

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-573

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

STATE OF NORTH CAROLINA

v.

Rutherford County
No. 00 CRS 2094

SHANA GOODE

Appeal by defendant from judgment entered 7 November 2000 by Judge Loto G. Caviness in Rutherford County Superior Court. Heard in the Court of Appeals 31 December 2001.

Attorney General Roy Cooper, by Assistant Attorney General Floyd M. Lewis, for the State.

David W. Rogers for defendant-appellant.

EAGLES, Chief Judge.

Defendant Shana Goode was indicted for possession of cocaine. The case was tried at the 6 November 2000 Criminal Session of Rutherford County Superior Court.

The State presented evidence at trial which tended to show the following: On 22 March 2000, Patrol Sergeant Doug Walker of the Forest City Police Department went to the Rutherford Manor Apartments complex to serve an arrest warrant on Ricky Wilkins. As Sergeant Walker approached Wilkins' apartment, the door to the apartment opened and Wilkins and another individual stepped outside

and closed the door behind them. Sergeant Walker informed Wilkins that he had a felony warrant for his arrest and that he needed to come with him. Wilkins responded that he needed to go back inside the apartment and give his girlfriend something. Sergeant Walker stopped Wilkins, told him he was under arrest and placed him in handcuffs.

Soon thereafter, the door to Wilkins' apartment opened and defendant, Shana Goode, was standing at the door asking what was going on. Sergeant Walker explained to defendant that Wilkins was under arrest, and he began to search Wilkins for weapons. While he was searching Wilkins, Sergeant Walker testified that he

noticed that [Wilkins'] arms were behind his back handcuffed and he went over to the right side of his body. At that time I noticed out of the corner of my eye Ms. Goode, the defendant, reach out from the door of this apartment and got something from Mr. Wilkins. She then stepped back towards the door to the apartment as if going back inside. I grabbed Ms. Goode's arm that had taken something from Mr. Wilkins.

I requested that Ms. Goode open her hand so I could see what she had just retrieved from Mr. Wilkins. She would not open her hand at this time. She kept it closed tightly. I asked Ms. Goode a second time to open her hand so I could see what she had. She still would not open her hand, and at this point Mr. Wilkins who I had arrested told Ms. Goode to go ahead and open her hand. At that point she did open her hand and there was a plastic bag in her hand that had a white, yellowish rock like substance in it in a plastic bag.

Tests later confirmed that the bag contained .8 grams of cocaine.

Defendant was convicted of possession of cocaine and sentenced to five to six months imprisonment. Defendant's sentence was

suspended and she was placed on supervised probation for two years. Defendant appeals.

Defendant's sole argument on appeal is that there was insufficient evidence to support the verdict. First, defendant contends that there was no evidence that she had any knowledge of what was in the bag, or a chance to look in the bag to determine its contents. Second, defendant asserts that "Wilkins and everything on his person" was in Officer Walker's custody. Thus, defendant argues that at no time did she have the power to control the disposition or use of the contraband.

After careful review of the record, briefs and contentions of the parties, we find no error. To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense and of the defendant being the perpetrator. See *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). "'Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.'" *Id.* at 717, 483 S.E.2d at 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)). Defendant was convicted of possession of a controlled substance, crack cocaine, in violation of G.S. § 90-95(a)(3). "Felonious possession of a controlled substance has two essential elements. The substance must be possessed, and the substance must be knowingly possessed." *State v. Weldon*, 314 N.C. 401, 403, 333 S.E.2d 701, 702 (1985) (quoting *State v. Rogers*, 32 N.C. App. 274, 278, 231 S.E.2d 919, 922 (1977)).

Here, defendant knew Wilkins was under arrest, surreptitiously took the bag of cocaine from him, attempted to conceal the bag, and twice refused Sergeant Walker's requests to open her hand and relinquish the bag. From this evidence, a jury could reasonably conclude that defendant knew of the illicit nature of the bag's contents. Additionally, defendant acquired possession of the drugs, albeit briefly, the moment she took them from Wilkins' hand. If Sergeant Walker had not seen the exchange, or was not quick enough to apprehend defendant, defendant would have been able to dispose of the drugs however she wished. Regardless of whether she was able to escape, defendant had control over the drugs. See *State v. Broome*, 136 N.C. App. 82, 86-87, 523 S.E.2d 448, 452-53 (1999), *disc. review denied*, 351 N.C. 362, 543 S.E.2d 136 (2000) (the defendant, who was surrounded by police and unable to leave when he took possession of the drugs, still had the capability to control the use and disposition of the drugs).

In the light most favorable to the State, a reasonable mind could conclude from this evidence that defendant feloniously possessed the cocaine. See *Cross*, 345 N.C. at 717, 483 S.E.2d at 434-35. Accordingly, the trial court did not err in denying defendant's motion to dismiss.

No error.

Judges TIMMONS-GOODSON and McCULLOUGH concur.

Report per Rule 30(e).