

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA07-1222

NORTH CAROLINA COURT OF APPEALS

Filed: 20 May 2008

STATE OF NORTH CAROLINA

v.

JASON ANTHONY EVANS

Forsyth County
Nos. 04 CRS 65000,
05 CRS 40548

Appeal by defendant from judgment entered 16 May 2007 by Judge Catherine C. Eagles in Forsyth County Superior Court. Heard in the Court of Appeals 5 May 2008.

Attorney General Roy Cooper, by Assistant Attorney General Patrick S. Woster, for the State.

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

McCULLOUGH, Judge.

Defendant appeals from judgment sentencing him for the offenses of felony possession of cocaine and habitual felon status.

On the afternoon of 17 December 2004, Officer Matt Morgan of the Winston-Salem Police Department Vice and Narcotics Unit, was working undercover in the parking lot of Franciscan Terrace Apartments. Detective Jeff Branham informed Officer Morgan that defendant would be in the area, would be possessing crack cocaine, and would be driving without a driver's license. This information

was provided to Detective Branham by Todd Carlton (Carlton), who was not present at trial.

When defendant drove into the parking lot of the Franciscan Terrace Apartments, Officer Morgan ordered defendant out of his vehicle. Officer Morgan searched the front and back passenger areas of the vehicle while Detective Branham spoke to defendant. Officer Morgan did not find any illegal substances in defendant's vehicle. In the meantime, Detective Branham determined that defendant was carrying the driver's license belonging to a "Randy Evans" and confronted defendant with the driver's license. Defendant began to cry. Detective Branham then inspected the vehicle and noticed a small piece of plastic sticking out from the console area between the front seats. Detective Branham pulled out what he identified as a plastic bag containing crack cocaine. Defendant again began to cry and offered assistance in "getting larger drug dealers." Defendant did not tell the officers that the cocaine was not his. Detective Branham testified that the crack cocaine found in defendant's vehicle weighed about two grams.

Defendant testified that the day before his arrest, 16 December 2004, he agreed to give Amanda Manning and Todd Carlton a ride to Hanes Mall. Defendant picked up the two at Franciscan Terrace Apartments in his wife's car. On the way to the mall, he stopped at a BP Station for gas. While Manning and Carlton stayed in the car, defendant went inside to pay for the gas with ten dollars given to him by Carlton. Defendant, Carlton, and Manning

shopped for about an hour at the mall; then defendant drove Carlton and Manning to the apartments.

The next day, Carlton called defendant and requested another ride to the mall. Defendant agreed to pick up Carlton at the apartments around noon. Defendant denied having any knowledge of drugs in his car or that he was meeting Carlton to distribute cocaine. Defendant admitted that he had three prior convictions for trafficking cocaine, felony motor vehicle rental fraud, and assault on a female. Manning, Carlton's then girlfriend, testified that she saw Carlton put a sandwich bag in the console of defendant's car while defendant was inside paying for the gas. Manning assumed that Carlton was putting the bag there because he did not want to take the drugs to the mall.

A jury found defendant guilty of possession of cocaine. Defendant pled guilty to habitual felon status. The trial court sentenced defendant to 110 to 141 months' imprisonment. Defendant appeals.

Defendant contends the trial court erred by denying his motion to dismiss the possession of cocaine charge based on insufficiency of the evidence. Defendant asserts that the "evidence created no more than suspicion that [he] knew of the contraband present in the car he was driving or had any intent to control it[.]" We disagree.

The standard for ruling on a motion to dismiss "is whether 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 that relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *State v. Patterson*, 335 N.C. 437, 449-50, 439 S.E.2d 578, 585 (1994). In ruling on a motion to dismiss, the trial court must consider all of the evidence 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). "Any contradictions or discrepancies arising from the evidence are properly left for the jury to resolve and do not warrant dismissal." *State v. King*, 343 N.C. 29, 36, 468 S.E.2d 232, 237 (1996), *cert. allowed in part and denied in part*, 348 N.C. 507, 506 S.E.2d 252 (1998).

The possession element of the offense of felony possession of cocaine "can be proven by showing either actual possession or constructive possession." *State v. Siriguanico*, 151 N.C. App. 107, 110, 564 S.E.2d 301, 304 (2002). Actual possession arises when a person has the substance on his person, is aware of its presence, and "either by himself or together with others he has the power and intent to control its disposition or use." *State v. Reid*, 151 N.C. App. 420, 429, 566 S.E.2d 186, 192 (2002). Constructive possession arises when a person does not have the substance on his person, but nonetheless "'has the intent and capability to maintain control and dominion over'" the substance. *State v. Matias*, 354 N.C. 549, 552, 556 S.E.2d 269, 270 (2001) (quoting *State v. Beaver*, 317 N.C. 643, 648, 346 S.E.2d 476, 480 (1986)). When the person does not have

"exclusive possession of the place where the narcotics are found, the State must show *other incriminating circumstances* before constructive possession may be inferred.'" *State v. McNeil*, 359 N.C. 800, 810, 617 S.E.2d 271, 277 (2005) (quoting *State v. Davis*, 325 N.C. 693, 697, 386 S.E.2d 187, 190 (1989)). "[C]onstructive possession depends on the totality of circumstances in each case. No single factor controls, but ordinarily the question will be for the jury." *State v. James*, 81 N.C. App. 91, 93, 344 S.E.2d 77, 79 (1986)).

The evidence in this case supporting constructive possession is compelling. The police found the cocaine hidden in the vehicle in which defendant was the driver and sole occupant. Contrary to defendant's assertion, the State was not required to present evidence of additional incriminating circumstances to allow an inference of constructive possession because defendant was the vehicle's sole occupant. When viewed in the light most favorable to the State, we conclude that there was substantial evidence of defendant's constructive possession of the cocaine. The trial court properly denied defendant's motion to dismiss. This assignment of error is overruled.

No error.

Judges HUNTER and STEELMAN concur.

Report per Rule 30(e).