

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA01-451

NORTH CAROLINA COURT OF APPEALS

Filed: 16 July 2002

STATE OF NORTH CAROLINA

v.

Wake County
No. 98 CRS 98313

ALONZO JUREON GARDNER

Appeal by defendant from judgment dated 23 February 2000 by Judge Henry W. Hight, Jr. in Superior Court, Wake County. Heard in the Court of Appeals 12 March 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General Thomas D. Zweigart, for the State.

Mary Boyce Wells for defendant.

McGEE, Judge.

Alonzo Jureon Gardner (defendant) was convicted on 23 February 2000 of trafficking in cocaine. Defendant was sentenced to thirty-five to forty-two months in prison. Evidence presented by the State at trial tended to show that Detective D.R. Johnson (Detective Johnson) of the Raleigh Police Department went to 311 Freeman Street, Raleigh, North Carolina, to serve a warrant on defendant on 21 October 1998. Detective Johnson knocked on the back door of the house at 311 Freeman Street. When defendant saw Detective Johnson, defendant ran to the front door of the house, where he saw a second police officer. Defendant then climbed out

a window and ran down the street. The two officers found defendant hiding behind another house and arrested him.

Detective Johnson found a key to 311 Freeman Street in defendant's pocket, and Detective Johnson went back to the house at 311 Freeman Street to secure the premises. Later that day, based on Detective Johnson's observations, police officers obtained a search warrant for 311 Freeman Street. When the officers searched the house, they found a shoe box containing rocks of crack cocaine and papers belonging to defendant. Officers found a bag in a closet containing 61.2 grams of cocaine, several handguns, and approximately \$900.00 in cash.

Defendant moved to dismiss the charge of trafficking in cocaine at the close of the State's evidence, which was denied. Defendant presented no evidence. Defendant renewed his motion to dismiss at the close of all evidence, which the trial court denied. The jury convicted defendant of trafficking in cocaine. Defendant appeals.

Defendant argues the trial court erred in denying defendant's motion to dismiss the charge of trafficking in cocaine for insufficiency of the evidence. Defendant contends the State failed to present substantial evidence of defendant's actual or constructive possession of the cocaine. We disagree.

Defendant argues the State did not present sufficient evidence that defendant had the "power and intent to control" the cocaine that was found in the house at 311 Freeman Street.

A trial court properly denies a motion to dismiss if there is substantial evidence that

the offense was committed and that the defendant committed it. In determining whether there is evidence sufficient for a case to go to the jury, the court must consider the evidence in the light most favorable to the State, and the State is entitled to every reasonable inference to be drawn from the evidence.

State v. Neal, 109 N.C. App. 684, 686, 428 S.E.2d 287, 289 (1993) (citations omitted).

The State did not present evidence that defendant was in actual possession of the drugs, or that he had ever had actual possession of the drugs. However, the State relied on the doctrine of constructive possession. With constructive possession, "the State is not required to prove actual physical possession of the controlled substance[.]" *Id.* "Constructive possession exists when a person, while not having actual possession, has the intent and capability to maintain control and dominion over a controlled substance." *State v. Williams*, 307 N.C. 452, 455, 298 S.E.2d 372, 374 (1983). If a controlled substance is found on premises under the control of a defendant, "this fact alone may be sufficient to overcome a motion to dismiss and to take the case to the jury." *Neal*, 109 N.C. App. at 686, 428 S.E.2d at 289.

Defendant argues the State did not prove he had exclusive control over the premises where the drugs were found. The State offered physical evidence that was discovered in the house at 311 Freeman Street, including release documents from prior criminal charges against defendant and insurance documents containing defendant's name. Defendant also had a key to the 311 Freeman Street house in his pocket when he was arrested. There was no one

else in the house at the time officers found defendant there.

Even if we agreed with defendant's argument that the State failed to present sufficient direct evidence that defendant was exclusively in control of the premises at 311 Freeman Street, the State can establish constructive possession of an illegal substance by "an additional inquiry into whether there were incriminating circumstances from which a jury might infer possession." *Neal*, 109 N.C. App. at 687, 428 S.E.2d at 290. "[E]vidence from which a jury might infer that defendant was fleeing from the area where illegal drugs were found is [a] circumstance supporting an inference of constructive possession." *Id.*; see also *State v. Harrison*, 93 N.C. App. 496, 499, 378 S.E.2d 190, 192 (1989) (holding that evidence that the defendant was found in a closed room standing "next to a window under circumstances from which the jury could infer that it had just been broken" was sufficient for a jury to infer the defendant was attempting to escape or dispose of a controlled substance, which in turn was sufficient to establish constructive possession of the drugs).

In the case before us, even if the State failed to directly show defendant had exclusive "control of the premises," the State did present other incriminating evidence which, under *Neal* and *Harrison*, established constructive possession. Officers knocked on the door of the house at 311 Freeman Street. When defendant realized there were police officers at both doors of the house, he climbed out the window. The officers chased defendant and caught him hiding behind another house. Defendant fled from the house

where the illegal drugs were found, and his attempted escape is a circumstance supporting an inference of constructive possession. *Harrison*, 93 N.C. App. at 499, 378 S.E.2d at 192. The evidence in this case would permit a jury to infer defendant's possession of cocaine. We overrule defendant's assignment of error. The trial court did not err in denying defendant's motion to dismiss.

No error.

Judges GREENE and CAMPBELL concur.

Report per Rule 30(e).