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NO. COA06-897

NORTH CAROLINA COURT OF APPEALS

Filed: 17 April 2007

STATE OF NORTH CAROLINA

v.

Henderson County
Nos. 05 CRS 714 - 717

LYNDA LEE WRIGHT

Appeal by defendant from judgments entered 1 February 2006 by Judge James U. Downs in Henderson County Superior Court. Heard in the Court of Appeals 21 March 2007.

Attorney General Roy Cooper, by Assistant Attorney General Diane Martin Pomper, for the State.

Randolph and Fischer, by J. Clark Fischer, for defendant-appellant.

TYSON, Judge.

Lynda Lee Wright ("defendant") appeals from judgments entered after a jury found her to be guilty of: (1) felonious possession of marijuana; (2) trafficking by possession of at least twenty-eight grams but less than 200 grams of methamphetamine; (3) misdemeanor maintaining place to keep controlled substances, to-wit: methamphetamine and marijuana; and (4) possession of drug paraphernalia. We find no error.

I. Background

A. State's Evidence

The State's evidence tended to show on 23 March 2004 Dewey Hilliard Bartlett ("Bartlett") sent two employee's to 432 Clover Extension to install water meter cutoffs. Bartlett received a telephone call from one of his employees to meet them at that address. When Bartlett arrived his employees were "All tore up, nervous[.]" One employee was later transported to the hospital because he had been struck by a vehicle.

On 23 March 2004 at approximately 2:22 p.m., 9-1-1 Dispatch received a telephone call from Bartlett's employees, who reported they had been struck by a vehicle and were being held at gunpoint. Fletcher Police Department Officer Sharon Archer ("Officer Archer") was dispatched to 432 Clover Extension. Officer Archer arrived at the location comprised of twelve to fifteen mobile homes.

Officer Archer talked with Bartlett's employees who directed her and two other officers to the residence where their alleged assailants had entered. As Officer Archer approached, defendant came outside and onto a porch. Defendant was gasping for air as if suffering from an asthma attack. Defendant was apprehended, handcuffed, and placed in a patrol vehicle.

Tim Robbins ("Robbins"), defendant's live-in boyfriend, was also apprehended. Robbins was asked by officers if he had a weapon. Robbins responded he owned a weapon and had locked it in a shed. Robbins provided the officers with a key to retrieve the weapon.

While Officer Archer and the other officers questioned defendant and Robbins, Robbins expressed concern about defendant's

mother, Billie Wright ("Wright"), inside the residence. Robbins told Officer Archer that Wright had just returned from surgery and needed to be checked on.

Officer Archer entered the residence and spoke with Wright. Wright asked Officer Archer to find a cellular phone so she could call for 9-1-1 in case of an emergency. Officer Archer searched several areas of the residence without finding a cellular phone. Officer Archer entered the master bedroom, looked on the night stand, found the cellular phone, and observed what appeared to be drug paraphernalia. Officer Archer observed a "clear rocket shaped cylinder" with a plastic bag containing a "white, powdery" substance inside the cylinder. Officer Archer gave the cellular phone to Wright and exited the residence.

Officer Archer obtained a search warrant and returned to search the residence. Controlled substances were found in the bathroom connected to the master bedroom. The master bedroom was also searched and controlled substances and drug paraphernalia were found. Officer Archer also observed: (1) men's and women's clothing in the dresser and on the floor; (2) prescription drug bottles containing defendant's name in the dresser; and (3) defendant's identification card in the pocket of a pair of pants located on the floor in the master bedroom.

Fletcher Police Department Sergeant Steve Morgan ("Sergeant Morgan") discovered a Pringle's potato chip container in a bedroom closet that contained \$987.00 in cash.

On 11 April 2005, defendant was indicted on the charges of: (1) possession with intent to sell or deliver marijuana; (2) trafficking in methamphetamine; (3) maintaining a place to keep controlled substances; and (4) possession of drug paraphernalia.

North Carolina State Bureau of Investigation Special Agent Jay Thomas Pintacuda ("Agent Pintacuda") testified as an expert witness in forensic chemistry. Agent Pintacuda stated the drugs seized during the search of the residence consisted of approximately eighty-five grams of methamphetamine and 444.5 grams of marijuana.

During the State's presentation of evidence, the State moved *in limine* to exclude defendant from presenting evidence Robbins had been convicted for criminal offenses related to the same drugs defendant was being tried for. The trial court granted the State's motion and stated, "Now, that does not prevent [defendant] from calling [Robbins] and letting him testify to what he was found guilty of." Defendant objected.

B. Defendant's Evidence

Defendant testified and presented evidence. Rachel Lee Morgan ("Rachel"), defendant's daughter, lived with defendant and Robbins in March 2004. Rachel testified: (1) defendant and Robbins were engaged in a strained romantic relationship, but continued to reside at the same residence; (2) defendant either stayed in the bedroom with her mother, Wright, or slept on the couch; (3) she had never seen any of the drugs found during Officer Archer's search; and (4) she had never known defendant to use any type of controlled substance.

Christina Morgan ("Christina"), who is also defendant's daughter, testified that in March 2004: (1) defendant's relationship with Robbins had deteriorated because he "had been cheating on her;" (2) defendant wanted Robbins to move out of the residence; (3) defendant "was sleeping in the living room;" (4) Robbins spent the majority of the time in the master bedroom; and (5) she had never seen any of the drugs Officer Archer recovered during the search.

Defendant testified on her own behalf. Defendant testified: (1) at the time of the search, she was staying in the living room because she had caught Robbins "with a couple of different women;" (2) in January 2004, she had called police officers to remove Robbins from the residence; (3) Robbins stayed in the master bedroom where the drugs were found; (4) she "couldn't handle" being in the master bedroom; and (5) she has never used methamphetamine.

C. State's Rebuttal Evidence

The State called Officer Archer in rebuttal. Officer Archer testified: (1) both defendant and Robbins gave 423 Clover Extension as their address during post-arrest booking; (2) female undergarments were found on the floor of and in the dresser located in the master bedroom; and (3) prescription drug bottles containing defendant's name were found inside the master bedroom.

On 1 February 2006, the jury convicted defendant of: (1) felonious possession of marijuana, a lesser included offense of possession with intent to sell or deliver marijuana; (2) trafficking by possession of at least twenty-eight grams but less

than 200 grams of methamphetamine; (3) misdemeanor maintaining place to keep controlled substances, to-wit: methamphetamine and marijuana; and (4) possession of drug paraphernalia. Defendant was sentenced to seventy to eighty-four months imprisonment. Defendant appeals.

II. Issue

Defendant argues the trial court erred by granting the State's motion *in limine* to exclude evidence that Robbins had been convicted for drug related criminal offenses related to the same drugs for which was charged.

III. Motion in Limine

Defendant asserts the trial court's exclusion of evidence "deprived [d]efendant of significant evidence supporting her defense that the drugs found in her home were solely the responsibility of Robbins rather than herself." We disagree.

The trial court's decision to exclude or admit evidence is generally reviewed under an abuse of discretion standard of review. *State v. Hyatt*, 355 N.C. 642, 662, 566 S.E.2d 61, 74 (2002), *cert. denied*, 537 U.S. 1133, 154 L. Ed. 2d 823 (2003). "A trial court may be reversed for an abuse of discretion only upon a showing that its ruling was so arbitrary that it could not have been the result of a reasoned decision." *State v. Wilson*, 313 N.C. 516, 538, 330 S.E.2d 450, 465 (1985) (internal citation omitted).

Here, defendant argues the exclusion of evidence that Robbins committed the crimes was error. Our Supreme Court has stated:

Evidence that another committed the crime for which the defendant is charged generally is

relevant and admissible as long as it does more than create an inference or conjecture in this regard. It must point directly to the guilt of the other party. Under Rule 401 *such evidence must tend both to implicate another and be inconsistent with the guilt of the defendant.*

State v. Israel, 353 N.C. 211, 217, 539 S.E.2d 633, 637 (2000) (emphasis supplied) (quoting *State v. Cotton*, 318 N.C. 663, 667, 351 S.E.2d 277, 279-80 (1987)).

Robbins's convictions for criminal offenses related to the same drugs defendant was charged with tends to "implicate another." *Id.* Robbins's convictions however fail to be "inconsistent with the guilt of the defendant." *Id.* Defendant could constructively possess the drugs and drug paraphernalia even though Robbins may have actually possessed the drugs and drug paraphernalia. See *State v. Matias*, 354 N.C. 549, 552, 556 S.E.2d 269, 270 (2001) ("Constructive possession exists when the defendant, 'while not having actual possession, . . . has the intent and capability to maintain control and dominion over' the narcotics.") (quoting *State v. Beaver*, 317 N.C. 643, 648, 346 S.E.2d 476, 480 (1986)). The trial court's ruling on the State's motion did not "prevent [defendant] from calling [Robbins] and letting him testify to what he was found guilty of."

The trial court did not abuse its discretion by not allowing defendant to present evidence that Robbins had been convicted for criminal offenses related to the same drugs for which she was on trial. Evidence of Robbins's convictions were properly excluded

because they failed to raise any inference of defendant's innocence. *Israel*, 353 N.C. at 217, 539 S.E.2d at 637.

Defendant argues that our Supreme Court's decision in *Isreal* has been overruled by a recent United States Supreme Court decision, *Holmes v. South Carolina*, 547 U.S. 319, 164 L. Ed. 2d 503 (2006). We disagree.

In *Holmes*, the United States Supreme Court reversed a decision by the South Carolina Supreme Court. 547 U.S. at ___, 164 L. Ed. 2d at 511. Contrary to defendant's argument, the Court in *Holmes* did not overrule North Carolina's rule that evidence of the guilt of another "must tend both to implicate another and be inconsistent with the guilt of the defendant." *Israel*, 353 N.C. at 217, 539 S.E.2d at 637. Instead, the Court cited approvingly from a South Carolina case stating the same rule that, "[E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence[.] . . ." *Holmes*, 547 U.S. at ___, 164 L. Ed. 2d at 511 (quoting *State v. Gregory*, 198 S.C. 98, 104-05, 16 S.E.2d 532, 534-35 (1941)). This argument misstates the Court's holding in *Holmes* and is overruled.

IV. Conclusion

The trial court did not abuse its discretion by preventing defendant from presenting evidence Robbins had been convicted for criminal offenses related to the same drugs she was being tried for. The trial court did not "prevent [defendant] from calling

[Robbins] and letting him testify to what he was found guilty of." Robbins's conviction was not "inconsistent with the guilt of the defendant." *Israel*, 353 N.C. at 217, 539 S.E.2d at 637. Defendant received a fair trial, free from prejudicial errors she preserved, assigned, and argued.

No Error.

Judges HUNTER and JACKSON concur.

Report per Rule 30(e).