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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1065

Filed 2 July 2024

Lincoln County, No. 22 CRS 51499

STATE OF NORTH CAROLINA

v.

LANCE ROBERT BARRETT

Appeal by Defendant from judgment entered 23 May 2023 by Judge Justin N. Davis in Lincoln County Superior Court. Heard in the Court of Appeals on 15 May 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Allison C. Hawkins, for the State.

Dunn, Pittman, Skinner, & Ashton, PLLC, by Rudolph A. Ashton, III, for the Defendant.

WOOD, Judge.

A jury convicted Lance Barrett (“Defendant”) of one count of possession of methamphetamine, a Schedule II controlled substance. On appeal, Defendant argues the trial court erred in denying his motions to dismiss based on insufficient evidence that he constructively possessed methamphetamine and that the substance was a controlled substance. He further argues the trial court erred in admitting an officer’s

testimony that this was a case of “clear-cut constructive possession.” For the reasons stated herein, we hold Defendant received a fair trial, free from error.

I. Factual and Procedural History

On 14 June 2022, Sergeant Redy Hoernlen (“Sergeant Hoernlen”) of the Lincoln County Sheriff’s Office was on patrol duty driving toward Lincolnton. He observed Defendant’s Toyota Corolla in front of him activate its four-way flashers and slow down. Defendant pulled onto the shoulder of the road. Believing Defendant might be a stranded motorist, and in accordance with his office’s policy, Sergeant Hoernlen pulled over behind Defendant and observed a total of three passengers in the vehicle.

Sergeant Hoernlen was surprised to observe Defendant step out of the driver’s door and approach his patrol car before he had time to relay the vehicle’s tag information and his location to dispatch. Sergeant Hoernlen rolled down his window to speak with Defendant, who explained that he had run out of gas. Sergeant Hoernlen believed Defendant looked nervous and found it strange that he would rush out of his vehicle to approach him.

The vehicle’s other occupants, males between the ages of twenty to fifty, were sitting in the front and rear passenger’s side seats. Tools and other items were scattered in the rear driver’s side seat. Sergeant Hoernlen asked Defendant if the vehicle belonged to him, and Defendant said yes. Sergeant Hoernlen then ran the vehicle’s plate and discovered that it belonged to an elderly woman rather than any

of its occupants. He became suspicious that Defendant's vehicle "might be possibly stolen or involved in something."

Before approaching Defendant's vehicle, Sergeant Hoernlen called for assistance and waited until other deputies arrived. When Deputies Lee Spurling ("Deputy Spurling") and Adam Georgia ("Deputy Georgia") arrived, Sergeant Hoernlen approached Defendant's vehicle to take a picture of the VIN near the driver's door to match it to a bill of sale, if Defendant were able to produce one. As he did so, he observed a small baggy containing a crystal-like substance in the space between the driver's door jamb and seat, toward the bottom of the seat.

Based on Sergeant Hoernlen's training and experience, he believed the substance looked like methamphetamine. At that point, Sergeant Hoernlen's attention shifted from verifying the vehicle's information to conducting a narcotics investigation. Sergeant Hoernlen was also aware that Deputy Georgia was trained as a narcotics investigator, so he had him look at the substance. Based on Deputy Georgia's training and experience, he recognized it to be methamphetamine.

On 14 June 2022, an arrest warrant was issued for Defendant, charging him with possession of methamphetamine, a Schedule II controlled substance, in violation of N.C. Gen. Stat. § 90-95(a)(3). On 15 August 2022, a grand jury indicted Defendant for the same charge.

Defendant's trial was held 22 and 23 May 2023. Defendant, through counsel, made motions to dismiss at the close of the State's evidence and at the close of all

evidence. The trial court denied both motions. A jury convicted Defendant of the charged offense. The trial court sentenced Defendant to six-to-seventeen months of imprisonment, suspended for eighteen months of supervised probation.

Defendant gave oral notice of appeal in open court.

II. Analysis

Defendant argues the trial court erred in denying his motions to dismiss and in allowing Deputy Georgia to testify that Defendant constructively possessed methamphetamine.

A. Sufficiency of the Evidence

Defendant argues the trial court erred in denying his motions to dismiss because the State presented insufficient evidence that he constructively possessed methamphetamine and because the State Crime Laboratory report results (“lab report”) stating that the substance in the baggy was methamphetamine was never introduced at trial.

“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). Upon review of a trial court’s denial of a motion to dismiss,

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.

. . .

The evidence is to 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; contradictions and discrepancies are for the jury to resolve and do not warrant dismissal; and all of the evidence actually admitted, whether competent or incompetent, which is favorable to the State is to be considered by the court in ruling on the motion.

State v. Powell, 299 N.C. 95, 98–99, 261 S.E.2d 114, 117 (1980) (citations omitted).

“Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence.” *State v. Fritsch*, 351 N.C. 373, 379, 526 S.E.2d 451, 455 (2000). If the trial court determines that circumstantial evidence permits a reasonable inference of a defendant’s guilt, “it is for the jury to decide whether the facts, *taken singly or in combination*, satisfy it beyond a reasonable doubt that the defendant is actually guilty.” *Id.* (brackets omitted) (emphasis in original).

“Proof of nonexclusive, constructive possession is sufficient” to prove a defendant possessed a controlled substance. *State v. Matias*, 354 N.C. 549, 552, 556 S.E.2d 269, 270 (2001). “Constructive possession exists when the defendant, while not having actual possession, has the intent and capability to maintain control and dominion over” the substance. *Id.* (quotation marks and ellipsis omitted).

“[A]n inference of constructive possession can also arise from evidence which tends to show that a defendant was the custodian of the vehicle where the controlled substance was found.” *State v. Hudson*, 206 N.C. App. 482, 490, 696 S.E.2d 577, 583

(2010). This inference may arise even if the controlled substance is found in a car the driver is borrowing because the driver still “has the power to control the contents of the car.” *Id.* “[P]ower to control the automobile where a controlled substance was found is sufficient, in and of itself, to give rise to the inference of knowledge and possession sufficient to go to the jury.” *Id.*

Our Supreme Court has stated:

Where [a controlled substance is] found on the premises under the control of an accused, this fact, in and of itself, gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury on a charge of unlawful possession. However, unless the person has exclusive possession of the place where the narcotics are found, the State must show other incriminating circumstances before constructive possession may be inferred.

State v. Davis, 325 N.C. 693, 697, 386 S.E.2d 187, 190 (1989) (citation and quotation marks omitted). Our State courts have identified facts “that may be used in conjunction with the defendant’s presence near the seized contraband to support a finding of constructive possession including: other personal items of the defendant near the contraband, defendant had some control of the premises where the contraband was found, and defendant’s nervous or suspicious behavior.” *State v. Fortney*, 201 N.C. App. 662, 668, 687 S.E.2d 518, 523 (2010).

Here, Sergeant Hoernlen found the baggy of methamphetamine between the driver’s seat and door jamb, in the space “where all the crumbs and stuff fall in [one’s] car.” Deputy Spurling specified the baggy was found “at the bottom of the driver’s

seat.” The fact that officers discovered a baggy of methamphetamine directly next to Defendant’s seat gives rise to a reasonable inference that he constructively possessed it.

Defendant argues the methamphetamine cannot be conclusively linked to him due to the presence of two others in the vehicle with him. However, the methamphetamine was not found in a location within the vehicle that the other occupants would have been able to reach. Rather, the officers found it in very close proximity to Defendant, the small area between the driver’s seat and door, at the “bottom of the driver’s seat.” The other passengers were sitting in the front and rear passenger’s side seats and could not have reached this small area. The location where officers discovered the methamphetamine supports constructive possession as it indicates Defendant’s knowledge of the existence of the methamphetamine due to its close proximity and demonstrates his “intent and capability to maintain control and dominion over” it. *Matias*, 354 N.C. at 552, 556 S.E.2d at 270. We further note that although there were other occupants in the car, constructive possession need not be exclusive. *Id.* Moreover, Sergeant Hoernlen observed that Defendant appeared nervous as demonstrated by his decision to quickly exit his vehicle and approach Sergeant Hoernlen before he had a chance to get out of his cruiser. These facts qualify as circumstantial evidence of Defendant’s guilt.

We hold that despite the presence of two other individuals in the vehicle, the evidence was sufficient for the charged offense of possession of methamphetamine to

proceed to the jury upon a theory of constructive possession. Accordingly, the trial court did not err in denying Defendant's motions to dismiss.

B. The Lab Report

Defendant also argues there was insufficient evidence to prove possession of a controlled substance because the State did not move to admit into evidence the lab report which identified the substance in the baggy as methamphetamine. Specifically, Defendant argues that although the State and Defendant stipulated as to the admissibility of the lab report, the State never requested to enter it into evidence, and it was not admitted into evidence subsequently. Defendant further cites N.C. Gen. Stat. § 90-95(g), which provides for the admissibility of a lab report without testimony from the lab analyst. However, Defendant states, "While the instant case *does not involve* the notification procedures in N.C.G.S. § 90-95(g), the [caselaw] show[s] that these procedures are strictly enforced when applicable." (Emphasis added). The State argues the trial court did indeed admit the lab report and that it did so pursuant to N.C. Gen. Stat. § 15A-1226(b).

A trial court's decision to admit evidence pursuant to N.C. Gen. Stat. § 15A-1226 is reviewed for abuse of discretion. *State v. Wise*, 178 N.C. App. 154, 163, 630 S.E.2d 732, 737 (2006).

N.C. Gen. Stat. § 90-95(g) provides that a report of a lab analysis "shall be admissible without further authentication and without the testimony of the analyst . . . as evidence of the identity, nature, and quantity of the matter analyzed." Before

admitting a lab report without testimony from the analyst who prepared it, however, the State must provide notice to a defendant of its intention to introduce the report into evidence fifteen business days prior to the proceeding. N.C. Gen. Stat. § 90-95(g)(1). Furthermore, the defendant must file a written objection with the court at least five days prior to the proceeding. N.C. Gen. Stat. § 90-95(g)(2).

N.C. Gen. Stat. § 15A-1226 provides in pertinent part, “The judge in his discretion may permit any party to introduce additional evidence at any time prior to verdict.” N.C. Gen. Stat. § 15A-1226(b). N.C. Gen. Stat. § 15A-1226(b) “specifically provides that the trial judge may exercise his discretion to permit any party to introduce additional evidence at any time prior to the verdict. This is so even after arguments to the jury have begun and even if the additional evidence is testimony from a surprise witness.” *State v. Revelle*, 301 N.C. 153, 161, 270 S.E.2d 476, 481 (1980) (disapproved of on other grounds by *State v. White*, 322 N.C. 506, 369 S.E.2d 813 (1988)).

Here, shortly before trial, defense counsel noted that the lab analyst was unavailable for trial and would remain so for the rest of the week. Defense counsel stated that Defendant stipulated:

On June 14th of 2022, a bag of white crystal-like material was seized by Deputies Adam Georgia and Lee Spurling, of the Lincoln County Sheriff’s office, during a response to a disabled vehicle;

Two, the bag was placed into evidence the same day. It was submitted to the North Carolina State Crime Laboratory to be tested;

Three, that on September 19th, 2022, that sample was tested by Isabella McMillion, a certified analyst with the North Carolina State Crime Lab; and

Four, the lab report reflect -- reflecting that result is hereby authenticated and will be ad -- admitted into evidence.

He understands that he's not stipulating that the substance was, in fact, methamphetamine. He's simply stipulating that the report that is going to be offered is -- that we're stipulating to the authenticity of it and that it, in fact, was the test result from the drugs that were seized that day.

He understands that. He understands that, ultimately, I advised him against it. But given the fact that this would result in a continuance and it is not central to what our defense would be, he wanted to get this put behind him.

The trial court confirmed with Defendant that it was his voluntary "choice to stipulate to the admissibility of the lab report" and that by doing so, he waived his right to object to the admissibility of the report.

The lab report was marked as State's Exhibit 3. The State, through Deputy Spurling, elicited testimony regarding the contents of the report. Deputy Spurling identified it as the lab report and read directly from it, stating, "Item 1, one plastic Ziploc bag, was analyzed and found to contain methamphetamine, net weight of

material .195 +/- 0.06 grams.”¹ He confirmed that the report returned a positive result for methamphetamine.

At the close of the State’s evidence, defense counsel made a motion to dismiss, arguing that “there’s been no testimony that methamphetamine is a Schedule 2 controlled substance” and, “I don’t think [State’s Exhibit 3] was ever admitted into evidence. . . . There’s no testimony that this is a controlled substance. The lab report says that, but the lab report is not in evidence.” The State argued, “I believe that this should be allowed to either be admitted into evidence or treated as admitted, as the parties had agreed that this would be admitted. There was testimony that the substance tested positive for methamphetamine. Again, the stipulation contemplated that we would have this admitted.” The trial court reminded defense counsel that the stipulation stated, “the lab report reflecting that result is hereby authenticated and will be admitted into evidence.” The State argued that “since sufficient foundation had been laid, the only thing missing was the actual admission of it into evidence.” Defense counsel argued regardless of the existence of the stipulation, the lab report “has to be actually offered.” The State argued the lab report stated that it was an “examination for a controlled substance and the indication that a . . . substance was detected is evidence that it is a controlled substance.” At the end of the colloquy on the matter, the trial court agreed that “words do matter,” though it

¹ Deputy Spurling misspoke. The lab report states the net weight of the methamphetamine contained in the baggy was 0.95 grams.

further stated, “the stipulation, I think, is clear that it will be admitted into evidence. I think that stipulation clearly is sufficient to admit the lab report into evidence. And so, that’s gonna be my ruling on that point.” The trial court then denied defense counsel’s motion to dismiss.

The trial court recessed for lunch, and upon returning, the State requested that the evidence be reopened for the purpose of admitting State’s Exhibit 3. The prosecutor explained, “I don’t know if that was your ruling, that it is admissible or has been admitted.” The trial court responded, “The [S]tate[]s rested, but the stipulation is very clear with regard to the admission into evidence. And so, it’s admitted.” The prosecutor clarified, “So, your ruling is that it has been admitted?” The trial court answered, “My ruling is that it’s admitted.” Defendant then rested, choosing not to put on evidence, and renewed his motion to dismiss. Defense counsel argued, again, that the lab report was not admitted because the stipulation only said that it “will be admitted into evidence,” and “that is forward looking.” The trial court denied the motion.

Defendant concedes that N.C. Gen. Stat. § 90-95(g) is inapplicable to this case because Defendant stipulated to the admissibility of the lab report and its actual admission, as the stipulation specifically stated it “will be admitted into evidence.” The trial court confirmed Defendant’s waiver of any right to object to admission of the lab report into evidence.

Although the State had rested, the trial court admitted the lab report into evidence before the close of all evidence, and it confirmed that it had done so. N.C. Gen. Stat. § 15A-1226(b) explicitly authorizes a trial court, in its discretion, “to introduce additional evidence at any time prior to verdict.” The lab report stated that the substance contained in the baggy was methamphetamine, at a weight of 0.95 grams, +/- 0.06 grams. “Methamphetamine is a Schedule II controlled substance in North Carolina.” *State v. Sasek*, 271 N.C. App. 568, 572, 844 S.E.2d 328, 332 (2020) (citing N.C. Gen. Stat. § 90-90(3)(c) which states that methamphetamine is a controlled substance). Therefore, the State submitted evidence that Defendant constructively possessed a controlled substance in violation of N.C. Gen. Stat. § 90-95(a)(3). Accordingly, the trial court did not abuse its discretion in admitting the lab report nor err in denying Defendant’s motions to dismiss based on his argument that there was no evidence the substance was a Schedule II controlled substance.

C. Deputy Georgia’s Testimony Regarding Constructive Possession

Defendant next argues the trial court erred in overruling his objection to Deputy Georgia’s testimony that this case “seemed to be clear-cut constructive possession.” Defendant contends that although a witness may express an opinion on an “ultimate issue,” Deputy Georgia’s testimony was not helpful to the trier of fact because it merely told the jury what result to reach. We disagree.

A trial court’s admission of testimony is reviewed for abuse of discretion. *State v. Washington*, 141 N.C. App. 354, 362, 540 S.E.2d 388, 395 (2000). An abuse of

discretion occurs when a trial court's "ruling was so arbitrary that it could not have been the result of a reasoned decision." *Id.*

N.C. R. Evid. 701 provides:

If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those 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.

"Testimony in the form of an opinion or inference is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." N.C. R. Evid. 704. Defendant cites the Advisory Committee's Note on Rule of Evidence 704, which states, "[T]he question, 'Did T have capacity to make a will?' would be excluded, while the question, 'Did T have sufficient mental capacity to know the nature and extent of his property and the natural objects of his bounty and to formulate a rational scheme of distribution?' would be allowed." N.C. R. Evid. 704, Advisory Committee's Note. Our Supreme Court has stated:

Although opinion testimony may embrace ultimate issues in a case, the opinion should not be phrased using a legal term of art carrying a specific legal meaning not readily apparent to the witness. However, where the witness uses a term as a shorthand statement of fact rather than as a legal term of art or an opinion as to the legal standard the jury should apply, the testimony is admissible.

State v. Anthony, 354 N.C. 372, 407–08, 555 S.E.2d 557, 581 (2001).

Witness testimony is admissible if it provides “context” regarding an officer’s “decision-making with regard to his investigation.” *State v. Daughtridge*, 248 N.C. App. 707, 718, 789 S.E.2d 667, 673 (2016). *Daughtridge* concerned an investigator’s testimony regarding his opinion that the victim had not committed suicide and based on that opinion, his conduct in investigating a potential murder. *Id.* at 712–16, 789 S.E.2d at 670–72. The court in *Daughtridge* noted, “it is apparent from the context of [the investigator’s] testimony . . . that he was simply explaining the steps he took in furtherance of his ongoing investigation” and that the investigator’s testimony expressing skepticism of the defendant’s version of events provided “context and explain[ed] his rationale for continuing to subject Defendant to additional scrutiny.” *Id.* at 248 N.C. App. at 716, 789 S.E.2d at 672.

Here, upon direct examination, the State had the following exchange with Deputy Georgia:

Q. So, Deputy Georgia, I noticed, when you arrived at the -
- the vehicle, you picked the bag up with your bare hand. Is
that correct?

A. That’s correct.

Q. Why not use gloves?

A. With everything that we sort of carry on us, we’re not
always in possession of latex gloves on our persons at all
times. So, the traffic is obviously sort of fluid. I went in,
immediately saw the bag, and I verified, based on my
training and experience, by picking it up real quick, that it
was indeed methamphetamine.

Q. Okay. Are you not at all concerned about, say, contaminating DNA evidence or fingerprints or –

A. Not in this –

Q. -- anything?

A. -- case, no.

Q. Why is that?

A. In -- in my estimation, the evidence was clearly within reach of the defendant. And, to me, *it seemed to be clear-cut constructive possession.*

(Emphasis added). Defense counsel objected “to the legal conclusion.” The trial court stated, “It’s overruled.” Deputy Georgia then explained that the drugs are sent to the state lab to test the contents, not to test for fingerprints.

Deputy Georgia’s testimony regarding this being a case of “clear-cut constructive possession” was given in the context of questions from the State regarding contaminating DNA evidence with his own fingerprints. Presumably, the testimony was elicited to reassure the jury that Deputy Georgia had not contaminated the evidence nor otherwise interfered with the accuracy of the identification of the substance itself. Deputy Georgia answered questions pertaining to why he did not wear gloves when touching the Ziploc baggy; he was not instructing the jury regarding which result it should reach. He qualified his lay opinion, stating that *to him*, “it seemed to be clear-cut constructive possession.” This testimony was relevant because the baggy of methamphetamine was found directly next to

Defendant's driver's seat. The important issue in the case, at least in Deputy Georgia's mind, was not regarding who possessed the methamphetamine. The baggy was not discovered in a location far away from Defendant. As such, there would not have been concern about Deputy Georgia's handling of the contraband and subsequent fingerprints on the baggy.

We hold Deputy Georgia did not improperly give testimony regarding a legal conclusion or instruct the jury as to the result it should reach. Read in its context, Deputy Georgia's testimony explained his conduct during the investigation and was a relevant and logical answer to the State's questions upon direct examination. Accordingly, the trial court did not abuse its discretion in overruling defense counsel's objection to the testimony.

III. Conclusion

We hold the trial court did not err in denying Defendant's motions to dismiss because there was sufficient evidence of Defendant's constructive possession of the methamphetamine to allow the question to proceed to the jury and because the trial court admitted the lab report, providing evidence that the substance in the baggy was methamphetamine, a Schedule II controlled substance. We further hold the trial court did not abuse its discretion in overruling defense counsel's objection to Deputy Georgia's testimony regarding constructive possession. Defendant received a fair trial, free from error.

NO ERROR.

STATE V. BARRETT

Opinion of the Court

Judges HAMPSON and STADING concur.

Report per Rule 30(e).