NO. COA01-1308

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

STATE OF NORTH CAROLINA

v. Pitt County
Nos. 00 CRS 4854, 67006

RANDY LEE ARTIS

Appeal by defendant from judgment entered 2 April 2001 by Judge Quentin T. Sumner in Pitt County Superior Court. Heard in the Court of Appeals 15 July 2002.

Attorney General Roy Cooper, by Assistant Attorney General David G. Heeter, for the State.

Jonathan E. Jones for defendant-appellant.

WALKER, Judge.

A jury found defendant guilty of possession of cocaine. After admitting to being an habitual felon, defendant was sentenced to 121 to 155 months in prison. Defendant gave notice of appeal in open court.

The State's evidence tended to show that, while conducting surveillance from a nearby field on the night of 7 November 1999, Greenville Police Officer W.A. Holloman observed defendant standing in a breezeway at the Heritage Inn Hotel. Holloman had previously conducted "well over 200 hours of surveillance" due to the high

volume of narcotics activity at the hotel. Believing that defendant was selling drugs, Holloman sought to determine where defendant was hiding his stash of drugs. He explained that dealers commonly hid their stash and money in a nearby location, so they would not be carrying contraband if they were stopped by police. Over the course of two hours, Holloman watched defendant approach at least five vehicles which drove through the hotel parking area. On some occasions defendant made initial contact with a vehicle, went back to the breezeway, and returned to the vehicle. In other instances, defendant had only one contact with the vehicle. Holloman saw defendant reach his head or hands into each vehicle but did not see any items exchanged. Defendant's interaction with a vehicle lasted "[n]o more than one and [a] half to two minutes[.]"

Realizing he would not be able to learn any additional information from his position, Holloman drove with Sergeant Phipps into the hotel parking lot. As they approached defendant, Sergeant Phipps yelled for him to stop. Defendant turned to look at the officers and walked quickly around a corner out of their field of vision. Phipps ran into the courtyard to intercept defendant but could not find him. Holloman saw defendant on a terrace on the hotel's second floor. Holloman directed defendant to come down to ground level, meeting him in a corridor beside the stairwell. Holloman observed Officer Fisher conduct a consent search of defendant. In defendant's left jacket pocket were several small plastic baggies that were "[l]ight pink-peach" in color. Holloman

began to retrace defendant's steps up to the second floor terrace, looking for contraband. When he arrived at the entrance of the stairwell, Holloman found a brown piece of paper which held seven pieces of crack cocaine packaged in plastic baggies of the same size and color as those found in defendant's pocket.

In his lone assignment of error on appeal, defendant challenges the trial court's denial of his motion to dismiss. He asserts that the State failed to present substantial evidence that he possessed the cocaine found in the hotel stairwell. He notes that he was never seen in the stairwell and did not exercise control over the area. Similarly, he contends that other people had free access to the stairwell before the drugs were found. Defendant avers there was no showing that he ever sold or purchased cocaine. Finally, he points out that he had no money on his person and that the plastic bags found in his possession were empty.

In reviewing the denial of defendant's motion to dismiss, this Court must determine whether the evidence, when viewed in the light most favorable to the State, is sufficient to allow a reasonable juror to find defendant guilty of the essential elements of the offense beyond a reasonable doubt. *See State v. Jones*, 147 N.C. App. 527, 545, 556 S.E.2d 644, 655 (2001), *disc. rev. denied*, 355 N.C. 351, 562 S.E.2d 427 (2002). The State is entitled to all favorable inferences reasonably drawn from the evidence. *State v. Tucker*, 347 N.C. 235, 243, 490 S.E.2d 559, 563 (1997), *cert. denied*, 523 U.S. 1061, 140 L. Ed. 2d 649 (1998). Although the evidence supporting a finding of the defendant's guilt must be

substantial, it need not exclude every reasonable hypothesis of innocence to survive a motion to dismiss. *See State v. Riddick*, 315 N.C. 749, 759, 340 S.E.2d 55, 61 (1986).

Possession of a controlled substance may be actual or constructive. *State v. Hamilton*, 145 N.C. App. 152, 155, 549 S.E.2d 233, 235 (2001). A person has constructive possession of an object if he lacks actual physical possession thereof but retains the power and intent to control its disposition and use. *See State v. Givens*, 95 N.C. App. 72, 78, 381 S.E.2d 869, 872 (1989). Evidence which places a defendant in the same location as a controlled substance is insufficient to permit an inference of constructive possession, absent an additional showing that he was aware of its presence. *See State v. Weems*, 31 N.C. App. 569, 570-71, 230 S.E.2d 193, 194 (1976). Thus, where a defendant is found in close proximity to drugs in an area not within his exclusive control, the State must show "'other incriminating circumstances which would permit an inference of constructive possession.'" *State v. Matias*, 143 N.C. App. 445, 448, 550 S.E.2d 1, 3, *affirmed*, 354 N.C. 549, 556 S.E.2d 269 (2001)(*quoting State v. Carr*, 122 N.C. App. 369, 372, 470 S.E.2d 70, 73 (1996)).

The trial court properly denied the motion to dismiss. The State's evidence showed that defendant was observed engaging in suspicious behavior over a two-hour period at a hotel known for a high degree of drug-related activity. When approached by police and ordered to stop, he instead moved out of their field of vision and up a stairwell onto the second floor of the hotel. Defendant

then returned to ground level to speak with police who, in turn, found several rocks of crack cocaine at the bottom of the stairwell. While these facts standing alone might be insufficient to prove defendant's constructive possession of the cocaine, *see State v. Ledford*, 23 N.C. App. 314, 316, 208 S.E.2d 870, 872 (1974), the State further showed that the cocaine in the stairwell was wrapped in small, plastic baggies identical in size and color to those found on defendant's person. In light of this evidence linking the cocaine's distinctive packaging to defendant, we conclude the State presented sufficient incriminating circumstances to permit an inference of constructive possession.

No error.

Judges THOMAS and BIGGS concur.

Report per Rule 30(e).