

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-210

NORTH CAROLINA COURT OF APPEALS

Filed: 15 September 2009

STATE OF NORTH CAROLINA

v.

BRENNAN LENARD CHRISTIAN

Guilford County  
Nos. 05 CRS 80311-12  
07 CRS 24679

Appeal by Defendant from judgment entered 16 July 2008 by Judge Richard W. Stone in Superior Court, Guilford County. Heard in the Court of Appeals 7 September 2009.

*Attorney General Roy Cooper, by Assistant Attorney General Jason T. Campbell, for the State.*

*Duncan B. McCormick, for defendant.*

WYNN, Judge.

Under North Carolina law, evidence of residency, standing alone, is sufficient to support the charge of maintaining a dwelling for the purpose of selling a controlled substance.<sup>1</sup> Though Defendant argues on the appeal that the State failed to present substantial evidence of Defendant's residency, we disagree and therefore find no error.

On 10 October 2005, Defendant was indicted on charges of trafficking in a controlled substance by manufacturing more than 28

---

<sup>1</sup> *State v. Spencer*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 664 S.E.2d 601, 605 (2008) (citations omitted).

but less than 200 grams of cocaine, possession with intent to sell and deliver a controlled substance, misdemeanor possession of marijuana, and knowingly maintaining a dwelling for the purpose of selling a controlled substance. In a 20 September 2007 Bill of Information, the State also charged Defendant with trafficking in cocaine by possessing more than 28 but less than 200 grams of cocaine. Defendant was further charged with possession of a firearm by a convicted felon and possession of a stolen firearm. Defendant pled not guilty to all charges and the case was tried on the 27 May 2008 Criminal Session of Superior Court for Guilford County, North Carolina. Prior to trial, the State dropped the charges of misdemeanor possession of marijuana and possession of a stolen firearm.

At trial, the State's evidence tended to show that on 3 June 2005, police obtained and executed a search warrant for the residence at 405½ Hay Street in High Point, North Carolina. Upon entry, police found Defendant in the bathroom with thirty-three grams of cocaine in his pocket and a mason jar containing white residue on the floor of the bathroom. The toilet had just been flushed and Defendant was wearing rubber gloves. The officers also found a gun on a chair in the kitchen, and a digital scale and crack cocaine on a kitchen table.

A customer service representative for the City of High Point testified that Defendant was responsible for utilities at the residence from December 2004 to July 2005. Additionally, the officer who arrested Defendant testified that Defendant, when asked

for his address, stated that he lived at "504½ [sic] Hay Street" the "same address" where the search warrant was executed. At the close of the State's evidence, the trial court denied Defendant's motion to dismiss all charges.

Defendant presented evidence, including testimony from Henry Meekins. Mr. Meekins also lived at 405½ Hay Street and knew Defendant because his granddaughter was Defendant's friend of six years. According to Mr. Meekins, Defendant did not live there but "sometimes helped" to pay the bills. Mr. Meekins testified further that he did not have good credit and his granddaughter convinced Defendant to put the utilities in his name.

At the end of the evidence, Defendant again moved to dismiss the charges. After hearing arguments from counsel, the trial court dismissed the charge of possession of a firearm by a convicted felon, but denied Defendant's motion to dismiss as to the remaining charges.

On 30 May 2008, the jury returned verdicts finding Defendant guilty of possession with intent to sell and deliver cocaine, knowingly maintaining a dwelling for the purpose of keeping or selling cocaine, and trafficking in a controlled substance by possessing more than 28 grams but less than 200 grams of cocaine. The jury acquitted Defendant on the charge of trafficking in a controlled substance by manufacturing cocaine. The court entered judgment pursuant to the jury's verdict and sentenced Defendant to an active term of imprisonment of thirty-five to forty-two months for trafficking cocaine by possession; a consecutive, active term

of imprisonment of eight to ten months for possession with intent to sell and deliver cocaine; and a consecutive, suspended term of six to eight months imprisonment for maintaining a place to keep or sell a controlled substance. Defendant entered written notice of appeal on 9 June 2008.

On appeal, Defendant's sole contention is that the trial court erred in denying his motion to dismiss the charge of knowingly maintaining a dwelling for the purpose of keeping or selling a controlled substance. We disagree.

"In ruling on a defendant's motion to dismiss, the trial court must determine whether the State has presented substantial evidence (1) of each essential element of the offense and (2) of the Defendant's being the perpetrator." *State v. Boyd*, 177 N.C. App. 165, 175, 628 S.E.2d 796, 804 (2006) (citing *State v. Robinson*, 355 N.C. 320, 336, 561 S.E.2d 245, 255, *cert. denied*, 537 U.S. 1006, 154 L. Ed. 2d 404 (2002)).

The evidence is to be considered in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom; contradictions and discrepancies are for the jury to resolve and do not warrant dismissal; and all of the evidence actually admitted, whether competent or incompetent, which is favorable to the State is to be considered by the court in ruling on the motion.

*State v. Powell*, 299 N.C. 95, 99, 261 S.E.2d 114, 117 (1980) (citing *State v. Thomas*, 296 N.C. 236, 250 S.E.2d 204 (1978)).

"[T]he trial court . . . is concerned only with the sufficiency of the evidence to carry the case to the jury and not with its

weight." *Powell*, 299 N.C. at 99, 261 S.E.2d at 117 (citing *State v. McNeill*, 280 N.C. 159, 185 S.E.2d 156 (1971)). We review the trial court's denial of a motion to dismiss for insufficient evidence *de novo*. *State v. Robledo*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 668 S.E.2d 91, 94 (2008).

Pursuant to the North Carolina Controlled Substances Act, it is unlawful for any person

[t]o knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled substances in violation of this Article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this Article.

N.C. Gen. Stat. § 90-108(a)(7) (2007). Defendant contests the sufficiency of State's evidence to show that he kept or maintained the residence at 405½ Hay Street. To obtain a conviction for knowingly maintaining a place for the purpose of keeping or selling controlled substances, the State has the burden of proving that Defendant: "(1) knowingly or intentionally kept or maintained; (2) a building or other place; (3) being used for the keeping or selling of a controlled substance." *State v. Frazier*, 142 N.C. App. 361, 365, 542 S.E.2d 682, 686 (2001).

Maintain means to "bear the expense of, carry on . . . hold or keep in an existing state or condition." *State v. Toney*, 187 N.C. App. 465, 471, 653 S.E.2d 187, 191 (2007); *State v. Allen*, 102 N.C. App. 598, 608, 403 S.E.2d 907, 913 (1991) (quoting Black's Law Dictionary 859 (5th ed. 1979)), *rev. on other grounds*, 332 N.C.

123, 418 S.E.2d 225 (1992). “[O]ccupancy, without more, will not support the element of ‘maintaining’ a dwelling. However, evidence of residency, standing alone, is sufficient to support the element of maintaining.” *State v. Spencer*, \_\_\_ N.C. App. \_\_\_, \_\_\_, 664 S.E.2d 601, 605 (2008) (citations omitted) (holding evidence of Defendant’s purported confession to police that Defendant resided at the home in question “was substantial evidence that Defendant maintained the dwelling”). Other factors which may be taken into consideration in determining whether a person keeps or maintains a dwelling under N.C.G.S. § 90-108(a)(7) include ownership of the property, occupancy of the property, repairs to the property, payment of utilities, payment of repairs, and payment of rent; since none of the factors is dispositive, the determination will depend on the totality of the circumstances. *State v. Baldwin*, 161 N.C. App. 382, 393, 588 S.E.2d 497, 506 (2003).

In the present case, a police officer testified that when asked for his place of residence, Defendant responded with the same address as that where the officers executed the search warrant. Other evidence included utility records indicating that the utilities were in Defendant’s name and testimony that Defendant “helped sometimes” to pay the utility bills. This evidence is sufficient to show Defendant maintained the residence at 405½ Hay Street and to carry the charge of keeping and maintaining a dwelling for the purpose of selling a controlled substance to the jury. Accordingly, the trial court did not err in denying Defendant’s motion to dismiss.

No error.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).