence of large amounts of cash, and whether the controlled substances were hidden in the vehicle.” *Id.* at 782, 842 S.E.2d at 620 (citing *Rogers*, 371 N.C. at 403, 817 S.E.2d at 155).

a. Keeping or Maintaining a Vehicle

Here, Defendant was in the driver’s seat of the U-Haul. Without more, this evidence is insufficient to show that Defendant kept or maintained the U-Haul. *See Weldy*, 271 N.C. App. at 792, 844 S.E.2d at 361. But the State offered additional evidence that Defendant kept or maintained the U-Haul: When approached by Sergeant Huggins, Defendant stated that he had possessed the U-Haul “for about a week.”

In combination, this evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,” *see Smith*, 300 N.C. at 78–79, 265 S.E.2d at 169, that Defendant possessed the U-Haul “for at least a short period of time,” *see Weldy*, 271 N.C. App. at 790–91, 844 S.E.2d at 361. Therefore, the State presented sufficient evidence for a jury to consider whether Defendant “kept or

maintained” the U-Haul under subsection 90-108(a)(7). *See* N.C. Gen. Stat. § 90-108(a)(7); *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455.

b. For the Purpose of Keeping or Selling Controlled Substances

Concerning the purpose of the U-Haul, Sergeant Huggins discovered the following inside the U-Haul: three bags of methamphetamine—totaling more than 119 grams—and a pipe and a hypodermic needle, both of which contained methamphetamine residue. Two of the bags of methamphetamine were hidden in the Safe, which was on the seat of the U-Haul and designed to look like a dictionary.

This evidence is “adequate to support a conclusion,” *see Smith*, 300 N.C. at 78–79, 265 S.E.2d at 169, that Defendant used the U-Haul to “keep” methamphetamine, i.e., to store methamphetamine, *see Weldy*, 271 N.C. App. at 794, 844 S.E.2d at 363. Therefore, the State presented sufficient evidence for a jury to consider whether Defendant used the U-Haul in order to “keep” a controlled substance under subsection 90-108(a)(7). *See* N.C. Gen. Stat. § 90-108(a)(7); *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455.

Accordingly, the trial court did not err by denying Defendant’s motion to dismiss the charge of keeping or maintaining a vehicle in order to keep or sell a controlled substance. *See* N.C. Gen. Stat. § 90-108(a)(7); *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455.

2. Possession of Methamphetamine and Methamphetamine Paraphernalia

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It is illegal to possess methamphetamine or drug paraphernalia. *See* N.C. Gen. Stat. §§ 90-95(h)(3b), 90-113.22(a) (2023). Possession can be “actual” or “constructive.” *State v. Wynn*, 276 N.C. App. 411, 418, 856 S.E.2d 919, 924 (2021). “A person has constructive possession of an item when the item is not in his physical custody, but he nonetheless has the power and intent to control its disposition.” *Id.* at 418, 856 S.E.2d at 924 (quoting *State v. Wirt*, 263 N.C. App. 370, 373, 822 S.E.2d 668, 671 (2018)). Put differently, “[c]onstructive possession exists when a person, while not having actual possession of the controlled substance, has the intent and capability to maintain control and dominion over a controlled substance.” *Id.* at 419, 856 S.E.2d at 924 (quoting *State v. Neal*, 109 N.C. App. 684, 686, 428 S.E.2d 287, 289 (1993)). “Where a controlled substance is found on premises under the defendant’s control, this fact alone may be sufficient to overcome a motion to dismiss and to take the case to the jury.” *Id.* at 419, 856 S.E.2d at 924–25 (quoting *Neal*, 109 N.C. App. at 686, 428 S.E.2d at 289).

Here again, Sergeant Huggins found three bags of methamphetamine—totaling more than 119 grams—and a pipe and a hypodermic needle, both of which contained methamphetamine residue, inside the U-Haul. Defendant was in the driver’s seat of the U-Haul. This evidence is “adequate to support a conclusion,” *see Smith*, 300 N.C. at 78–79, 265 S.E.2d at 169, that Defendant had the “intent and capability to maintain control and dominion over” the methamphetamine and

methamphetamine paraphernalia within the U-Haul, *see Wynn*, 276 N.C. App. at 419, 856 S.E.2d at 924.

Therefore, the State presented substantial evidence that Defendant possessed methamphetamine and methamphetamine paraphernalia, and the trial court did not err by denying Defendant's motion to dismiss concerning his possession charges. *See Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455.

B. Sergeant Huggins' Testimony

In his final argument, Defendant asserts that the trial court plainly erred by admitting Sergeant Huggins' testimony concerning constructive possession. Although the trial court erred, it did not plainly error.

"In order to preserve an issue for appellate review, the appellant must have raised that specific issue before the trial court to allow it to make a ruling on that issue." *Regions Bank v. Baxley Com. Props., LLC*, 206 N.C. App. 293, 298–99, 697 S.E.2d 417, 421 (2010) (citing N.C. R. App. P. 10(b)(1)).

Here, Defendant failed to object to Sergeant Huggins' testimony. Therefore, Defendant failed to preserve any arguments concerning the admissibility of Sergeant Huggins' testimony. *See id.* at 298–99, 697 S.E.2d at 421.

In criminal cases, however, we "review unpreserved issues for plain error when they involve either (1) errors in the judge's instructions to the jury, or (2) rulings on the admissibility of evidence." *State v. Gregory*, 342 N.C. 580, 584, 467 S.E.2d 28, 31 (1996) (citing *State v. Sierra*, 335 N.C. 753, 761, 440 S.E.2d 791, 796 (1994)). But on

appeal, a defendant must “specifically and distinctly” argue plain error for us to apply plain-error review. *See State v. Frye*, 341 N.C. 470, 496, 461 S.E.2d 664, 677 (1995); N.C. R. App. P. 10(a)(4) (allowing certain unpreserved arguments in criminal appeals only “when the judicial action questioned is specifically and distinctly contended to amount to plain error”).

Because this is a criminal case, and because Defendant distinctly argues that the trial court plainly erred by admitting testimonial evidence, we will review the trial court’s decision for plain error. *See Gregory*, 342 N.C. at 584, 467 S.E.2d at 31; *Frye*, 341 N.C. at 496, 461 S.E.2d at 677.

To find plain error, this Court must first determine that an error occurred at trial. *See State v. Towe*, 366 N.C. 56, 62, 732 S.E.2d 564, 568 (2012). Second, Defendant must demonstrate the error was “fundamental,” which means the error probably caused a guilty verdict and “seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings.” *State v. Grice*, 367 N.C. 753, 764, 767 S.E.2d 312, 320–21 (2015) (quoting *State v. Lawrence*, 365 N.C. 506, 518–19, 723 S.E.2d 326, 334–35 (2012)). Notably, the “plain error rule . . . is always to be applied cautiously and only in the exceptional case” *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983) (quoting *United States v. McCaskill*, 676 F.2d 995, 1002 (4th Cir. 1982)).

A lay witness may testify in the form of “opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear

understanding of his testimony or the determination of a fact in issue.” N.C. Gen. Stat. § 8C-1, Rule 701 (2023). A lay witness, however, cannot testify to legal standards. *Amos v. Bateman*, 68 N.C. App. 46, 49, 314 S.E.2d 129, 131 (1984). This is because legal testimony “invades that province of the court to determine the applicable law and to instruct the jury as to that law.” *State v. Linney*, 138 N.C. App. 169, 184, 531 S.E.2d 245, 257 (2000). Nonetheless, “[j]urors are presumed to follow a trial court’s instructions” on the law. *State v. Prevatte*, 356 N.C. 178, 253–54, 570 S.E.2d 440, 482 (2002) (quoting *State v. McCarver*, 341 N.C. 364, 384, 462 S.E.2d 25, 36 (1995)).

Here, Sergeant Huggins testified as a lay witness. His relevant testimony is as follows:

The State: So your testimony is basically the position of Marion Police Department is two people are in a vehicle and y’all—your testimony is that basically the position of the Marion Police Department is that if two or more people are in a vehicle and y’all find drugs in it, everybody possesses it automatically?

Sergeant Huggins: It’s not the position of the police department. It’s law.

In this testimony, Sergeant Huggins opined about the “law” of constructive possession, thus exceeding the bounds of Rule 701, *see* N.C. Gen. Stat. § 8C-1, Rule 701, and invading the trial court’s role to instruct the jury on the applicable law, *see Linney*, 138 N.C. App. at 184, 531 S.E.2d at 257. Thus, the portion of Sergeant Huggins’ testimony quoted above was inadmissible.

Prior to jury deliberations, however, the trial court properly instructed the jury on constructive possession. The trial court instructed the jury as follows:

Possession of a substance may be either actual or constructive. A person has actual possession of a substance if the person has it on the person, is aware of its presence, and either alone or together with others has both the power and the intent to control its disposition or use. A person has constructive possession of the substance if that person does not have it on the person, but is aware of its presence, and has either alone or together with others both the power and intent to control its disposition or use. A person's awareness of the presence of the substance and the person's power and intent to control its disposition or use may be shown by direct evidence or may be inferred from the circumstances.

So while the trial court erred by allowing Sergeant Huggins to opine on the law, we still presume the jury followed the trial court's proper instructions. *See Prevatte*, 356 N.C. at 253–54, 570 S.E.2d at 482. With that presumption in mind, Defendant has not established that Sergeant Huggins' testimony probably caused a guilty verdict and “seriously affect[ed] the fairness, integrity, or public reputation of judicial proceedings,” *see Grice*, 367 N.C. at 764, 767 S.E.2d at 320–21, because, as detailed above, the jury considered substantial evidence that Defendant constructively possessed methamphetamine and methamphetamine paraphernalia. Accordingly, this is not the “exceptional case” that justifies finding plain error. *See Odom*, 307 N.C. at 660, 300 S.E.2d at 378.

V. Conclusion

We hold that the trial court did not err by denying Defendant's motion to

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dismiss all charges, and the trial court did not plainly err by admitting Sergeant Huggins' testimony concerning constructive possession.

NO PLAIN ERROR.

Judges HAMPSON and GORE concur.

Report per Rule 30(e).