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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-742

Filed 7 May 2025

Guilford County, Nos. 21CRS070221-400, 21CRS070222-400

STATE OF NORTH CAROLINA

v.

JEROME PATRICK BETHEA, Defendant.

Appeal by defendant from judgment entered 12 October 2023 by Judge Aaron Jay Berlin in Guilford County Superior Court. Heard in the Court of Appeals 8 April 2025.

Attorney General Joshua H. Stein, by Assistant Attorney General Scott A. Conklin, for the State.

Richard J. Costanza for defendant-appellant.

FLOOD, Judge.

Defendant Jerome Patrick Bethea appeals from the trial court's verdict finding him guilty of one count of trafficking in heroin by possession of four or more grams, one count of trafficking in heroin by transportation of four or more grams, and one count of trafficking in heroin by possession of twenty-eight or more grams. On appeal, Defendant argues the trial court erred in denying Defendant's motion to dismiss the

charge of trafficking in heroin by possession of more than four grams, because Defendant could have been convicted of only one single possession charge for possessing both the heroin found on his person and the heroin found in his apartment. Upon review, we conclude the trial court did not err in denying Defendant's motion to dismiss because the State presented substantial evidence that the two acts of possession were separate in time and space.

I. Factual and Procedural Background

In February of 2021, Detective Daniel Rakes of the Greensboro Police Department received information from a concerned citizen who observed a black Infiniti SUV, on multiple occasions, involved in what the citizen believed to be short, hand-to-hand narcotics-related transactions. After researching the license plate number, Detective Rakes determined that Defendant owned the vehicle. Over the course of the following month, the Greensboro Police Department conducted surveillance of Defendant, and observed him driving the vehicle to and from his apartment.

On 18 March 2021, Detective Rakes obtained a search warrant and waited outside Defendant's apartment. Upon observing Defendant leave the apartment and get into the vehicle, Detective Rakes and a fellow detective of the Greensboro Police Department, Detective Daniel Kroh, parked in front of the vehicle and verbally commanded Defendant to put the vehicle in park, and Defendant complied. Detectives Rakes and Kroh then "quickly removed" Defendant from the vehicle and

placed him in handcuffs. Detective Rakes retrieved from Defendant's left pocket two small plastic bags, each of which contained a heroin mixture, and Detective Kroh retrieved "a few more" small plastic bags containing a heroin mixture from Defendant's right pocket. After being searched, Defendant handed over the keys to his apartment to "one of" the detectives, at which point Detectives Rakes and Kroh, along with several other law enforcement officers who had by then arrived at the scene, entered and searched the apartment. The detectives observed a "pretty good amount" of a heroin mixture in the master bedroom closet; the heroin mixture was very wet and was drying on a piece of cardboard, which, to Detective Rake, indicated that the heroin mixture found in the closet was a "specific type" that had just been manufactured and placed in the closet to dry. The heroin mixture found on Defendant's person weighed approximately 5.18 grams, and the heroin mixture found in the apartment weighed approximately 44.19 grams.

Defendant was indicted for: one count of trafficking in heroin by possession of four or more grams; one count of trafficking in heroin by transportation of four or more grams; one count of trafficking in heroin by possession of twenty-eight or more grams; one count of maintaining a dwelling to keep controlled substances; and one count of trafficking in heroin by manufacturing twenty-eight or more grams. The matter came on for trial on 9 October 2023. Following the conclusion of the State's evidence, Defendant moved to dismiss all charges, alleging an insufficiency of evidence, and the trial court denied Defendant's motion. Defendant did not offer

evidence and renewed his motion to dismiss the charges. The trial court denied Defendant's motion to dismiss the charges at the close of all the evidence. The jury found Defendant guilty of one count of trafficking in heroin by possession of four or more grams, one count of trafficking in heroin by transportation of four or more grams, and one count of trafficking in heroin by possession of twenty-eight or more grams. The remaining charges were voluntarily dismissed by the State. Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction to review an appeal from a final judgment of a superior court, pursuant to N.C.G.S. § 7A-27(b) (2023).

III. Standard of Review

“This Court reviews the trial court's denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62 (2007). “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. Williams*, 362 N.C. 628, 632–33 (2008) (internal quotation marks omitted). “In reviewing challenges to the sufficiency of evidence, [this Court] must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences.” *State v. Fritsch*, 351 N.C. 373, 378–79 (2000). This Court must determine whether there is substantial evidence of each element of the offense, and that the defendant committed the offense. *State v. Jones*, 110 N.C. App. 169, 177 (1993). “Substantial evidence is such relevant evidence as a reasonable

mind might accept as adequate to form a conclusion.” *State v. Smith*, 300 N.C. 71, 78 (1980).

IV. Analysis

On appeal, Defendant argues the trial court erred in denying Defendant’s motion to dismiss the charge of trafficking in heroin by possession of more than four grams. Specifically, Defendant argues he could have only been convicted of one single possession charge for possessing both the heroin found on his person and the heroin found in his apartment, because there was insufficient evidence presented at trial to support convictions for both offenses. We disagree.

“Whether particular circumstances of possession constitute a single criminal act or several is a determination of a factual nature to be made by the trial court.” *State v. Rozier*, 69 N.C. App. 38, 55 (1984). “The circumstances of each case will determine whether separate offenses may properly be charged.” *Id.* at 55. “In order for the State to obtain multiple convictions for possession of a controlled substance, the State must show distinct acts of possession separated in time and space.” *State v. Moncree*, 188 N.C. App. 221, 231 (2008). “[T]he time/space differential between offenses need not be large.” *Rozier*, 69 N.C. App at 55.

In *State v. Moncree*, the defendant was pulled over by a police officer, when the officer noticed that the defendant’s vehicle had a broken taillight. 188 N.C. App. at 224. During the traffic stop, the officer observed a marijuana joint and a “chunk” of marijuana in the front passenger seat. *Id.* at 224. At that point, the officer placed

the defendant and the passenger in the back of his patrol car, while he searched the vehicle. *Id.* at 224. The officer did not find any additional marijuana in the vehicle, and upon issuing citations to the defendant and the passenger for possession of marijuana, informed them they were free to leave. *Id.* at 224. As the defendant and passenger walked back to the defendant's vehicle, the officer noticed a bag of cocaine in the backseat of his patrol car. *Id.* at 224. The officer then restrained the defendant and passenger and transported them to the county sheriff's department. *Id.* at 224. At the sheriff's department, the defendant was instructed to take off his shoes, in one of which a sheriff's deputy observed a bag containing marijuana. *Id.* at 224. The defendant was convicted of separate counts of possession of marijuana based on marijuana that was: found in the defendant's vehicle, found in his shoe, and possessed on the premises of a local confinement facility. *Id.* at 229.

On appeal, the defendant argued that he should not have been charged with three separate counts of possession because the evidence demonstrated that all three counts arose from one continuous act of possession. *Id.* at 230. This Court concluded that the defendant could have been convicted only of one count of possession for the possession of marijuana found on the vehicle's seat and in the defendant's shoe, because the State presented no evidence showing that the defendant came into possession of the marijuana in his shoe after his arrest. *Id.* at 231–32.

Here, while Defendant relies on *Moncree* to support his argument, Defendant's reliance is misplaced. Defendant was convicted of (1) possessing a heroin mixture

found in his possession immediately after the police removed him from the vehicle, and (2) possessing a heroin mixture the police located inside the apartment shortly after Defendant was removed from the vehicle. Unlike in *Moncree*, where marijuana was found in the defendant's vehicle and in the defendant's shoe, the State presented evidence that the possession of the heroin mixture found on Defendant's person was separate in space from the heroin mixture found in the closet of his apartment. *Id.* at 231. Specifically, the State presented evidence indicating that Defendant came into possession of the heroin mixture found in the apartment at a different time than the heroin mixture found on his person. At trial, Detective Rakes testified that the heroin mixture found in the closet was very wet and being dried out, indicating that it was made recently and not yet ready for sale, while the heroin mixture found on Defendant's person was already packaged and being transported for sale.

The circumstances of this case dictate that separate offenses may be properly charged because a reasonable mind might accept Detective Rakes' testimony as adequate to support the conclusion that Defendant came into possession of the heroin mixture found in the apartment more recently than the heroin mixture found on his person. *See Smith*, 300 N.C. at 78; *Rozier*, 69 N.C. App. at 55. Accordingly, the State presented substantial evidence that Defendant's acts of possession were separate "in time and space." *See Moncree*, 188 N.C. App. at 231. Thus, we conclude the trial court did not err in denying Defendant's motion to dismiss.

IV. Conclusion

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Opinion of the Court

Upon review, we conclude the trial court did not err in denying Defendant's motion to dismiss because the State presented substantial evidence that the two acts of possession of heroin were separated in time and space.

NO ERROR.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).