

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-837

NORTH CAROLINA COURT OF APPEALS

Filed: 2 April 2002

STATE OF NORTH CAROLINA

v.

LARRY STYCARLO JOHNSON

Forsyth County
Nos. 00 CRS 56794
01 CRS 00060

Appeal by defendant from judgment dated 24 April 2001 by Judge Ronald E. Spivey in Forsyth County Superior Court. Heard in the Court of Appeals 26 March 2002.

Attorney General Roy Cooper, by Assistant Attorney General Claud R. Whitener, III, for the State.

Danny T. Ferguson for defendant-appellant.

GREENE, Judge.

Larry Stycarlo Johnson (Defendant) appeals a judgment dated 24 April 2001 entered consistent with a jury verdict finding him guilty of felony possession of cocaine, possession of marijuana up to one-half ounce, and having obtained the status of habitual felon.

At trial, the State's evidence showed that Officer A.J. Santos (Santos), of the Winston-Salem Police Department, and another officer were working security for the Dixie Classic Fair (the Fair) on 5 and 6 October 2000, when Santos was twice approached by an

employee of the company organizing the Fair. The employee told Santos that Defendant, an employee of the Fair, was selling cocaine to patrons at the Fair. When Santos and the other officer approached Defendant and asked to speak with him, Defendant fled on foot, whereupon Santos gave chase. During the fifteen-foot chase of Defendant, Santos observed Defendant, from approximately two feet away, pulling napkins out of his right pocket and throwing them on the ground. Santos testified that the napkins fell less than six feet from him, and that after catching Defendant, he retraced Defendant's steps and found the napkins Defendant had pulled from his pockets. The napkins contained cocaine and marijuana (verified by SBI lab tests). Santos specifically noted that there were no other napkins or tissue lying in the area of those napkins discarded by Defendant. During a search conducted after Defendant's arrest, Santos found \$395.00 on Defendant's person.

At the close of the State's case, Defendant moved to dismiss the charges against him. The trial court denied Defendant's motion. After the jury found Defendant guilty of the substantive possession charges, the State presented its evidence as to the habitual felon charge. The jury subsequently found Defendant had attained the status of an habitual felon. The trial court consolidated the charges for sentencing.

The dispositive issue is whether the State presented substantial evidence Defendant had possession, either actual or

constructive, of the controlled substances.

A motion to dismiss based upon insufficient evidence is properly denied if there is "substantial evidence of [the] defendant's guilt on every essential element of the crime charged." *State v. Wilder*, 124 N.C. App. 136, 139, 476 S.E.2d 394, 397 (1996). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Franklin*, 327 N.C. 162, 171, 393 S.E.2d 781, 787 (1990). In ruling on a motion to dismiss, the trial court must consider the evidence, direct, circumstantial, or both, in the light most favorable to the State, giving the State the benefit of every reasonable inference arising therefrom. *Wilder*, 124 N.C. App. at 139, 476 S.E.2d at 397. "If the trial court determines that a reasonable inference of the defendant's guilt may be drawn from the evidence, it must deny the defendant's motion and send the case to the jury even though the evidence may also support reasonable inferences of the defendant's innocence." *State v. Smith*, 40 N.C. App. 72, 79, 252 S.E.2d 535, 540 (1979).

As Defendant takes issue only with the possession element of the crimes charged, our analysis is limited to whether the State produced substantial evidence Defendant knowingly possessed cocaine and marijuana within the meaning of N.C. Gen. Stat. § 90-95. Possession within the meaning of section 90-95 may be either actual or constructive. *Wilder*, 124 N.C. App. at 139, 476 S.E.2d at 397. In the absence of actual possession, a person has constructive possession of a controlled substance when he "has the intent and

power to maintain control over the disposition and use of the substance." *Id.* at 139-40, 476 S.E.2d at 397.

In this case, viewing the evidence in the light most favorable to Defendant, Santos testified he observed Defendant pull and discard napkins from his right pocket. After those napkins were retrieved a few minutes later, they were found to contain marijuana and cocaine. There were no other napkins in the vicinity of those napkins discarded by Defendant. This evidence is sufficient evidence to enable a reasonable fact-finder to conclude Defendant did indeed possess the cocaine and marijuana as charged. *See id.* at 140, 476 S.E.2d at 397 (a reasonable mind could rationally conclude that a defendant possessed cocaine, where: the arresting officer observed the defendant throw an object in the bushes when the car in which he was a passenger was stopped by the police; the bag was subsequently discovered in the bushes approximately ten feet from where the car was stopped; and it was later determined by the SBI lab that the bag contained 990.3 grams of cocaine). Accordingly, the trial court did not err in denying Defendant's motion to dismiss the substantive possession charges.

No error.

Judges HUDSON and TYSON concur.

Report per Rule 30(e).