NO. COA01-967

NORTH CAROLINA COURT OF APPEALS

Filed: 21 May 2002

STATE OF NORTH CAROLINA

v. Wake County
Nos. 98CRS072375
98CRS072378

WILLIAM CHARLES PARKS

Appeal by defendant from judgments entered 23 February 2000 by Judge Henry W. Hight, Jr. in Wake County Superior Court. Heard in the Court of Appeals 13 May 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Jeffrey R. Edwards, for the State.*

*George E. Kelly, III for defendant-appellant.*

TYSON, Judge.

## I. Facts

William Charles Parks ("defendant") was charged with maintaining a dwelling used for keeping cocaine and with trafficking in cocaine by possession. The State's evidence tends to show that police officers executed an arrest warrant for Alonzo Gardner ("Gardner") at 311 Freeman Street, Raleigh, North Carolina at about 9:30 a.m. on 21 October 1998. Police subsequently obtained a search warrant for the premises. During execution of the search warrant, officers found a small amount of crack cocaine

in a shoe box, which also contained defendant's North Carolina photo identification and release papers. Officers also found a sixty-one gram rock of crack cocaine in a closet near a bookbag, which contained some more of defendant's release papers and a letter addressed to defendant from his girlfriend. The search of the premises also yielded a paper bag containing $920.00 in cash, two sets of scales like those commonly used to measure drugs, copper mesh which is often used as filters for smoking crack cocaine, a "bong," plastic baggies of the type used to package individual rocks of crack cocaine for sale, seven handguns, numerous rounds of ammunition, a shotgun, and cellular telephones. Police officers also found photographs of defendant making an obscene gesture and holding a large sum of money. Thirty minutes prior to executing the arrest warrant on Gardner, police officers observed defendant leaving the residence. Detective D.R. Johnson, of the Raleigh Police Department, testified that while patrolling the area around 311 Freeman Street he had observed defendant present at the house and knew that he lived there.

Defendant's mother testified at trial that the house at 311 Freeman Street was rented in her name. She noted that she did not live there and had rented the residence solely for the use of her son, who had a key to the house. She stated that defendant gave her money to assist her with the rent and utility bills.

A jury found defendant guilty. The trial court sentenced defendant to an active term of thirty-five to forty-two months imprisonment for the trafficking conviction and a suspended term of

six to eight months for the maintaining a dwelling used for keeping cocaine conviction, to run consecutively. Defendant appeals.

## II. Issues

### A. Motion to Dismiss

Defendant contends that the trial court erred in denying his motion to dismiss the charges against him. Defendant argues that there was insufficient evidence that defendant committed the crimes charged. We disagree.

This Court reiterated the standard for review to be used in reviewing a trial court's decision on a motion to dismiss based upon insufficient evidence:

> In considering a motion to dismiss, the trial court must consider the evidence in the light most favorable to the State. The court must determine if the evidence, in the light most favorable to the State, shows substantial evidence of each offense charged and, further, shows that defendant committed the offense. Substantial evidence is that amount of relevant evidence which a reasonable mind would find sufficient to support a conclusion. If there is any evidence presented at trial which tends to show that the defendant committed the offense at issue, the motion is properly denied and instead, the defendant's guilt or innocence must be left to the jury.

*State v. Smith*, 121 N.C. App. 41, 44, 464 S.E.2d 471, 473 (1995) (citations omitted). In *State v. Everhardt*, this Court stated, "'If there is more than a scintilla of competent evidence to support allegations in the warrant or indictment, it is the court's duty to submit the case to the jury.'" 96 N.C. App. 1, 11, 384 S.E.2d 562, 568 (1989) (quoting *State v. Horner*, 248 N.C. 342, 344-45, 103 S.E.2d 694, 696 (1958)), *aff'd*, 326 N.C. 777, 392 S.E.2d

391 (1990). "In close or borderline cases, 'courts have consistently expressed a preference for submitting issues to the jury[.]'" *State v. Kelly*, 120 N.C. App. 821, 826, 463 S.E.2d 812, 815 (1995) (quoting *State v. Jackson*, 103 N.C. App. 239, 244, 405 S.E.2d 354, 357 (1991)(other citations and quotations omitted)).

Defendant was charged with knowingly and intentionally maintaining a dwelling used for keeping or selling controlled substances under G.S. 90-108(a)(7). This statute provides that it is unlawful "to knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, . . . which is used for the keeping or selling of [a controlled substance]." N.C. Gen. Stat. § 90-108(a)(7)(2001). The issue of whether "a person 'keep[s] or maintain[s]' a dwelling, within the meaning of N.C. Gen. Stat. § 90-108(a)(7), requires the consideration of several factors, none of which are dispositive." *State v. Bowens*, 140 N.C. App. 217, 221, 535 S.E.2d 870, 873 (2000)(citation omitted). "Those factors include: 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." *Id.* (citations omitted)

Here, the evidence, in the light most favorable to the State, tends to show that defendant was living at 311 Freeman Street in 1998. Defendant's mother testified that she leased the property in her name "for the sole purpose of renting the house to [her] son to have a place to live." Defendant's mother also placed the

utilities in her name because defendant was unemployed. Defendant and his mother had keys to the property. Defendant's mother stated that she generally paid the rent and utility bills for defendant's benefit, but defendant did give her money to assist with the costs.

When the police searched the house, they found men's clothing, defendant's North Carolina photo ID, a photograph of defendant making an obscene gesture and holding a large sum of money, numerous booking and release papers dated 18 May 1998 that listed defendant's address as 311 Freeman Street, and a personal letter from defendant's girlfriend. The police also found a sixty-one gram rock of crack cocaine in the house. This quantity is usually associated with dealing in cocaine, since the rock can be cut up and packaged for individual sale. The police seized another small rock of cocaine, a paper bag containing $920.00 in cash, and various other items associated with the drug trade.

This evidence viewed in the light most favorable to the State is sufficient for a reasonable person to infer that defendant kept or maintained the residence for drug activities. As this Court stated in *Kelly*, "To withstand a motion to dismiss, overwhelming evidence is not needed. In close or borderline cases, 'courts have consistently expressed a preference for submitting issues to the jury.'" *Kelly*, at 826, 463 S.E.2d at 815 (quoting *Jackson*, 103 N.C. App. at 244, 405 S.E.2d at 357 (other citations and quotations omitted)). The cases relied upon by defendant are readily distinguishable. This portion of defendant's assignment of error is overruled.

B. Constructive Possession

Defendant was also charged with trafficking in cocaine by possession under G.S. 90-95(h)(3). To obtain a conviction for this offense, the State must prove the defendant "possesse[d]" cocaine. N.C.G.S. §90-95(h)(3) (2000). This Court recently explained,

> An accused has possession of a controlled substance within the meaning of the law when he has both the power and intent to control its disposition or use. Necessarily, power and intent to control the controlled substance can exist only when one is aware of its presence. "Possession of controlled substances may be either actual or constructive." . . .
>
> Evidence of constructive possession is sufficient to support a conviction if it would allow a reasonable mind to conclude that defendant had the intent and capability to exercise control and dominion over the controlled substance. "Proving constructive possession where defendant had nonexclusive possession of the place in which the drugs were found requires a showing by the State of other incriminating circumstances which would permit an inference of constructive possession."

*State v. Matias*, 143 N.C. App. 445, 448, 550 S.E.2d 1, 3 (citations omitted), *aff'd*, 354 N.C. 549, 556 S.E.2d 269 (2001). Whether an accused had constructive possession of a controlled substance is dependent upon "'the totality of the circumstances.'" *State v. Butler*, ___ N.C. App. ___, ___, 556 S.E.2d 304, 311 (2001)(quoting *Jackson,* 103 N.C. App. 239, 243, 405 S.E.2d 354, 357 (1991) (citations omitted)). "'No single factor controls, but ordinarily the questions will be for the jury.'" *Id.*

Viewing the evidence in the light most favorable to the State, the evidence tends to show that defendant, along with his co-

defendant, had possession and control of the residence where the cocaine was found. When police officers searched the residence located at 311 Freeman Street, they found defendant's state-issued photo identification card, and numerous booking and release papers. Some of those release papers were found in a shoe box that contained a small rock of crack cocaine. Other release papers and a personal letter written to defendant were found in a black backpack located in the closet and in close proximity to the large rock of crack cocaine. Various other items associated with the drug trade were also seized during the search of the defendant's residence. This evidence was sufficient incriminating evidence from which the rational fact-finder could infer defendant's guilty knowledge and intent to possess and sell the cocaine seized by the police.

We conclude that the trial court did not err in denying defendant's motion to dismiss. This assignment of error is overruled.

III. Admission of Lab Report

Defendant argues that the trial court erred in admitting, over his objection, the State Bureau of Investigation (SBI) laboratory report regarding the identity and weight of the substances seized from defendant's residence. We disagree.

G.S. 90-95(g) provides that the State may introduce into evidence, without further authentication, a lab report prepared by the SBI, after analysis, showing the identity, nature, and quantity of a suspected controlled substance if:

> (1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and
>
> (2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

N.C. Gen. Stat. § 90-95(g)(1),(2)(1999).

The record shows that the State sent a copy of the lab report to defendant some eight months prior to trial. The lab report was attached to the State's response to one of defendant's discovery requests, and was listed as a discoverable report. The State's response also stated, "Unless otherwise indicated herein, the State intends to offer into evidence all statements, documents, tangible objects, reports, etc. disclosed in this response."

We conclude that the State's actions were in full compliance with G.S. 90-95(g) and constituted timely notice of the State's intent to introduce the SBI lab report into evidence. This assignment of error is overruled.

Having considered all of defendant's arguments, we find no error.

No error.

Judges GREENE and HUDSON concur.

Report per Rule 30(e).