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NO. COA01-672

NORTH CAROLINA COURT OF APPEALS

Filed: 07 May 2002

STATE OF NORTH CAROLINA

v.

RONALD JANE WALLACE

Guilford County
No. 99 CRS 104819
00 CRS 23223

Appeal by defendant from judgment entered 3 August 2000 by Judge Melzer A. Morgan, Jr. in Guilford County Superior Court. Heard in the Court of Appeals 28 March 2002.

Roy Cooper, Attorney General, by Teresa L. White, Assistant Attorney General, for the State.

Clifford, Clendenin, O'Hale & Jones, LLP by Robert I. O'Hale for defendant-appellant.

THOMAS, Judge.

Defendant, Ronald Jane Wallace, appeals from a conviction of possessing cocaine and for being a habitual felon. We find no error.

The State's evidence tended to show the following: Greensboro police officers conducted a search of a residence at 1010 Vance Street on 14 October 1999. The officers found cocaine and drug paraphernalia, including crack pipes and razors, in multiple locations there.

Inside a locked room within the residence, police found 18.8 grams of crack cocaine on top of and inside a heating vent.

Defendant was the only person seen by Officer J. D. Warren in the room where the cocaine was discovered, and he was later found in a bathroom with the toilet flushing alongside another occupant of the house. With officers still searching the house, defendant then attempted to leave through a window.

Defendant did not testify at trial and offered no evidence.

Defendant was indicted for possession with intent to sell and deliver crack cocaine and for being a habitual felon. He was found guilty of possession of cocaine and stipulated to being a habitual felon. He was sentenced to a minimum of sixty months and a maximum of eighty-one months in the North Carolina Department of Correction.

By his only assignment of error, defendant argues the trial court erred in denying his motion to dismiss for insufficiency of the evidence. We disagree.

A motion to dismiss is properly 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). "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). "When ruling on a motion to dismiss, all of the evidence should be considered in the light most favorable to the State, and the State is entitled to all reasonable inferences which may be drawn from the evidence." *State v. Davis*, 130 N.C. App. 675, 679, 505 S.E.2d

138, 141 (1998).

The elements of possession of a controlled substance are: (1) possession; (2) of a controlled substance. N.C. Gen. Stat. § 90-95(a)(3) (1999). Possession may be in a single individual, or in combination with others. *State v. Anderson*, 76 N.C. App. 434, 333 S.E.2d 762 (1985). A defendant's possession of a drug may be actual or constructive. *State v. Harvey*, 281 N.C. 1, 187 S.E.2d 706 (1972). A defendant's mere presence in a room where drugs are located is insufficient to support an inference of constructive possession. *State v. James*, 81 N.C. App. 91, 344 S.E.2d 77 (1986). Direct evidence of a defendant's possession of drugs is not required, however. It is sufficient if defendant's possession can be reasonably inferred from the evidence. *State v. Welch*, 89 N.C. App. 135, 365 S.E.2d 190, *appeal dismissed*, 322 N.C. 485, 370 S.E.2d 235 (1988). "The State is not required to prove that the defendant owned the controlled substance . . . or that defendant was the only person with access to it." *State v. Rich*, 87 N.C. App. 380, 382, 361 S.E.2d 321 (1987) (citations omitted).

This Court has upheld constructive possession where the defendant was on property that he did not own, but he had sole or joint physical custody of the premises. *State v. Baize*, 71 N.C. App. 521, 323 S.E.2d 36 (1984), *cert. denied*, 313 N.C. 174, 326 S.E.2d 34 (1985). A defendant has possession of contraband within the meaning of the law when he has the power and intent to control its disposition or use. *State v. Pevia*, 56 N.C. App. 384, 289 S.E.2d 135, *cert. denied*, 306 N.C. 391, 294 S.E.2d 218 (1982).

In the instant case, police raided the residence located at 1010 Vance Street. While they were searching the residence, an officer who remained outside observed defendant attempt to escape through a window. The window was to the locked bedroom where over eighteen grams of crack cocaine were found. Defendant was the only person seen inside that room, and was later found in a bathroom alongside a woman and with the toilet flushing.

When viewed in the light most favorable to the State, the evidence was substantial and sufficient to support the trial court's ruling on the motion. We therefore reject defendant's argument and find no error.

NO ERROR.

Judges MARTIN and TYSON concur.

Report per Rule 30(e).