

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-362  
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Guilford County  
Nos. 09 CRS 95759  
10 CRS 24016

STEVEN DASHAWN SMITH

Appeal by Defendant from judgment entered 26 April 2010 by Judge L. Todd Burke in Superior Court, Guilford County. Heard in the Court of Appeals 1 November 2011.

*Attorney General Roy Cooper, by Special Deputy Attorney General Mary Louise Lucasse, for the State.*

*Eric A. Bach for Defendant-Appellant.*

McGEE, Judge.

Steven Dashawn Smith (Defendant) appeals from judgment entered after a conviction of maintaining a dwelling for controlled substances. Defendant pled guilty to having attained habitual felon status. Defendant contends that the trial court erred by denying his motion to dismiss the maintaining a dwelling charge. We find no error.

The Greensboro Police Department executed a search warrant at a single-family home located at 708 Tuscaloosa Street in Greensboro on 12 October 2009. After officers initially attempted to force open the door, Defendant's girlfriend, Tamekia Rogers (Ms. Rogers), allowed them to enter the home. Defendant, who was the target of the investigation, was also present. In the kitchen, officers found a black digital scale with cut marks and off-white residue flakes on it. Officers also found an "off-white rock substance" on the bedroom floor. Karen Stossmeister, a forensic chemist with the State Bureau of Investigation (SBI), testified that the substance from the bedroom was 0.1 gram of cocaine. Officers also found a loaded handgun in a coat pocket in the bedroom closet.

Officer Charles Parker (Officer Parker) testified that after Defendant was advised of his *Miranda* rights, he admitted he was a drug dealer and that he made about \$300.00 to \$400.00 per week selling drugs. When Officer Parker searched Defendant, he found \$450.00 in cash in Defendant's pocket. In Defendant's affidavit seeking appointed counsel, he listed "708 Tuscalousa [sic] St." as his address, and indicated that he paid \$350.00 per month in rent. At trial, the State introduced Defendant's affidavit into evidence. Both Defendant and Ms. Rogers

testified at trial, and each denied that Defendant lived in the home at the time of the search.

The trial court denied Defendant's motion to dismiss. The jury found Defendant guilty of maintaining a dwelling for controlled substances. Defendant pled guilty to having attained habitual felon status, and the trial court imposed a term of 90 to 117 months in prison. Defendant appeals.

In his sole argument on appeal, Defendant contends the trial court erred by denying his motion to dismiss the charge of maintaining a dwelling for controlled substances because the State presented insufficient evidence that Defendant resided in the home or intended to sell drugs. We disagree.

"When a defendant moves to dismiss a charge against him on the ground of insufficiency of the evidence, the trial court must determine 'whether there is substantial evidence of each essential element of the offense charged and of the defendant being the perpetrator of the offense.'" *State v. Garcia*, 358 N.C. 382, 412, 597 S.E.2d 724, 746 (2004) (citation omitted), *cert. denied*, 543 U.S. 1156, 161 L. Ed. 2d 122 (2005). Substantial evidence is "relevant evidence that a reasonable person might accept as adequate, or would consider necessary to support a particular conclusion." *Id.*

"In reviewing challenges to the sufficiency of evidence, we must view the evidence in the light most favorable to the State, giving the State the benefit of all reasonable inferences.]" *State v. Scott*, 356 N.C. 591, 596, 573 S.E.2d 866, 869 (2002) (citation omitted). "'Contradictions and discrepancies do not warrant dismissal of the case but are for the jury to resolve.'" *Id.* (citation omitted). A defendant's evidence is not to be considered, "unless it tends to explain or make clear that offered by the State." *State v. Oldham*, 224 N.C. 415, 416, 30 S.E.2d 318, 320 (1944).

In determining whether the State's evidence supports a charge of maintaining a dwelling, a court must consider "ownership of the property; occupancy of the property; repairs to the property; payment of taxes; payment of utility expenses; payment of repair expenses; and payment of rent." *State v. Bowens*, 140 N.C. App. 217, 221, 535 S.E.2d 870, 873 (2000), *disc. review denied*, 353 N.C. 383, 547 S.E.2d 417 (2001). "In determining whether a defendant maintained a dwelling for the purpose of selling illegal drugs, this Court has looked at factors including the amount of drugs present and paraphernalia found in the dwelling." *State v. Battle*, 167 N.C. App. 730, 734, 606 S.E.2d 418, 421 (2005) (emphasis omitted).

In this case, we hold that the evidence sufficiently supports the State's contention that Defendant maintained a dwelling for the purpose of selling controlled substances. Officers found cocaine in the bedroom when they executed the search warrant. Although it was a small amount of cocaine, officers also found a digital scale in the kitchen, and the scale had cut marks and residue flakes on it. In addition, officers found a loaded handgun in a pocket of a coat hanging in the bedroom closet. Following the search, Defendant admitted he sold drugs to earn \$300.00 or \$400.00 per week, and officers found \$450.00 in cash in Defendant's pocket when they searched him. Finally, Defendant signed an affidavit in which he stated he lived at the residence where the drugs and paraphernalia were found, and that he paid the rent. Although Defendant's trial testimony contradicts some of this evidence, that contradiction was an issue for the jury to resolve. Accordingly, we hold that the trial court properly denied Defendant's motion to dismiss.

No error.

Judges ELMORE and McCULLOUGH concur.

Report per Rule 30(e).