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NO. COA09-252

NORTH CAROLINA COURT OF APPEALS

Filed: 15 September 2009

STATE OF NORTH CAROLINA

v.

Cabarrus County
Nos. 07 CRS 2760, 50160

GEORGE FREEMAN JONES, SR.

On Writ of Certiorari Defendant appeals from judgment entered 6 December 2007 by Judge Susan C. Taylor in Superior Court, Cabarrus County. Heard in the Court of Appeals 7 September 2009.

Attorney General Roy Cooper, by Assistant Attorney General Allison A. Angell, for the State.

Michael J. Reece for defendant-appellant.

WYNN, Judge.

"[T]he intent to sell or distribute may be inferred from (1) the packaging, labeling, and storage of the controlled substance, (2) the defendant's activities, (3) the quantity found, and (4) the presence of cash or drug paraphernalia."¹ In this appeal, Defendant George Freeman Jones, Sr. argues the trial court erred by denying his motion to dismiss a charge of possession with intent to sell or deliver cocaine because the State presented insufficient evidence of intent. Because the State's circumstantial evidence

¹ *State v. Nettles*, 170 N.C. App. 100, 106, 612 S.E.2d 172, 176, *disc. review denied*, 359 N.C. 640, 617 S.E.2d 286 (2005).

supported a reasonable inference that Defendant intended to sell or deliver the cocaine in his possession, we find no error.

On 13 January 2007, Officer Allen Tomlin of the Kannapolis Police Department was on patrol when two vehicles traveled past him on China Grove Road. One of the vehicles stopped in the roadway and the driver, Desiree Smith (Smith), waved her arms in Officer Tomlin's direction. Officer Tomlin rolled down his window and pulled up beside Smith, who stated that the driver of the other vehicle "had stolen her child." Officer Tomlin activated his blue lights, called for back up and sped after the vehicle, which stopped on a bridge near Lake Fisher. Officer Tomlin pulled up behind the vehicle, and Smith parked behind Officer Tomlin's patrol car. When he approached the driver's side of the vehicle, Officer Tomlin observed Defendant in the driver's seat and a child crying in the back seat.

Officer Tomlin asked for Defendant's identification, which he provided. Officer Tomlin then asked Defendant to step out of the vehicle. When Defendant stepped out of the vehicle, his right hand was inside his coat pocket. Officer Tomlin asked Defendant to remove his right hand from his coat pocket, but Defendant refused. Officer Tomlin grabbed Defendant's right hand, attempting to forcibly remove it from Defendant's coat pocket. Defendant struggled with Officer Tomlin, refusing to remove his hand from his pocket. During the struggle, Officer Tomlin felt a cylindrical plastic object in Defendant's hand.

Meanwhile, Smith exited her car and approached Defendant's vehicle. She told Officer Tomlin to "let [Defendant] go." Officer Tomlin advised Smith to stay back and she remained by the rear-passenger's side door of Defendant's vehicle.

As Officer Tomlin pulled Defendant's hand out of his pocket, Defendant released the object in his hand. Officer Tomlin observed a brown pill bottle fall onto the driver's seat of Defendant's vehicle. After Defendant "made some type of statement[,] " Smith walked up to the open passenger side window, reached into the vehicle, and picked up the pill bottle. Officer Tomlin instructed Smith not to touch the pill bottle. Instead, Smith turned away from Defendant's vehicle and threw the pill bottle toward the water. Officer Tomlin observed the pill bottle hit a tree limb and fall to the ground short of the water.

Shortly thereafter, Officer Patrick Jones arrived and assisted Officer Tomlin in handcuffing Defendant and arresting Smith for resisting, obstructing, and delaying. Officer Tomlin retrieved the pill bottle from where he watched it land. When Officer Tomlin opened the pill bottle, he observed three cut-off baggies tied at the top. Inside each baggy was a small off-white substance. The off-white substance was later identified as crack cocaine, weighing a total of .5 grams. Police also found \$500 in Defendant's pants' pocket, consisting of one \$50 bill, numerous \$20 bills, and one \$10 bill.

After Defendant's arrest, Officer Tomlin learned that Defendant and Smith were the child's parents and that they had a

custody disagreement earlier that day. Defendant moved to dismiss the charges at the close of the State's evidence and the trial court denied the motion.

Smith testified on Defendant's behalf. Smith testified that she and Defendant had a disagreement; that Defendant put their son into his car and drove off; that she flagged down Officer Tomlin to help her retrieve their son; and that she yelled at Officer Tomlin when she thought Officer Tomlin was using excessive force with Defendant. Smith further testified that she reached into her pocket, pulled out the bottle and threw it across the bridge because she "didn't want [Officer Tomlin] to manhandle me like that." Defendant testified that he never had the pill bottle, never said anything to Smith about the bottle, and never saw Smith with the bottle.

The trial court denied Defendant's motion to dismiss at the close of the evidence. Thereafter, the jury found Defendant guilty of one count each of possession with intent to sell or distribute cocaine and resisting a public officer, and Defendant pled guilty to attaining habitual felon status. The trial court sentenced Defendant to 80 to 105 months imprisonment.

In his sole argument on appeal, Defendant contends the trial court erred by denying his motion to dismiss because the State presented insufficient evidence of intent to sell or distribute. 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).

The elements of the crime of possession with intent to sell or deliver are: (1) possession of a substance; (2) the substance must be a controlled substance; and (3) there must be intent to sell or distribute the controlled substance. N.C. Gen. Stat. § 90-95(a)(1) (2007); *State v. Fletcher*, 92 N.C. App. 50, 55, 373 S.E.2d 681, 685 (1988). "While intent may be shown by direct evidence, it is often proven by circumstantial evidence from which it may be inferred." *State v. Nettles*, 170 N.C. App. 100, 105, 612 S.E.2d 172, 175-76, *disc. review denied*, 359 N.C. 640, 617 S.E.2d 286 (2005). "Based on North Carolina case law, the intent to sell or distribute may be inferred from (1) the packaging, labeling, and storage of the controlled substance, (2) the defendant's activities, (3) the quantity found, and (4) the presence of cash or

drug paraphernalia." *Id.* at 106, 612 S.E.2d at 176 (citations omitted).

Here, the State presented evidence that inside Defendant's pill bottle were three cut-off baggies tied at the top and that each baggie contained crack cocaine. Although .5 grams was a small amount, the cocaine was distributed among the three separate, small packages. Furthermore, police found \$500 in Defendant's pants' pocket. We conclude the manner in which the cocaine was separately packaged and the amount of cash in Defendant's possession was sufficient evidence to permit a reasonable inference that Defendant intended to sell or distribute the cocaine. *See State v. McNeil*, 165 N.C. App. 777, 782, 600 S.E.2d 31, 35 (2004) (total weight of 5.5 grams crack cocaine, individually wrapped in twenty-two pieces, placed in the corner of a paper bag), *aff'd*, 359 N.C. 800, 617 S.E.2d 271 (2005); *see also State v. Autry*, 101 N.C. App. 245, 399 S.E.2d 357 (1991) (.88 grams of cocaine distributed among four separate, small packages, and \$47 in cash found alongside the cocaine on the table). Accordingly, the trial court properly denied Defendant's motion to dismiss the charge of possession with intent to sell or deliver cocaine.

No error.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).