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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-595

Filed 7 May 2025

Union County, Nos. 20CRS052187-890, 20CRS052188-890

STATE OF NORTH CAROLINA

v.

ASHEKA MARIE DAVIS

Appeal by Defendant from Judgments entered 3 November 2023 by Judge Jonathan Wade Perry in Union County Superior Court. Heard in the Court of Appeals 12 February 2025.

*Attorney General Jeff Jackson, by Special Deputy Attorney General Colin Justice, for the State.*

*Edward Eldred for Defendant.*

HAMPSON, Judge.

**Factual and Procedural Background**

Asheka Marie Davis (Defendant) appeals from Judgments entered upon jury verdicts finding her guilty of Possession of a Firearm by a Felon, Trafficking in Heroin by Possession, and Trafficking in Heroin by Transportation. The Record before us, including evidence presented at trial, tends to reflect the following:

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On 28 May 2020, a confidential informant reported to the Monroe Police Department a drug transaction was expected to take place in Monroe, North Carolina. Officers were told to look for a white pickup truck driven by a woman. The informant indicated heroin would be found inside the vehicle. Officer Bryson Burton was advised a vehicle matching the description provided by the informant was traveling his direction; Officer Burton pulled the truck over on the basis its window tint was too dark. Officer Burton asked Defendant to step out of the vehicle because she seemed “nervous”. A K-9 sniff was conducted around the vehicle, and the dog alerted at the driver’s side door of the truck. The officers searched the vehicle and located a gun in the center console but did not find any drugs. An officer ran the gun’s serial number and discovered it had previously been reported as stolen.

Defendant was handcuffed and placed in Officer Burton’s patrol vehicle while the officers waited for a female officer to arrive and conduct a pat-down of Defendant. When Defendant was removed from the vehicle to be searched, her handcuffs appeared to be loose and one of her hands appeared to be entirely out of the handcuffs. Nothing was found on Defendant during the search.

Defendant was placed back into Officer Burton’s vehicle and driven to jail. Shortly thereafter, Officer Burton discovered a package containing what was found to be approximately 57 grams of a combination of heroin and fentanyl underneath the back seat where Defendant had been sitting. Officer Burton testified he regularly checks the seats of his vehicle after he transports someone in the back, and there had

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been no contraband or illegal narcotics in his vehicle prior to Defendant being placed there.

On 3 August 2020, Defendant was indicted for Possession of a Stolen Firearm, Possession of a Firearm by a Felon, Trafficking in Heroin by Possession, and Trafficking in Heroin by Transportation. The State offered Defendant a plea deal, which she rejected. At the close of the State's evidence, defense counsel moved to dismiss all charges. The trial court denied the Motion. At the close of all evidence, defense counsel renewed its Motion; the trial court dismissed the charge of Possession of a Stolen Firearm but submitted the three remaining charges to the jury. The jury returned verdicts finding Defendant guilty of all three charges. The trial court entered Judgments consistent with the jury verdicts and imposed consecutive sentences of 225 to 282 months imprisonment for each Trafficking offense, and a 17 to 30 month sentence for Possession of a Firearm by a Felon, to run concurrently with the Trafficking sentences. Defendant gave oral notice of appeal in open court.

**Issue**

The issue on appeal is whether the trial court erred by denying Defendant's Motions to Dismiss the charge of Trafficking in Heroin by Transportation.

**Analysis**

"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) (citation omitted). "Upon [a] 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) (citation omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Brown*, 310 N.C. 563, 566, 313 S.E.2d 585, 587 (1984) (citation omitted). "If the evidence is sufficient only to raise a suspicion or conjecture as to either the commission of the offense or the identity of the defendant as the perpetrator of it, the motion [to dismiss] should be allowed." *Fritsch*, 351 N.C. at 378, 526 S.E.2d at 455 (citation omitted).

"In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, 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) (citation omitted). However, "[w]hether the State has offered such substantial evidence is a question of law for the trial court." *State v. McKinney*, 288 N.C. 113, 119, 215 S.E.2d 578, 583 (1975) (citations omitted).

Defendant challenges the denial of her Motions to Dismiss solely with respect to the charge of Trafficking in Heroin by Transportation. Under N.C. Gen. Stat. § 90-95, any person who transports four grams or more of heroin shall be guilty of Felony Trafficking in Heroin by Transportation. See N.C. Gen. Stat. § 90-95(h)(4) (2023).

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On appeal, Defendant argues the State failed to present sufficient evidence she transported heroin.

In the context of trafficking, we have held “transportation” means “any real carrying about or movement from one place to another.” *State v. Outlaw*, 96 N.C. App. 192, 197, 385 S.E.2d 165, 168 (1989) (citing *Cunard Steamship Co. v. Mellon*, 262 U.S. 100, 122, 43 S. Ct. 504, 506, 67 L. Ed. 894, 901 (1922)), *disc. rev. denied*, 326 N.C. 266, 389 S.E.2d 118 (1990). “A conviction for trafficking in [heroin] by transportation requires that the State show a substantial movement.” *State v. Wilder*, 124 N.C. App. 136, 140, 476 S.E.2d 394, 397 (1996) (citation and quotation marks omitted). “Our courts have determined that even a very slight movement may be ‘real’ or ‘substantial’ enough to constitute transportation depending upon the purpose of the movement and the characteristics of the areas from which and to which the contraband is moved.” *State v. McRae*, 110 N.C. App. 643, 646, 430 S.E.2d 434, 436 (1993), *disc. rev. denied*, 334 N.C. 625, 435 S.E.2d 347 (1993).

In *Outlaw*, this Court upheld a conviction for trafficking by transportation where the defendant kept cocaine in a locked toolbox in his house; removed the toolbox from his house; placed the toolbox in his parked truck; and backed down his driveway, but not off his property, before law enforcement stopped him. 96 N.C. App. at 197, 385 S.E.2d at 168-69.

Conversely, in *State v. Williams*, this Court reversed the denial of the defendant’s motion to dismiss a charge of trafficking in cocaine where the State’s

evidence tended to show the cocaine was seized from a parked vehicle which was stationary during the entire course of law enforcement's search and seizure. 177 N.C. App. 725, 729, 630 S.E.2d 216, 219-20 (2006), *rev. denied*, 360 N.C. 581, 636 S.E.2d 198 (2006).

Here, by contrast, the State presented evidence tending to show Defendant was driving before being pulled over and temporarily placed inside of Officer Burton's patrol vehicle where heroin was subsequently found—when there had been none prior to Defendant being placed and held there. Notably, Defendant does not challenge her conviction for Trafficking in Heroin by Possession on appeal. *See State v. Sares*, 182 N.C. App. 762, 764, 643 S.E.2d 49, 50 (2007) ("It is important to note that defendant does not contest the trial court's finding that he had possession of marijuana at the time of his arrest. Under the circumstances, it would be illogical to conclude that defendant was guilty of trafficking in marijuana by possession but was not personally involved in transporting marijuana[.]").

Defendant argues there was no evidence of where she had come from or how long she had been driving before she was pulled over. This argument is unavailing. We have held evidence of slight or short movement is sufficient to constitute transportation for the purposes of trafficking. *See McRae*, 110 N.C. App. at 646, 430 S.E.2d at 437 (defendant carried drugs from inside a home to a car by which he left the premises); *State v. Greenidge*, 102 N.C. App. 447, 450, 402 S.E.2d 639, 641 (1991) (defendant tossed drugs off back porch into yard next door); *State v. Manning*, 139

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N.C. App. 454, 468, 534 S.E.2d 219, 228 (2000) (defendant ran “some distance” from arresting officers while carrying 109 grams of cocaine), *aff’d per curiam*, 353 N.C. 449, 545 S.E.2d 211 (2001); *Sares*, 182 N.C. App. at 764, 643 S.E.2d at 50 (defendant was driven to a shopping center where he was arrested with marijuana on his person). Indeed, Defendant concedes she transported heroin from “somewhere” to the gas station parking lot.

Thus, viewed in the light most favorable to the State, there was evidence Defendant carried heroin from one location to another. Therefore, the trial court properly denied Defendant’s Motions to Dismiss. Consequently, the trial court did not err in entering Judgments against Defendant on the jury verdicts.

**Conclusion**

Accordingly, for the foregoing reasons, we conclude there was no error in Defendant’s trial and affirm the Judgments.

NO ERROR.

Judges TYSON and GRIFFIN concur.

Report per Rule 30(e).