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NO. COA10-1247

NORTH CAROLINA COURT OF APPEALS

Filed: 4 October 2011

STATE OF NORTH CAROLINA

v.

Cabarrus County
No. 07 CRS 11543
No. 07 CRS 11545

SAMARIO ANTWAIN BRADSHAW,
Defendant

Appeal by defendant from judgment entered 1 April 2010 by Judge Joseph N. Crosswhite in Cabarrus County Superior Court. Heard in the Court of Appeals 9 March 2011.

Attorney General Roy Cooper, by Assistant Attorney General Stanley G. Abrams, for the State.

James N. Freeman, Jr., for defendant.

Bryant, Judge.

Where there was probable cause to issue a search warrant, the trial court did not err in denying defendant's motion to suppress evidence seized during execution of the search warrant. Where there was substantial evidence of each element of the offenses of possession of a firearm by a felon and trafficking

cocaine by possession, the trial court did not err in denying defendant's motion to dismiss. Where evidence was not introduced for the truth of the matter asserted, the trial court did not err in admitting the evidence, an envelope identified as State's Exhibit 13.

Samario Antwain Bradshaw (defendant) was indicted on 29 October 2007 for possession of a firearm by a felon pursuant to N.C. Gen. Stat. § 14-415.1; trafficking cocaine by possession pursuant to N.C.G.S. § 90-95(h)(3); and maintaining a dwelling for drug activity pursuant to N.C.G.S. § 90-108(A)(7).

The State's evidence at trial tended to show the following: S.B. Kelly, a detective with the Concord Police Department, obtained a search warrant for 487 Pharr Drive in Concord, North Carolina due to suspected drug activity. On 19 June 2007, Detectives Kelly, Tierney, and other officers from the Concord Police Department executed the search warrant. The search warrant did not specify individuals to be searched, but only cited the address as the subject of the search warrant. During execution of the search warrant, two individuals, Silas Lamont Swan and Juan Smith, were apprehended in the fenced in area of the yard at the rear of the house where they had retreated as officers approached. No one else was detained.

A search of the house revealed crack and powder cocaine, marijuana, a large sum of cash, pistols and a rifle. In the

front left bedroom of the home, officers found several rocks of crack cocaine, over 100 grams of cocaine in various forms in plastic bags, a .22 caliber rifle and a cash box containing a large sum of cash. Also found in the left front bedroom was the following indicia of ownership: utility bills; a Time Warner Cable bill in defendant's name dated 19 May 2007; a receipt for installation of cable dated 30 March 2007 in defendant's name; a cover to a payroll stub; photos; and, an envelope and a card addressed to "BI" which was believed to be one of defendant's aliases. Defendant was arrested during the execution of a separate search warrant at another address in October 2009.

At trial, Detective Tierney testified that all utility bills for 487 Pharr Drive were in the name of Beverly Copeland, defendant's mother, and that it was her house. Evidence was also presented that in addition to defendant's mother, defendant's brother DeAngelo Davis, and defendant's mother's boyfriend Walter Steele had resided at 487 Pharr Drive in the past but had not done so for more than a year prior to the search. Detective Tierney further testified that anyone who had access to the home would also have access to the front left bedroom as there were no locked doors throughout the house.

Bradley Smith, Jr., Director of Security for Time Warner Cable, testified regarding billing data for 487 Pharr Drive. His testimony revealed: defendant's name was on the account, no

other names were associated with the account, the first bill was dated 25 April 2007, and service was disconnected 25 October 2007.

On 1 April 2010, a jury found defendant guilty of possession of a firearm by a felon and trafficking cocaine by possession, and not guilty of maintaining a dwelling for drug activity. Defendant was sentenced to thirty-five to forty-two months imprisonment for trafficking cocaine and given a suspended sentence of twenty to twenty-four months for possession of a firearm by a felon. Defendant appeals.

Defendant contends the trial court erred (1) in not suppressing the evidence obtained as a result of the execution of the search warrant on the subject premises; (2) in not allowing defendant's motion to dismiss; and (3) in admitting portions of State's Exhibit 13.

I.

Defendant first argues the trial court erred in not suppressing the evidence obtained as a result of the search warrant on 487 Pharr Drive because the magistrate issuing the warrant lacked a substantial basis to conclude probable cause existed for the warrant to issue. We disagree.

In ruling on a motion to suppress evidence, the review "is strictly limited to determining whether the trial judge's

underlying findings of fact are supported by competent evidence . . . and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Robinson*, 189 N.C. App. 454, 458, 658 S.E.2d 501, 504 (2008)(quoting *State v. Cooke*, 306 N.C. 132, 134, 291 S.E.2d 618, 619 (1982)). "If the trial court's conclusions of law are supported by its factual findings, we will not disturb those conclusions on appeal." *State v. Pickard*, 178 N.C. App. 330, 333-34, 631 S.E.2d 203, 206, *appeal dismissed and disc. review denied*, 361 N.C. 177, 640 S.E.2d 59 (2006)(citation omitted). The appellate court will review the trial court's conclusions of law *de novo*. *See State v. Stone*, 179 N.C. App. 297, 302, 634 S.E.2d 244, 247 (2006).

Probable cause for a search exists where sufficient facts are stated in the search warrant to establish reasonable grounds to believe a search of the premises at issue will reveal the items sought. *State v. Arrington*, 311 N.C. 633, 636, 319 S.E.2d 254, 256 (1984). Under the "totality of the circumstances" standard adopted by the Supreme Court for determining the existence of probable cause:

> [t]he task of the issuing magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

> And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for . . . conclud[ing]" that probable cause existed.

Id. at 638, 319 S.E.2d at 257-58 (quoting *Illinois v. Gates*, 462 U.S. 213, 238-39, 76 L. Ed. 2d 527, 548 (1983)).

> When the application is based upon information provided by an informant, the affidavit should state circumstances supporting the informant's reliability and basis for the belief that a search will find the items sought. *State v. Crawford*, 104 N.C. App. 591, 596, 410 S.E.2d 499, 501 (1991). A showing is not required "that such belief be correct or more likely true than false. A practical, nontechnical probability is all that is required." *State v. Zuniga*, 312 N.C. 251, 262, 322 S.E.2d 140, 146 (1984). Further, a magistrate's determination of probable cause should be given great deference, and an "after-the-fact scrutiny should not take the form of a de novo review." *Arrington*, 311 N.C. at 638, 319 S.E.2d at 258.

State v. Washburn, 201 N.C. App. 93, 100-01, 685 S.E.2d 555, 560-61 (2009).

In the case *sub judice*, there was sufficient evidence offered in support of the search warrant for 487 Pharr Drive to provide probable cause to believe that contraband would be found at that location. Detective Kelly's affidavit asserted that on 11 June 2007, eight days prior to the application for the search warrant, detectives observed Raymond Gonsalvas drop two rocks of crack cocaine while walking away from 487 Pharr Drive. When questioned, Gonsalvas stated he went to the residence to

purchase cocaine and was told he could purchase cocaine there. The affidavit also offered the statements of two confidential informants, CSI-441 and CSI-450. The affidavit indicates CSI-441 had conducted a controlled purchase of cocaine from an unknown black male at 487 Pharr Drive on 19 June 2007, within forty-eight hours preceding the warrant application. CSI-450, the affidavit asserts, had been inside the residence at 487 Pharr Drive and had seen cocaine and marijuana.

Additionally, the affidavit indicates that fellow police officers had informed Detective Kelly about drug sales conducted in and around 487 Pharr Drive, that the Vice and Narcotics unit of the Concord Police Department had "located crack cocaine residue, razors, plastic baggies, .357 Magnum ammunition and assorted drug paraphernalia . . . lying in plain view" in the wooded area adjacent to 487 Pharr Drive, and that three men who had been arrested on "various narcotics charges in the past" had listed 487 Pharr Drive as their address.

Given the specific information from multiple sources set forth in the affidavit - including statements from Gonsalvas, CSI-441 and CSI-450 - that drug activity had been occurring at the residence, and that known drug offenders had resided at the residence, we conclude that the magistrate was presented with sufficient probable cause in Detective Kelly's affidavit.

Finding probable cause, we next turn to the reliability of

the informants and bases for their beliefs. *See Washburn*, 201 N.C. App. at 100-01, 685 S.E.2d at 560-61. First, the affidavit asserts that "CSI-441 has provided . . . information that resulted in probable cause for search warrants which have resulted in seizures of various types and amounts of narcotics and drug paraphernalia." The affidavit also avers that "CSI-441 has provided helpful information against her/his own penal interests that has been verified and proven accurate and reliable." *See State v. Beam*, 325 N.C. 217, 221, 381 S.E.2d 327, 330 (1989) ("Statements against penal interest carry their own indicia of credibility sufficient to support a finding of probable cause to search." (citation omitted)). Regarding CSI-450, the affidavit makes clear the informant had established credibility with Detective Kelly and the informant had personally seen marijuana and cocaine in the residence. The affidavit indicates that both informants have provided reliable information on an ongoing basis to the police and are known to Detective Kelly. *See Arrington,* 311 N.C. at 642, 319 S.E.2d at 260 (noting that past performance of informants was a strong indication of reliability); *Washburn,* 201 N.C. App. at 102, 685 S.E.2d at 561 (noting that personal knowledge of the reliability of an informant strengthens affiant's assertion of informant's reliability).

Further, the affidavit provides for each informant a basis

of personal knowledge of drug activities at 487 Pharr Drive: CSI-441 conducted a controlled buy at 487 Pharr Drive within forty-eight hours of the application for a search warrant; and CSI-450 observed marijuana and cocaine in the residence. Therefore, Detective Kelly's affidavit provided sufficient indication of the reliability and the basis of the informants' belief that a search warrant would reveal the presence of drugs at 487 Pharr Drive. *Washburn,* 201 N.C. App. at 100-01, 685 S.E.2d at 560-61. Thus, the trial court did not err in denying defendant's motion to suppress.

II.

Defendant next argues the trial court erred in not allowing defendant's motion to dismiss. Defendant contends the evidence is insufficient to support the offenses of possession of a firearm by a felon and trafficking cocaine by possession. We disagree.

In ruling on a motion to dismiss, all evidence must be considered in the light most favorable to the State, giving the State the benefit of all reasonable inferences which can be drawn from the evidence. *State v. Rasor*, 319 N.C. 577, 585, 356 S.E.2d 328, 333 (1987). A motion to dismiss should be denied if "there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d

811, 814 (1990)(citation omitted).

The elements of possession of a firearm by a felon are that: "(1) defendant was previously convicted of a felony; and (2) thereafter possessed a firearm." *State v. Wood*, 185 N.C. App. 227, 235, 647 S.E.2d 679, 686 (2007). For the offense of trafficking cocaine by possession, the State is required to prove that the defendant "possesse[d] 28 grams or more of cocaine...." N.C. Gen.Stat. § 90-95(h)(3) (2007).

The State, at trial, proceeded on a theory of constructive possession.

> A defendant constructively possesses contraband when he or she has "the intent and capability to maintain control and dominion over" it. *State v. Beaver*, 317 N.C. 643, 648, 346 S.E.2d 476, 480 (1986). The defendant may have the power to control either alone or jointly with others. *State v. Fuqua*, 234 N.C. 168, 170-71, 66 S.E.2d 667, 668 (1951). Unless a defendant has exclusive possession of the place where the contraband is found, the State must show other incriminating circumstances sufficient for the jury to find a defendant had constructive possession. *State v. Matias*, 354 N.C. 549, 552, 556 S.E.2d 269, 271 (2001).

State v. Miller, 363 N.C. 96, 99, 678 S.E.2d 592, 594 (2009); *See also State v. Mewborn*, 200 N.C. App. 731, 736, 684 S.E.2d 535, 539 (2009) ("Where a defendant is not in exclusive control of the place where the object is found, the State must show other incriminating circumstances to give rise to an inference

of constructive possession." (considering constructive possession of a firearm)) (citation omitted). "Our determination of whether the State presented sufficient evidence of incriminating circumstances depends on the totality of the circumstances in each case." *State v. Alston*, 193 N.C. App. 712, 716, 668 S.E.2d 383, 386-87 (2008)(quotations and citation omitted), *aff'd per curiam,* 363 N.C. 367, 677 S.E.2d 455 (2009).

Here, the State proceeded under a theory of constructive possession. Therefore, there is no assertion of actual possession as defendant was not present when the cocaine and the .22 rifle were found. It is also uncontroverted that defendant did not have exclusive control over the front left bedroom where the .22 rifle and cocaine were found. Indeed, Detective Tierney testified that anyone with access to the home would also have access to the bedroom where the contraband was found as there were no locked doors in the house.

Lacking proof of exclusive control of the left front bedroom where the gun and cocaine in this case were located, the State, for both the charge of possession of cocaine and possession of a firearm by a felon, had to prove "other incriminating circumstances" in order to establish constructive possession by defendant. *Miller*, 363 N.C. at 99, 678 S.E.2d at 594 (quoting *State v. Matias*, 354 N.C. 549, 552, 556 S.E.2d 269, 271 (2001)). Although cases "addressing constructive possession

have tended to turn on the specific facts presented[,]" *id.*,

> incriminating circumstances relevant to constructive possession have include[d] evidence that defendant: (1) owned other items found in proximity to the contraband; (2) was the only person who could have placed the contraband in the position where it was found; (3) acted nervously in the presence of law enforcement; (4) resided in, had some control of, or regularly visited the premises where the contraband was found; (5) was near contraband in plain view; or (6) possessed a large amount of cash.

State v. Alston, 193 N.C. App. 712, 716, 668 S.E.2d 383, 386 (2008), *aff'd per curiam*, 363 N.C. 367, 677 S.E.2d 455 (2009).

In *Miller*, the Supreme Court concluded that the State presented sufficient evidence of constructive possession when the police found the defendant in a bedroom of the home where his children lived with their mother; the defendant was initially sitting on the end of a bed where cocaine was found; when the defendant slid to the floor, he was in reach of cocaine later found behind the bedroom door; and the defendant's birth certificate and state-issued identification card were on top of a television stand in that bedroom. 363 N.C. at 100, 678 S.E.2d at 595. Even though there was another individual in the room when the police entered, the Court concluded that "these incriminating circumstances permit a reasonable inference that defendant had the intent and capability to exercise control and dominion over cocaine in that room." *Id.*

The dissent states that the evidence in the instant case is insufficient to survive defendant’s motion to dismiss; that the evidence only raises a “mere suspicion” that defendant constructively possessed the contraband at issue. We disagree. Here, officers found the contraband, cocaine and rifle in the left front bedroom of the house at 487 Pharr Drive. No one was in the house at the time of the search, but it appeared to the officers that someone was living in the left front bedroom. Further, officers had seen defendant at 487 Pharr Drive, standing on the porch, both before and after the search.

Five rocks of cocaine were found in plain view on top of one of the two dressers in the left front bedroom. Next to the five rocks of cocaine was a Father's Day Card with an envelope addressed to defendant. A "cookie" of cocaine was found in a drawer containing men's underwear. There was a corner bag of cocaine in another dresser drawer and a single rock of cocaine on the floor at the foot of the bed.

Another envelope and a gift card addressed to defendant and "Daddy" was found in one of the dresser drawers. Also located in the bedroom was part of a payroll stub for defendant and three photos of defendant with other people. On one of the photos, there was a date of 15 April 2007, while on a second one there was a date of 13 May 2007. There was a television on the dresser containing the cocaine cookie. Officers found a receipt

in the bedroom for installation of Time Warner Cable service made out to defendant and dated 30 March 2007. Officers also found a bill for Time Warner Cable service addressed to defendant at 487 Pharr Drive. Payment was due on 19 May 2007, a month before the search of the house.

While the evidence indicated that three people other than defendant were known to have lived at 487 Pharr Drive from time to time (defendant's mother, Beverly Copeland; defendant's brother, DeAngelo Davis; and Ms. Copeland's boyfriend, Walter Steele), none of the items in the bedroom were identified as specifically belonging to any of the three other people. Further, defendant's personal effects were undeniably present. Cocaine was found in a drawer with *male*, rather than female, underwear. However, as for Mr. Davis and Mr. Steele, both men were incarcerated at the time of the search. Mr. Davis was incarcerated in March 2006 and was not released until 1 April 2008. Mr. Steele was similarly incarcerated from 14 July 2006 until 12 January 2008. In other words, neither Mr. Davis nor Mr. Steele had been at the house at 487 Pharr Drive for a year or more.

We hold that these circumstances are sufficiently incriminating to permit a jury to find that defendant constructively possessed the cocaine and rifle found in the bedroom at 487 Pharr Drive. While the defendant in *Miller* was

actually found in physical proximity to the cocaine, there was, in *Miller*, evidence of other individuals who were potential possessors of the cocaine. As a result, the presence of the *Miller* defendant's personal papers was a significant incriminating circumstance. Here, the State's evidence did not suggest that anyone other than defendant was living in the room where the contraband was found. The number and the personal nature of the personal papers and belongings suggested residency rather than occasional visits. The Time Warner cable documents provided further evidence that defendant was living in that room. The dates would permit a jury to conclude that defendant was likely still sleeping in that room at the time of the search.

Our courts have found comparable evidence sufficient to establish constructive possession in other cases. In *State v. Baxter*, 285 N.C. 735, 737, 208 S.E.2d 696, 697 (1974),[1] the Supreme Court found sufficient evidence of constructive possession when, as in this case, the defendant was not present during the search of the apartment uncovered marijuana. The Court noted that only the defendant and his wife lived in the apartment, marijuana was found underneath male undergarments in a dresser drawer, marijuana was found in a man's coat in the

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[1]The Supreme Court relied on *Baxter* in *Miller*. *See Miller*, 363 N.C. at 100, 678 S.E.2d at 594-95.

bedroom closet, and no one other than the defendant's wife was in the apartment at the time the marijuana was found. *Id*. *See also State v. Battle*, 167 N.C. App. 730, 733, 606 S.E.2d 418, 420 (2005) (holding that State presented sufficient evidence of constructive possession when, even though defendant had not rented motel room where drugs were found, defendant had been seen in room playing video games and sleeping, room contained defendant's clothing and personal papers, and defendant's car was in parking lot); *State v. Rich*, 87 N.C. App. 380, 382-83, 361 S.E.2d 321, 323 (1987) (finding sufficient evidence of incriminating circumstances when female defendant was present on premises, women's clothes and undergarments were in room and in dresser where cocaine was found, and letters with defendant's name were also in room). We believe the evidence was comparable to that found sufficient in *Miller*, *Baxter*, *Battle*, and *Rich*.

Thus, we hold that viewing the evidence in the light most favorable to the State, there was substantial evidence of each element of the offense of trafficking cocaine by possession and of possession of a firearm by a felon. Therefore, the trial court did not err in denying defendant's motion to dismiss.

III.

Last, defendant argues the trial court erred in admitting an envelope, State’s Exhibit 13, which he contends constitutes inadmissible hearsay. We disagree.

The trial court's determination as to whether an out-of-court statement constitutes hearsay is reviewed *de novo* on appeal. *State v. Miller*, 197 N.C. App. 78, 87–88, 676 S.E.2d 546, 552, *disc. review denied*, 363 N.C. 586, 683 S.E.2d 216 (2009). Evidence must be relevant in order to be admissible. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C.G.S. § 8C-1, Rule 401 (2009). "'Hearsay' is a statement, other than one made by the declarant while testifying at trial or hearing, offered in evidence to prove the truth of the matter asserted." N.C.G.S. § 8C-1, Rule 801(c) (2009). "Hearsay is not admissible unless provided by statute or as an exception to these rules." N.C.G.S. § 8C-1, Rule 802 (2009). "However, out-of-court statements offered for purposes other than to prove the truth of the matter asserted are not considered hearsay." *State v. Call*, 349 N.C. 382, 409, 508 S.E.2d 496, 513 (1998).

During the State's case-in-chief, Detective Tierney testified to the contents of the envelope, laying the foundation for admission of the envelope - State's Exhibit 13 - which was introduced into evidence. Detective Tierney testified that the envelope contained "photographs, a letter, an envelope for a card, a cover to what looks like a payroll stub and a Time

Warner Cable receipt for, I guess, connection, then also a Time Warner Cable bill." Defendant objected to State's Exhibit 13 as hearsay, specifically contending it to be an inadmissible business record. However, the State argued that the purpose of introducing the items in State's Exhibit 13 was only to show the location of the items in proximity to the cocaine and the rifle seized from defendant's room. The trial court agreed and ruled that it was admissible and "offered for the purpose only of saying where [the items in Exhibit 13] were found . . . ."

It is clear from the record that Detective Tierney was merely describing the inventory seized during the raid of the home on 487 Pharr Drive. Since this testimony is not offered for the truth of the matter asserted, the evidence is not inadmissible hearsay. Therefore, we conclude that the trial court did not err in its ruling to admit State's exhibit 13.

The ruling of the trial court is affirmed.

Affirmed.

Judge Geer concurs.

Judge ELMORE dissents in a separate opinion.

Report per 30(e).

NO. COA10-1247

NORTH CAROLINA COURT OF APPEALS

Filed: 4 October 2011

STATE OF NORTH CAROLINA

v. Cabarrus County
No. 07 CRS 11543; 11545

SAMARIO ANTWAIN BRADSHAW

Defendant.

ELMORE, Judge dissenting.

I respectfully disagree with the holding of the Court that the State presented substantial evidence of "other incriminating circumstances" to establish constructive possession of the contraband by defendant. I find that the evidence in question in this case only raises a "mere suspicion" that defendant was in constructive possession of the contraband from which the charges in this case arise. Accordingly, I believe that the State's evidence was insufficient to survive defendant's motion to dismiss, and both convictions should be vacated on that basis.

"Where a defendant is not in exclusive control of the place where the object is found, the State must show other incriminating circumstances to give rise to an inference of constructive possession." *State v. Mewborn*, 200 N.C. App. 731, 736, 684 S.E.2d 535, 539 (2009). "Our determination of whether

the State presented sufficient evidence of incriminating circumstances depends on the totality of the circumstances in each case." *State v. Alston*, 193 N.C. App. 712, 716, 668 S.E.2d 383, 386-87 (2008)(quotations and citation omitted), *aff'd per curiam*, 363 N.C. 367, 677 S.E.2d 455 (2009).

Here, the State presented the following evidence of other incriminating circumstances tying defendant to the left front bedroom where the gun and the cocaine in this case were found: 1) Detective Tierney testified he had seen defendant at 487 Pharr Drive, but could not remember when; 2) a Time Warner installation receipt and bill were in defendant's name, 3) pictures of defendant were found in the front left bedroom as was a card addressed to "BI", which detective Tierney believed to be one of defendant's aliases; 4) a check stub and cover bearing the name of defendant was found in the bedroom.

Our Supreme Court recently observed that "[o]ur cases addressing constructive possession have tended to turn on the specific facts presented." *State v. Miller*, 363 N.C. 96, 99, 678 S.E.2d 592, 595 (2009). In *Miller*, the Court reviewed a number of constructive possession cases and concluded that "two factors frequently considered are the defendant's proximity to the contraband and indicia of the defendant's control over the place where the contraband is found." *Id.* at 100, 678 S.E.2d at 594.

Here it is undisputed that the house in question was not owned by defendant, and that defendant was not present at the house 1) when the search warrant was executed or 2) when he was apprehended. Furthermore, the evidence fails to show that defendant even resided at 487 Pharr Drive at the time the search warrant was executed. No dispositive indicia of control of the front left bedroom by defendant were presented at trial. All of the evidence presented at trial to prove defendant's control of the bedroom in question is consistent with his mother, Beverly Copeland, owning the home. Here the State in its case emphasized the fact that defendant's name appeared on the Time Warner cable bill, the installation receipt, and a paycheck stub which were found in the left front bedroom of the house where contraband was located. However, it would not be unusual for defendant's check stub to be in his mothers house, or for him to have at some point helped her get cable television. Furthermore, evidence was presented at trial that the signature on the installation receipt was illegible and no proof was offered to corroborate that it was defendant's signature that appeared on the receipt. Again, this evidence is consistent with the house belonging to defendant's mother. This evidence does not, however, prove that defendant was in control of the front left bedroom of 487 Pharr Drive at the time of the execution of the search warrant, or that the cocaine and .22

rifle he is charged to have possessed were his.

Our Supreme Court has made it clear that "proper application of the standard of review focuses our analysis on the evidence that the State did present in these highly fact-specific cases, not on evidence that a reviewing court thinks the State should have presented[.]" *Miller*, 363 N.C. at 100-01, 678 S.E.2d at 594. However, we must also weigh the evidence presented against the requirement that in order to survive a motion to dismiss the evidence presented must move beyond "rais[ing] a suspicion or mere conjecture" of the allegations presented. *McCullough*, 79 N.C. App. at 544, 340 S.E.2d at 135. I find that, in this case, it did not.

The weak connection between defendant and the place where the contraband was found does not rise to the level that our courts have found to be sufficient to establish constructive possession. When looking purely to the facts of this case, I am not convinced that the evidence presented by the State is sufficient to prove that defendant had control over the place where the contraband was found. I believe that the evidence in this case raises only a "mere suspicion" that defendant was in constructive possession of the contraband. Therefore, the charges should not have survived defendant's motion to dismiss.