

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA05-1566

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

STATE OF NORTH CAROLINA

v.

Pitt County  
Nos. 03 CRS 64740-41

GREGORY DEVONE JONES

Appeal by defendant from judgments entered 17 August 2005 by Judge Alma L. Hinton in Pitt County Superior Court. Heard in the Court of Appeals 24 July 2006.

*Attorney General Roy Cooper, by Assistant Attorney General John F. Oates, Jr., for the State.*

*Paul T. Cleavenger for defendant-appellant.*

MARTIN, Chief Judge.

Defendant was found guilty by a jury of trafficking in heroin by possession and possession of drug paraphernalia. The trial court sentenced him to 70 to 84 months of imprisonment for the trafficking offense and a consecutive 120-day term for possession of drug paraphernalia. On appeal, defendant claims only that the trial court erred in denying his motion to dismiss the charge of possession of drug paraphernalia at the conclusion of the State's evidence. We find no error.

The State's evidence tended to show that Greenville Police

Officer C.B. Jones found a bundle of 130 small glassine bags containing a total of 4.4 grams of heroin powder inside a rip in defendant's jacket while arresting defendant for resisting, delaying, or obstructing fellow Officer Armalin Richardson on 22 November 2003. Ninety of the glassine bags were blue and "were stamped with the name Heavy D." Forty of the bags were white and "were all stamped with the name Orange County." At the time of his arrest, defendant told Jones, "It's my dope. I'm not talking."

At the conclusion of the evidence, the trial court dismissed the charge of resisting, delaying or obstructing an officer, because the indictment erroneously identified Jones as the officer resisted by defendant. The court denied defendant's motion to dismiss the charges of trafficking in heroin by possession and possession of drug paraphernalia.

Defendant now argues that his possession of the 130 glassine baggies containing the heroin did not support a conviction for possession of drug paraphernalia under N.C. Gen. Stat. § 90-113.21 (2005), in addition to his conviction for heroin trafficking. Citing no authority, defendant avers that "any wrapping containing contraband drugs [sh]ould merge with the drugs" for purposes of N.C. Gen. Stat. § 90-113.21, thereby requiring evidence that he possessed additional, unused packaging to support a separate conviction for possession of drug paraphernalia in addition to his trafficking offense.

Under N.C. Gen. Stat. § 90-113.22(a) and (b) (2005), it is a Class 1 misdemeanor "for any person to knowingly use, or to possess

with intent to use, drug paraphernalia to . . . package, repackage, store, contain, or conceal a controlled substance which it would be unlawful to possess[.]” (emphasis added). As defined by N.C. Gen. Stat. § 90-113.21(a), “‘drug paraphernalia’ means all equipment, products and materials of any kind that are used to facilitate, or intended or designed to facilitate, violations of the Controlled Substances Act[.]” The statute explicitly includes within the meaning of “drug paraphernalia” the following items: “[c]apsules, balloons, envelopes and other containers for packaging small quantities of controlled substances[.]” N.C. Gen. Stat. § 90-113.21(a)(9). In order to sustain a conviction under this statute, the State must prove both (1) possession of drug paraphernalia and (2) “the intent to use [the paraphernalia] in connection with controlled substances.” *State v. Hedgecoe*, 106 N.C. App. 157, 164, 415 S.E.2d 777, 781 (1992).

We find no merit to defendant’s claim. As quoted above, N.C. Gen. Stat. § 90-113.22(a) criminalizes both the “knowing[] use” of drug paraphernalia and the mere possession of paraphernalia with intent to use it. Accordingly, the fact that defendant was using the 130 glassine baggies “for packaging small quantities of [heroin]” at the time of his arrest does not bar his prosecution for both possession of the drug paraphernalia and possession of the heroin. N.C. Gen. Stat. § 90-113.21(a)(9).

Defendant expressly abandons his second assignment of error.  
No error.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).