NO. COA01-1245

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v. Wayne County
No. 97CRS14659

ROBERT L. CHESSON

Appeal by defendant from judgment entered 10 May 2001 by Judge Jerry Braswell in Wayne County Superior Court. Heard in the Court of Appeals 29 April 2002.

Attorney General Roy Cooper, by Assistant Attorney General Christopher W. Brooks, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Anne M. Gomez, for defendant-appellant.

MARTIN, Judge.

Defendant was found guilty of possession of marijuana on the premises of a penal institution and of having attained status as an habitual felon. He was sentenced to a minimum of 108 months and a maximum of 139 months on 25 June 1998. On appeal this Court found no error in defendant's trial and remanded the case for a resentencing hearing in an unpublished opinion filed 18 July 2000, COA99-350. On remand, the trial court imposed a sentence of the same duration. Defendant appeals from that judgment.

Defendant contends that the indictment charging him with possession of a controlled substance on the premises of a penal institution is fatally defective because it fails to allege that

defendant "knowingly" possessed the controlled substance. The indictment charges that

> on or about the 10th day of August, 1997 in Wayne County, Robert L. Chesson . . . unlawfully, willfully, and feloniously did violate N.C.G.S. 90-95(a)(3) by possessing marijuana, a controlled substance, which is included in Schedule VI of the North Carolina Controlled Substances Act. The defendant possessed the controlled substance on the premises of a penal institution, to wit: Wayne Correctional Center.

Generally, an indictment "couched in the language" of a statute establishing a crime is sufficient to charge the crime. *State v. Blackmon*, 130 N.C. App. 692, 699, 507 S.E.2d 42, 46, *cert. denied*, 349 N.C. 531, 526 S.E.2d 470 (1998). The crime of possession of a controlled substance on the premises of a penal institution is established by G.S. § 90-95(e)(9), which provided at the time of commission of the offense charged in this case that "[a]ny person who violates G.S. 90-95(a)(3) on the premise of a penal institution or local confinement facility shall be guilty of a Class I Felony." N.C. Gen. Stat. § 90-95(e)(9) (Cum. Supp. 1991). A person violates G.S. § 90-95(a)(3) if he unlawfully possesses a controlled substance. A crime is committed willfully if it is done "purposely and designedly in violation of law." *State v.* Stephenson, 218 N.C. 258, 264, 10 S.E.2d 819, 823 (1940).

Here, the indictment is couched in the language of G.S. § 90-95(e)(9) and alleges that defendant "unlawfully, willfully, and feloniously" violated the statute. We hold the indictment is sufficient to charge the crime.

No error.

Judges HUNTER and BRYANT concur.

Report per Rule 30(e).