NO. COA01-1015

NORTH CAROLINA COURT OF APPEALS

Filed: 4 June 2002

STATE OF NORTH CAROLINA

v. Durham County
No. 99 CRS 70976
00 CRS 3192

DAVID PAUL POWELL,
Defendant.

Appeal by defendant from judgment entered 27 February 2001 by Judge Evelyn W. Hill in Durham County Superior Court. Heard in the Court of Appeals 28 May 2002.

Attorney General Roy Cooper, by Assistant Attorney General William W. Stewart, Jr., for the State.

Brian Michael Aus, for the defendant.

HUDSON, Judge.

The jury convicted defendant of possession of heroin and of the status of habitual felon. He was sentenced to a minimum of 101 months and a maximum of 131 months.

The State presented evidence tending to show that on 3 December 1999, Investigator William Evans of the vice and narcotics unit of the Durham Police Department observed a group of men, including defendant, gathered around a table near the picnic shelter of Burton Park. Investigator Evans had made more than fifty purchases of heroin and had made numerous arrests for

narcotics violations at Burton Park. Investigator Evans observed a man, whom he knew as Marcus Brooks and whom he had arrested twice for selling heroin, pass out something to the men in the circle. Investigator Evans recognized Timothy Lamont Little and John Williams, two other men from whom he had twice purchased heroin in the past, among the group of the men. During the ninety minutes he maintained surveillance, Investigator Evans saw Brooks yell at and flag down passing vehicles. Williams would then approach the vehicle and conduct a transaction with the driver. After seeing Williams conduct a transaction with a person in a pickup truck, Investigator Evans notified uniformed and undercover officers in marked and unmarked vehicles to come into the area and make arrests.

As the police vehicles entered the area, the men around the picnic table scattered. Brooks ran south through the park, Little walked briskly toward McDougald Terrace, and defendant walked north through the park toward a picnic table. Officer Robert Gaddy, wearing a Durham Police Department vest, stopped defendant. With defendant's consent, Officer Gaddy searched defendant's person and found a glassine bag containing a white powder substance in the right front pocket of defendant's jacket. The substance was subsequently identified as heroin.

Defendant's brother, Trevor, testified on defendant's behalf that the jacket defendant was wearing belonged to him (Trevor) and that defendant and another one of their brothers sometimes borrowed it.

Defendant presents two assignments of error for review. First, he contends that the court committed plain error by admitting the contraband into evidence. He argues the court should have recognized that the exhibit was the subject of a motion to suppress for which no written order was issued. He also argues that the lack of a complete record of the suppression hearing precludes meaningful appellate review.

By failing to object during trial to the admission of the evidence, defendant waived appellate review of the denial of the motion to suppress and of the admissibility of the evidence. *See State v. Golphin*, 352 N.C. 364, 405, 533 S.E.2d 168, 198 (2000), *cert. denied*, 532 U.S. 931, 149 L. Ed. 2d 305 (2001). Therefore, our consideration of the issue is governed by the plain error standard. *See State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983). For relief to be granted, it must be shown that the claimed error is so fundamental or grave that it resulted in the denial of a fundamental right of the accused or a miscarriage of justice. *See id.* We do not find error or plain error. Defendant first contends that the trial court's omission of findings of fact and conclusions of law on the motion to suppress precludes meaningful appellate review. N. C. Gen. Stat. § 15A-977(d) (1999) does not always require such findings. Where "there is no material conflict in the evidence presented at a motion to suppress evidence, the trial judge may admit the challenged evidence without specific findings of fact." *State v. Norman*, 100 N.C. App. 660, 663, 397 S.E.2d 647, 649 (1990) (citing *State v. Phillips*, 300 N.C.

678, 685, 268 S.E.2d 452, 457 (1980)), *disc. rev. denied*, 328 N.C. 273, 400 S.E.2d 459 (1991). "In that event, the necessary findings are implied from the admission of the challenged evidence." *Id.* (internal citations and quotations omitted). All of the evidence produced at the suppression hearing supports the conclusion that the exigencies of the circumstances gave the officers sufficient basis to stop the defendant and to search him. There was no need for detailed findings and conclusions, and there was no error in the admission of the evidence seized. Defendant has not shown any violation of his constitutional rights. Defendant's first assignment of error is overruled.

Second, defendant contends the court erred by denying his motion to dismiss the charge for insufficient evidence. He argues the evidence fails to show he knowingly possessed the contraband. Upon a motion to dismiss, the court must examine the evidence in the light most favorable to the State and give the State the benefit of every reasonable inference that may be drawn from the evidence. *See State v. Benson*, 331 N.C. 537, 544, 417 S.E.2d 756, 761 (1992). Contradictions and discrepancies in the evidence are to be disregarded and left for resolution by the jury. *See id.* The test is the same whether the evidence is direct, circumstantial, or both. *See State v. Earnhardt*, 307 N.C. 62, 68, 296 S.E.2d 649, 653 (1982). If the evidence supports a reasonable inference of guilt, then the court must deny the motion and allow the jurors to determine whether the evidence satisfies them beyond a reasonable doubt of the defendant's guilt. *See State v. Jones*,

303 N.C. 500, 504, 279 S.E.2d 835, 838 (1981).

Pursuant to N. C. Gen. Stat. §§ 90-95(a)(3) & (d)(1) (1999) and *State v. Rogers*, 32 N.C. App. 274, 278, 231 S.E.2d 919, 922 (1977), the charge of felonious possession of a controlled substance consists of the knowing possession of the controlled substance. The defendant's state of mind, described as "guilty knowledge," must ordinarily be proved by circumstantial evidence. *State v. Weldon*, 314 N.C. 401, 404, 333 S.E.2d 701, 703 (1985). Such circumstantial evidence may include the discovery of contraband on the person of the accused, a circumstance which alone is sufficient to raise an inference of knowledge and possession sufficient to take a charge of felonious possession to the jury and overcome a motion to dismiss. *See State v. Johnson*, 124 N.C. App. 462, 468, 478 S.E.2d 16, 20 (1996), *cert. denied*, 345 N.C. 758, 485 S.E.2d 304 (1997).

Here, not only was the contraband found in the pocket of the coat defendant was wearing, defendant was present in an area notorious for the sale of heroin. Defendant was seen receiving something from a person who had been previously arrested for selling heroin. We hold the court correctly denied the motion to dismiss.

No error.

Judges GREENE and TYSON concur.

Report per Rule 30(e).