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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-1009

Filed 1 October 2024

Wake County, Nos. 19CRS212419, 212420

STATE OF NORTH CAROLINA

v.

JOVON LAMAR POWELL, Defendant.

Appeal by defendant from judgment entered 17 November 2022 by Judge John M. Dunlow in Wake County Superior Court. Heard in the Court of Appeals 28 August 2024.

Attorney General Joshua H. Stein, by Assistant Attorney General Catherine R. Laney, for the State.

Dunn, Pittman, Skinner & Ashton, PLLC, by Rudolph A. Ashton, III, for defendant-appellant.

FLOOD, Judge.

Defendant Jovon Lamar Powell appeals from the trial court's judgment finding him guilty of possession with intent to sell and deliver cocaine, possession of drug paraphernalia, and trafficking in cocaine by possession. Defendant argues on appeal that the trial court erred in (A) denying Defendant's two motions to dismiss where

the State failed to meet its evidentiary burden in support of a finding that Defendant constructively possessed cocaine, and (B) denying Defendant's request for new counsel and failing to advise him regarding his right to counsel. After careful review, we conclude the State presented substantial circumstantial evidence to support a finding of constructive possession, and therefore affirm the trial court's denial of Defendant's motions to dismiss. We further conclude the trial court, upon hearing Defendant's request for new counsel, satisfied itself that present counsel was able to render competent assistance and that the nature or degree of Defendant's conflict with counsel was not such as to render that assistance ineffective. Under the United States Constitution and North Carolina law, this is all that was required of the trial court, and we therefore affirm the trial court's denial of Defendant's request.

I. Factual and Procedural Background

On the night of 6 July 2019, Officer Bakari Merritt of the City of Raleigh Police Department was off duty but was dressed in his police uniform and wearing his badge, working as a security officer at a Denny's Restaurant in north Raleigh. At around 4:00 a.m., Officer Merritt saw a shirtless man—later identified as Aurel Hysa—run back and forth across the Denny's parking lot, and then get into the front passenger seat of a car parked in the lot. Upon witnessing Hysa get into the car, Officer Merritt approached the vehicle to conduct a "welfare check." As he approached the vehicle, he saw a man—later identified as Defendant—sitting in the driver's seat, and saw Hysa holding a digital scale and a bag of what appeared to be

cocaine. Officer Merritt instructed Defendant to roll down his window, but Defendant instead opened the car door to “tell [Officer Merritt] he was going to roll down his window.” At this point, Officer Merritt noticed on the floorboard of the car, between Defendant’s feet, a bag of what appeared to be heroin.

Officer Merritt then instructed Defendant and Hysa to put their hands on the steering wheel and dashboard, respectively, but instead of complying, Hysa opened the front passenger door of the vehicle and ran from the scene. Officer Merritt began to chase Hysa, called for backup, and informed other officers of Defendant’s whereabouts. After Officer Merritt ran in pursuit of Hysa, Defendant tried to drive away from the parking lot. Officers Mick Styers and Anthony Johnson, responding to Officer Merritt’s call, arrived on the scene and prevented Defendant from leaving. Soon thereafter, Officer Merritt returned to the Denny’s parking lot with Hysa in his custody.

The officers searched Defendant’s car and found two bags between the center console and the passenger seat, one containing 26.44 grams of cocaine and the other 3.76 grams of cocaine. Officer Johnson later testified that, although the bags were found between the center console and the passenger seat, both bags were found in “plain view[.]” The officers found cash in the top compartment of the center console, and as Officer Styers began to count the cash, Defendant stated, “[t]hat’s \$400,” which proved to be accurate. In the bottom center console compartment, the officers found inside a mason jar two more bags, one containing 3.58 grams of cocaine and the other

nine tenths of a gram of cocaine. The officers also searched Hysa's vehicle, and while it contained no cocaine, the officers found two additional scales, a bag of purple containers, and a clear bag containing a "brown crystallized substance[.]"

After searching the vehicles, the officers began to question Defendant, and he stated to the officers that he personally knew Hysa, was planning to drive Hysa home, and that Defendant owned the vehicle in which the officers found cocaine. The officers placed Defendant under arrest, and Officer Johnson searched Defendant's pockets, which revealed \$1,671 in cash and what was later identified as a methamphetamine pill. Officer Johnson asked Defendant: "[W]hat [is] that pill[?]" Defendant responded, "I don't know." Officer Johnson then transported Defendant to the police station for booking, and while in transit, Defendant made several unsolicited statements, including "I'm done" and muttering the word "grams."

On 12 August 2019, Defendant was charged by a bill of indictment with trafficking in cocaine by possession, and on 24 October 2022, Defendant was charged by another bill of indictment with: possession with intent to sell or deliver cocaine; possession of methamphetamine; possession of an open container of alcohol in a vehicle¹; and possession with intent to use drug paraphernalia. On 14 October 2021, before issuance of the second bill of indictment, Defendant's first court-appointed attorney moved to withdraw as counsel due to irreconcilable differences, which the

¹ Although Defendant was charged with possession of an open container of alcohol in a vehicle, the Record contains no evidence of the officers discovering such a container in Defendant's vehicle.

trial court granted on 28 October 2021. Defendant was appointed new counsel on 3 November 2021, and on 15 November 2022, this matter came on for hearing before the trial court.

On the first day of trial, Defendant's counsel informed the court that Defendant requested a new attorney, as Defendant had "lost confidence" in his new counsel. Counsel explained to the trial court that, in preparation for trial, he had acquired the discovery materials, reviewed them, and "gone over" them with Defendant. The day before trial, however, he and Defendant had a conversation during which counsel told Defendant: "Go ahead and tell me your side of it again." Defendant took this to mean that counsel does not "know the case well enough." Counsel tried to explain to Defendant that he wished only to review the evidence with Defendant once more before trial, but this did not allay Defendant's concerns.

After hearing counsel's account of the conversation, the trial court gave Defendant the opportunity to be heard. Defendant told the trial court that, during his conversation with counsel, counsel's recitation of the facts concerning Defendant's arrest was inconsistent with what they had previously discussed. Defendant further stated that "[t]here's not really been no [sic] communication since November[,] " he felt "uncomfortable[,] " and he would like a new attorney. The trial court asked Defendant whether he was requesting a new court-appointed attorney, or whether Defendant was going to hire his own, and Defendant responded, "I don't have the finances to hire one at this point, but I can pretty much reach out to my family to get

an attorney.”

After Defendant indicated he had nothing more to say, the trial court asked counsel whether he was prepared to proceed to trial, and counsel answered in the affirmative. The trial court further asked counsel whether there were any rules of professional conduct that would prevent counsel from proceeding, and counsel responded, “I don’t see that I’m under any kind of . . . conflict[.]” The trial court confirmed again that counsel was prepared for trial and had “reviewed the discovery[.]” and then asked the State’s attorney whether she wished to be heard. In response, the State’s attorney requested the trial court deny Defendant’s request for new counsel, and informed the court that she had discussed the case with Defendant’s counsel “at length.” The trial court denied Defendant’s request for a new attorney, finding that: Defendant’s request was made on the day of trial; Defendant had not voiced his dissatisfaction with counsel until the day before the trial; and counsel had reviewed the discovery, was prepared to proceed to trial, and was under no conflict that would necessitate his withdrawal.

This matter proceeded to trial, and in addition to hearing testimony from the arresting officers, the trial court heard Defendant’s testimony. Defendant testified that Hysa was his “weed partner” from whom Defendant purchased marijuana approximately three times a week, and that on the night of the arrest, Defendant had agreed to take Hysa to Apex in exchange for Ecstasy and marijuana, and they had arranged to meet at the Denny’s in north Raleigh. Defendant further testified that

the cocaine found between the center console and the passenger seat was not his, and he did not know there was any cocaine in the center console. After Hysa entered Defendant's vehicle with cocaine and a scale in hand, Defendant told Hysa that he would not drive Hysa with the cocaine and scale in the vehicle. Defendant admitted in his testimony, however, that at some point while they were together in Defendant's car, Hysa gave him the methamphetamine pill that Defendant believed to be Ecstasy, and Defendant had lied to Officer Johnson when he told Officer Johnson that he did not know what the pill was. Additionally, Defendant testified that the \$400 and \$1,671 found in the center console of his car and in his pocket, respectively, belonged to him, and that he had obtained the money from gambling. Finally, Defendant testified that he had attempted to flee the scene and thereafter lied to the arresting officers because he "didn't want to get in trouble[.]"

At the close of the State's evidence, Defendant's counsel moved to dismiss all charges for insufficiency of the evidence, and at the close of all evidence, renewed his motion. The trial court granted this motion as to the possession of an open container of alcohol in a vehicle charge, and denied the motion as to the remaining four charges. The trial court thereafter instructed the jury as to whether the State met its evidentiary burden in support of a finding Defendant possessed cocaine, on a theory of constructive possession. On 17 November 2022, the jury found Defendant guilty of possession with intent to sell and deliver cocaine, possession with intent to use drug paraphernalia, and trafficking in cocaine by possession, and not guilty of possession

of methamphetamine. The trial court sentenced Defendant to a consolidated term of thirty-five to fifty-one months' imprisonment, and imposed a \$50,000 fine on him. Defendant timely appealed.

II. Jurisdiction

Defendant's appeal is properly before this Court as an appeal from a final judgment of a superior court pursuant to N.C. Gen. Stat. §§ 7A-27(b) and 15A-1444(a) (2023).

III. Analysis

Defendant argues on appeal (A) the trial court erred in denying his motions to dismiss the possession with intent to sell and deliver cocaine charge and the trafficking in cocaine by possession charge, and (B) the trial court erred in denying his request for new counsel and not properly advising him regarding his right to counsel. We address each argument, in turn.

A. Constructive Possession

In his first allegation of error, Defendant contends the State presented insufficient evidence to support Defendant's conviction, as the circumstantial evidence was such that a reasonable juror could not conclude Defendant constructively possessed the cocaine. We disagree.

"The denial of a motion to dismiss for insufficient evidence is a question of law, which this Court reviews *de novo*." *State v. Bagley*, 183 N.C. App. 514, 523, 644 S.E.2d 615, 621 (2007) (citations omitted). "Under a *de novo* review, th[is C]ourt

considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Clapp*, 235 N.C. App. 351, 359–60, 761 S.E.2d 710, 717 (2014) (citation and internal quotation marks omitted). Upon appeal from the trial court’s denial of a defendant’s motion to dismiss, “the question for th[is] Court is whether there is substantial evidence (1) of each essential element of the offense charged . . . and (2) of defendant’s being the perpetrator of such offense. If so, the motion is properly denied.” *State v. Schmieder*, 265 N.C. App. 95, 101, 827 S.E.2d 322, 327 (2019) (citation omitted).

“Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion[.]” *id.* at 101, 827 S.E.2d at 327–28 (citation omitted), and “[t]he evidence can be circumstantial or direct, or both.” *State v. English*, 241 N.C. App. 98, 104, 772 S.E.2d 740, 745 (2015) (citation 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. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988), and “[c]ontradictions and discrepancies [in the evidence] do not warrant dismissal of the case; rather, they are for the jury to resolve.” *State v. Agustin*, 229 N.C. App. 240, 242, 747 S.E.2d 316, 318 (2013) (citation omitted). In determining whether the State met its evidentiary burden, we must consider the evidence “in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994).

Under N.C. Gen. Stat. § 90-95(a)(1) (2023), for a possession with intent to sell and deliver cocaine charge to survive a motion to dismiss for insufficiency of the evidence, the State must have presented substantial evidence of a defendant’s “(1) possession; (2) of . . . [cocaine]; (3) with intent to sell or deliver the” cocaine. *State v. Blagg*, 377 N.C. 482, 489, 858 S.E.2d 268, 274 (2021). Likewise, under N.C. Gen. Stat. § 90-95(h)(3) (2023), the State must have presented substantial evidence that a defendant “(1) knowingly possessed [cocaine], and (2) that the amount transported was greater than” the statutory threshold amount. *State v. King*, 291 N.C. App. 264, 269, 894 S.E.2d 790, 796 (2023) (citation and internal quotation marks omitted).

Here, as to both offenses, Defendant challenges on appeal only the element of possession, arguing there was insufficient evidence to demonstrate Defendant either actually or constructively possessed the cocaine. As such, Defendant has abandoned any argument as to the remaining elements, and we address only Defendant’s challenge to the possession element of the two offenses charged. *See* N.C.R. App. P. 28(b)(6) (“Issues not presented in a party’s brief . . . will be taken as abandoned.”).

North Carolina courts have held that the State may meet its evidentiary burden for the possession element of both N.C. Gen. Stat. §§ 90-95(a)(1) and (h)(3) by demonstrating that a defendant either actually or constructively possessed the controlled substance for which he was charged. *See State v. Rich*, 87 N.C. App. 380, 382 - 83, 361 S.E.2d 321, 323 (1987) (affirming the trial court’s denial of a motion to dismiss the charge of possession with the intent to sell and deliver cocaine where the

State presented evidence “sufficient to allow the jury to infer that [the] defendant was in constructive possession of cocaine”); *see also King*, 291 N.C. App. at 269–70, 894 S.E.2d at 796 (“The knowing possession element of the offense of trafficking by possession may be established by showing . . . the defendant had constructive possession[.]” (citation and internal quotation marks omitted)).

“A person has actual possession of . . . [cocaine] if it is on his person, he is aware of its presence, and either by himself or together he has the power and intent to control its disposition or use.” *State v. Hooks*, 243 N.C. App. 435, 444, 777 S.E.2d 133, 140 (2015) (citation omitted). Where a defendant did not have actual possession of cocaine, the State may survive a motion to dismiss by presenting substantial evidence that the defendant constructively possessed cocaine. *See State v. Alston*, 193 N.C. App. 712, 715, 668 S.E.2d 383, 386 (2008). In the instant case, there is no Record evidence tending to show Defendant had the cocaine on his person, meaning he never had actual possession of the substance. *See Hooks*, 243 N.C. App. at 444, 777 S.E.2d at 140. As such, to survive Defendant’s motion to dismiss, the State must have demonstrated by substantial evidence that Defendant constructively possessed the cocaine. *See Alston*, 193 N.C. App. at 715, 668 S.E.2d at 386.

Constructive possession of cocaine “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 controlled substance.” *Id.* at 715, 668 S.E.2d at 386 (citation omitted) (cleaned up). “A finding of constructive possession requires a

totality of the circumstances analysis[.]” and where such analysis reveals the defendant was “not in exclusive possession of the place where contraband [was] found, . . . the State must [have] show[n] other incriminating circumstances linking the defendant to the contraband.” *State v. Chekanow*, 370 N.C. 488, 493, 496, 809 S.E.2d 546, 550, 552 (2018) (citations omitted). Our Supreme Court has previously assessed whether a defendant had exclusive control of a vehicle in which cocaine was found, and upon its consideration of the totality of the circumstances, found the defendant did not have exclusive control where he was not the sole occupant of the vehicle. *See State v. Matias*, 354 N.C. 549, 552, 556 S.E.2d 269, 271 (2001). Regarding the State’s demonstration of incriminating circumstances, our Supreme Court in *Chekanow* set forth certain factors that may be considered under a totality of the circumstances analysis (the “*Chekanow* factors”):

- (1) [T]he 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.

370 N.C. at 496, 809 S.E.2d at 552 (citations omitted). In consideration of these factors, “[t]his Court has held a large amount of currency can be evidence tending to establish constructive possession[.] . . . [and e]vidence of conduct by a defendant indicating his knowledge of the presence of a controlled substance is also sufficient for a jury to find constructive possession.” *King*, 291 N.C. App. at 270, 894 S.E.2d at

796 (citation omitted).

1. Exclusive Control of the Vehicle

Here, the Record demonstrates that, before Hysa fled the scene, Defendant and Hysa were co-occupants of Defendant's vehicle, with Defendant seated in the driver's seat and Hysa seated next to him in the front passenger seat. Under these circumstances, and per our Supreme Court's prior consideration of similar circumstances to determine whether a defendant had exclusive control of a vehicle, it cannot be said Defendant had exclusive possession of his vehicle—where the cocaine was found by the arresting officers. *See Matias*, 354 N.C. at 552, 556 S.E.2d at 271; *see also Chekanow*, 370 N.C. at 493–94, 809 S.E.2d at 550–51. As such, to show constructive possession, the State had the burden of demonstrating Defendant's intent and power to maintain control over the disposition and use of the cocaine, as evinced by incriminating circumstances linking Defendant to the cocaine. *See Alston*, 193 N.C. App. at 715 -16, 668 S.E.2d at 386; *see also Chekanow*, 370 N.C. at 496, 809 S.E.2d at 552.

2. Chekanow Factors

Defendant contends that the State's circumstantial evidence fails to demonstrate he had the intent and power to maintain control over the cocaine, and the presence of conflicting evidence renders any conclusion regarding constructive possession mere "suspicion or conjecture[.]" Defendant's contention is unpersuasive. Upon our totality of the circumstances analysis as discussed below, in consideration

of the *Chekanow* factors and viewing the evidence in the light most favorable to the State, we conclude the State demonstrated incriminating circumstances linking Defendant to the cocaine found in his vehicle. *See Chekanow*, 370 N.C. at 496, 809 S.E.2d at 552; *see also Rose*, 339 N.C. at 192, 451 S.E.2d at 223. We now delineate our assessment of each of the individual *Chekanow* factors.

As to the first factor—ownership and control of the property in which the contraband was found—while Defendant’s exclusive control of the vehicle is unsupported by the evidence, Defendant admitted to the arresting officers that he owned the vehicle in which they found the cocaine, and the uncontroverted facts demonstrate Defendant, immediately prior to the discovery of the cocaine and his arrest, occupied the vehicle. The cocaine was found in the center compartment of Defendant’s car, and between the passenger’s seat and center compartment; as Defendant both owned and occupied the vehicle, drawing all reasonable inferences in favor of the State, this is evidence of an incriminating circumstance which tends to support a finding of constructive possession. *See Chekanow*, 370 N.C. at 496, 809 S.E.2d at 552; *see also Rose*, 339 N.C. at 192, 451 S.E.2d at 223.

As to the second and third factors—proximity to the contraband and indicia of control over the property where the contraband was found, respectively—the Record shows Defendant occupied the driver’s seat of his vehicle, and upon the officers’ search of the vehicle, they found four bags of cocaine, two between the center console and the passenger seat, and two within the mason jar found in the bottom of the

center console compartment. From this evidence, a reasonable juror could conclude not only that Defendant was in close proximity to the contraband, but also that Defendant's control of the vehicle as the driver—while not exclusive—was greater than that of Hysa. *See Chekanow*, 370 N.C. at 496, 809 S.E.2d at 552; *see also Schmieder*, 265 N.C. App. at 101, 827 S.E.2d at 327–28.

As to the fourth factor—suspicious behavior at or near the time of the contraband's discovery—the Record contains evidence that Defendant: allowed a shirtless man into his vehicle at 4:00 a.m. in a Denny's parking lot, opened his driver's-side door when Officer Merritt instructed he roll down the window, attempted to depart from the scene after Officer Merritt left to pursue Hysa, and lied to the arresting officers about his knowledge of the methamphetamine pill found in his pocket. Based on this evidence, a reasonable juror could conclude Defendant's behavior at or near the time of the cocaine's discovery was, under the circumstances, suspicious. *See Chekanow*, 370 N.C. at 496, 809 S.E.2d at 552; *see also Schmieder*, 265 N.C. App. at 101, 827 S.E.2d at 327–28.

As to the fifth and final factor—other evidence found in the defendant's possession that links the defendant to the contraband—between his pockets and the top compartment of the car's center console, Defendant was discovered with over \$2,000 in cash, and this Court has held the possession of a large amount of currency is incriminating evidence tending to establish constructive possession. *See Chekanow*, 370 N.C. at 496, 809 S.E.2d at 552; *see also King*, 291 N.C. App. at 270,

894 S.E.2d at 796. Further, Officer Johnson’s testimony that some of the cocaine was in “plain view[,]” together with Defendant’s testimony regarding his interactions with Hysa at or near the time of the contraband’s discovery, would allow a reasonable juror to conclude Defendant was—at a minimum—aware of the cocaine’s presence in his vehicle. *See King*, 291 N.C. App. at 270, 894 S.E.2d at 796; *see also Schmieder*, 265 N.C. App. at 101, 827 S.E.2d at 327–28. As this Court has provided, evidence indicating a defendant’s awareness of the presence of a controlled substance may be sufficient to support a jury’s finding of constructive possession. *See King*, 291 N.C. App. at 270, 894 S.E.2d at 796; *see also Chekanow*, 370 N.C. at 496, 809 S.E.2d at 552.

Upon our assessment of the *Chekanow* factors, under the totality of the circumstances, we find the State presented circumstantial evidence of incriminating circumstances from which a reasonable juror could conclude Defendant had the intent and power to maintain control over the disposition and use of the cocaine. *See Alston*, 193 N.C. App. at 715, 668 S.E.2d at 386; *see also Chekanow*, 370 N.C. at 496, 809 S.E.2d at 552. While Defendant asserts the presence of conflicting evidence renders this conclusion mere speculation or conjecture, “[c]ircumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence[,]” *Stone*, 323 N.C. at 452, 373 S.E.2d at 433, and “[c]ontradictions and discrepancies [in the evidence] do not warrant dismissal of the case; rather, they are for the jury to resolve.” *Agustin*, 229 N.C. App.

at 242, 747 S.E.2d at 318 (citation omitted).

Accordingly, upon our de novo review, we conclude Defendant's constructive possession of the cocaine was supported by substantial circumstantial evidence, and as such, the State met its evidentiary burden to survive Defendant's motions to dismiss. *See Schmieder*, 265 N.C. App. at 101, 827 S.E.2d at 327; *see also English*, 241 N.C. App. at 104, 772 S.E.2d at 745; *Rich*, 87 N.C. App. at 383, 361 S.E.2d at 324; *King*, 291 N.C. App. at 269–70, 894 S.E.2d at 796; *Bagley*, 183 N.C. App. at 523, 644 S.E.2d at 621; N.C. Gen. Stat. §§ 90-95(a)(1), (h)(3). The trial court's denial of Defendant's motions to dismiss is affirmed.

B. Request for New Counsel

Defendant argues the trial court, in denying his request for new counsel, violated Defendant's right to counsel under the Sixth Amendment to the United States Constitution and N.C. Gen. Stat. § 15A-603 (2023). We disagree.

This Court's "standard of review for alleged violations of constitutional rights is *de novo*." *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009) (citation omitted).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee a defendant "the right to assistance of counsel[,] . . . [and] a criminal defendant likewise has a constitutional right to proceed *without* counsel when he voluntarily and intelligently elects to do so." *State v. Lane*, 365 N.C. 7, 19, 707 S.E.2d 210, 218 (2011) (citing *Faretta v. California*, 422 U.S. 806, 807, 95 S.Ct. 5. 2525, 45

L.E.2d 562, 566 (1975)) (internal quotation marks omitted) (emphasis in original); *see also* U.S. Const. amend. VI, XIV. Under North Carolina law, however, it is well established that:

The right to counsel guaranteed to all defendants in state prosecutions by the fourteenth amendment requires only that [the] defendant receive competent assistance of counsel. Thus, when faced with a claim of conflict and a request for appointment of substitute counsel, the trial court must satisfy itself *only* that present counsel is able to render competent assistance and that the nature or degree of the conflict is not such as to render that assistance ineffective. The United States Constitution requires no more.

State v. Thacker, 301 N.C. 348, 353, 271 S.E.2d 252, 256 (1980) (emphasis added); *see also State v. Gary*, 348 N.C. 510, 516, 501 S.E.2d 57, 62 (1998) (“In order to be granted substitute counsel, the defendant must show good cause, such as a conflict of interest, a complete breakdown in communication, or an irreconcilable conflict which leads to an apparently unjust verdict.” (citations and internal quotation marks omitted)). Where a trial court’s inquiry is sufficient to “learn that the [alleged] conflict [is] . . . not such as to render the public defender’s assistance ineffective[,]” a defendant’s request for appointment of new counsel is properly denied. *Thacker*, 301 N.C. at 353, 271 S.E.2d at 256.

Here, Defendant’s dissatisfaction with counsel derived from Defendant’s belief that counsel lacked sufficient knowledge of the material facts of the case. When presented with this information, as well as Defendant’s request that he be appointed

new counsel, the trial court: heard both counsel's and Defendant's recounting of the conversation that gave rise to Defendant's dissatisfaction; confirmed once with counsel that he had "reviewed the discovery[.]" and twice that counsel was prepared to proceed to trial; confirmed with counsel that there are no rules of professional conduct that would prevent counsel from proceeding to trial; and heard from the State's attorney, who informed the court that she had discussed the case with opposing counsel "at length."

Upon our review of these relevant facts, we conclude the trial court properly denied Defendant's request for new counsel. As articulated above, upon a defendant's claim of conflict with counsel and request for appointment of new counsel, the trial court is required *only* to satisfy itself that counsel is able to render competent representation, and that the conflict would not render ineffective counsel's assistance. *See Thacker*, 301 N.C. at 353, 271 S.E.2d at 256. The trial court, in its colloquy with counsel and the State's attorney, satisfied itself that counsel was able to render competent representation of Defendant, and that Defendant's concern over counsel's knowledge of the facts of the case would not render ineffective counsel's assistance. As such, the trial court conducted itself fully in keeping with the standard for proper denial of a request for new counsel. *See id.* at 353, 271 S.E.2d at 256.

Defendant, however, argues that the trial court, in violation of N.C. Gen. Stat. § 15A-603, did not properly advise Defendant of his right to counsel, and failed to consider the ability of Defendant's family to hire replacement counsel. This argument

is patently unmeritorious. N.C. Gen. Stat. § 15A-603 concerns only a defendant's right to counsel and the inquiries the trial court must make to ensure this right is protected. *See* N.C. Gen. Stat. § 15A-603. As the current issue concerns only Defendant's request for appointment of *substitute* counsel, N.C. Gen. Stat. § 15-603 is immaterial to the current case. Upon hearing Defendant's claim of conflict and his request for appointment of substitute counsel, the trial court, under the United States Constitution and North Carolina law, was required *only* to satisfy itself that counsel was able to render competent assistance and that the alleged conflict would not render ineffective the assistance. *See Thacker*, 301 N.C. at 353, 271 S.E.2d at 256. As explained above, the trial court did precisely that, and the trial court's denial of Defendant's request for new counsel is therefore affirmed.

IV. Conclusion

Upon review, we conclude the State met its evidentiary burden of substantial evidence in support of a finding of constructive possession, and therefore affirm the trial court's denial of Defendant's motions to dismiss. We further conclude, as the trial court satisfied itself that counsel was able to render competent assistance and that Defendant's conflict with counsel did not render the assistance ineffective, and as this is all that was required under the United States Constitution and North Carolina law, the trial court properly denied Defendant's request for new counsel. We therefore affirm the trial court's denial of Defendant's request.

STATE V. POWELL

Opinion of the Court

AFFIRMED.

Chief Judge DILLON and Judge THOMPSON concur.

Report per Rule 30(e).