NO. COA06-918

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

STATE OF NORTH CAROLINA

v. Person County
No. 05 CRS 51900

NATHANIEL LEATHERS

Appeal by defendant from judgment entered 23 March 2006 by Judge W. Osmond Smith, III, in Person County Superior Court. Heard in the Court of Appeals 26 March 2007.

Attorney General Roy Cooper, by Assistant Attorney General Christine A. Goebel, for the State.

Glenn, Mills & Fisher, P.A., by Carlos E. Mahoney, for defendant appellant.

McCULLOUGH, Judge.

FACTS

On 14 November 2005, Nathaniel Leathers ("defendant") was indicted for felonious possession of cocaine. The case was tried at the 22 March 2006 Criminal Session of Person County Superior Court.

The State presented evidence at trial which tended to show the following: On 27 May 2005, Officers Dewey Jones and Don Mangum of the Roxboro Police Department were traveling north on Highway 501. As they passed Henry's Quick Stop ("Henry's"), they observed what they believed to be suspicious activity. Specifically, they

believed that they saw defendant and another man engaged in either a money or drug transaction. They returned to the area, parked across the street from Henry's, and began looking for defendant. Shortly thereafter, they encountered defendant, who was walking between residences and headed back towards Henry's.

As the officers approached defendant, they told him what they observed in front of Henry's and asked him if he possessed anything illegal. Defendant said no, and the officers asked for consent to search him. Defendant told the officers they could "[g]o ahead and check; I have nothing on me." Officer Mangum testified that defendant was acting nervous, so he took his left hand and placed it on defendant's left hand and held it against the house so that defendant could not run away. Meanwhile, Officer Jones patted defendant down and checked his pockets. Initially, the officers did not find anything. Then, they asked defendant to remove his shoes, at which time he became increasingly nervous. When defendant removed his shoes, the officers saw a package hit the ground. Officer Jones seized the package, which he believed to contain crack cocaine, and placed defendant under arrest.

Defendant was convicted of possession of cocaine and was sentenced to a term of eight to ten months' imprisonment. Defendant appeals.

ANALYSIS

I.

Defendant contends that the trial court erred by denying his motion to dismiss the charge of possession of cocaine. Defendant

contends that there was no evidence that he either actually or constructively possessed the cocaine. We disagree.

To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense. *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 charged with possession of cocaine. To withstand the motion to dismiss, the State must present evidence that defendant had either actual or constructive possession of the cocaine. *See State v. Weldon*, 314 N.C. 401, 403, 333 S.E.2d 701, 702 (1985). "Actual possession requires that a party have physical or personal custody of the item." *State v. Alston*, 131 N.C. App. 514, 519, 508 S.E.2d 315, 318 (1998)(citing 28 C.J.S. Drugs and Narcotics § 170, at 773 (1996)). Here, Officer Jones testified that, initially, he failed to find any contraband while patting down defendant. However, Officer Jones further testified that

> I asked him to remove his shoes at which time the defendant became very nervous, and then at that time when he was starting to slip his shoes off is when I actually saw a package. I can't tell you if it c[a]me from his shoes, his sock, or the cuff of his pants, but I saw a package that actually hit the ground when he was removing his shoes . . . .

Officer Mangum likewise testified that the package "fell out of [defendant's] shoe or pants leg or what-not," although he did not

actually see it fall from defendant. Based on the officers' testimony, a jury could reasonably infer that the cocaine fell from defendant when he removed his shoes. Defendant offers alternative theories for the presence of the cocaine, including claims that it could have fallen from the roof or porch of an adjoining home, or possibly was kicked off the ground by defendant or one of the officers during the search. However, these theories go to the weight of the evidence, not its sufficiency, and were a matter for the jury. *See State v. Sokolowski*, 351 N.C. 137, 143, 522 S.E.2d 65, 69 (1999). In the light most favorable to the State, we find that a jury could rationally conclude that defendant actually possessed the cocaine. *See State v. Wilder*, 124 N.C. App. 136, 140, 476 S.E.2d 394, 397 (1996). Accordingly, we disagree with defendant.

II.

Defendant contends that the trial court committed plain error by allowing the State to offer testimony regarding the reputation of the neighborhood where he was arrested. We disagree.

Officer Jones testified that, when he and Officer Mangum arrived at the scene and went looking for defendant, he was "in an area known for the presence of drugs." He further explained that he was "familiar with the area" and that there were "several houses in that area that do deal in narcotics." Officer Jones also testified when prompted on cross-examination that "[a] few arrests have been made in this area." Officer Mangum additionally testified that there were "several crack houses . . . that we're

aware of." Defendant contends that the trial court should have, *sua sponte*, excluded the testimony of the arresting officers that defendant was arrested in an area known for the presence of drugs. We are not persuaded.

"A plain error is one 'so fundamental as to amount to a miscarriage of justice or which probably resulted in the jury reaching a different verdict than it otherwise would have reached.'" *State v. Carroll*, 356 N.C. 526, 539, 573 S.E.2d 899, 908 (2002)(quoting *State v. Bagley*, 321 N.C. 201, 213, 362 S.E.2d 244, 251 (1987), *cert. denied*, 485 U.S. 1036, 99 L. Ed. 2d 912 (1988)), *cert. denied*, 539 U.S. 949, 156 L. Ed. 2d 640 (2003). It is to be applied cautiously and only in the exceptional case where the error is so prejudicial that justice cannot have been done. *State v. Baldwin*, 161 N.C. App. 382, 388, 588 S.E.2d 497, 503 (2003).

In North Carolina, the "general rule is that in a criminal prosecution evidence of the reputation of a place or neighborhood is ordinarily inadmissible hearsay." *Weldon*, 314 N.C. at 408, 333 S.E.2d at 705. We agree with defendant that the admission of the officers' testimony that the neighborhood was an area known for drugs was error on the grounds that the testimony was inadmissible hearsay. *See State v. Williams*, 164 N.C. App. 638, 639, 596 S.E.2d 313, 314 (2004) ("[T]he trial court erroneously allowed testimony indicating Defendant was in a neighborhood known as an 'open air market for drugs.'"). However, defendant has failed to show that the admission of this testimony amounted to plain error. As

discussed previously herein, we concluded that the State presented substantial evidence that defendant possessed cocaine. We further find that the officers' testimony regarding the neighborhood was not critical evidence in the State's case, and it is not likely that the jury would have reached a different verdict had it been barred. Moreover, admission of this testimony was not error amounting to a miscarriage of justice. *Carroll*, 356 N.C. at 539, 573 S.E.2d at 908. Accordingly, the assignment of error is overruled and we find no plain error.

No error.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).