NO. COA13-408

NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v. Rockingham County
No. 10 CRS 52148

ANTOINETTE DEVONA RUMLEY,
Defendant.

Appeal by defendant from judgment entered 11 October 2012 by Judge Alma L. Hinton in Rockingham County Superior Court. Heard in the Court of Appeals 9 October 2013.

Attorney General Roy Cooper, by Assistant Attorney General Charlene B. Richardson, for the State.

Anne Bleyman for defendant-appellant.

BRYANT, Judge.

Where sufficient evidence is presented to withstand defendant's motion to dismiss the charges of conspiracy to traffic in cocaine and trafficking in cocaine by possession, we find no error in the judgment of the trial court.

In June 2010, defendant Antoinette Devona Rumley ("defendant") began residing with her friend Terricka Hampton Haislip ("Haislip"). On 20 June 2010, defendant joined in a cookout at Haislip's home. Defendant testified that she had borrowed $700.00 cash from Jennifer Yvette Derreberry ("Derreberry") earlier that day. Defendant testified that she periodically assisted Derreberry in running a "yard sale shop" and that Derreberry had given her $700.00 cash from the shop's cash register "to pay bills."

Defendant testified that while at the cookout, she met a man called "B." After deciding that she wanted to get to know "B" better, defendant received permission from Haislip to use Haislip's car, a silver Buick, so that she could drive around with "B" and talk to him. Defendant drove "B" to Eden,[1] about an hour away from Haislip's home, to see defendant's friend. During the drive defendant testified that she smoked marijuana with "B." After discovering that her friend was not home, defendant allowed "B" to drive them back to Haislip's house.

[1] Defendant testified that she and "B" drove "to Draper, Eden." Defendant later stated that her friend "lived in Eden – I mean – yeah, I guess it's Eden. . . . I don't know if it's called Draper or not, but I heard it's Draper, so that's what I called it, Draper."

At approximately 4:00 p.m. that afternoon, Rockingham County Sherriff's Deputy Hall saw and began to pass a silver Buick traveling southbound on U.S. 171, Highway 29. After the driver turned his head away to block Deputy Hall from seeing his face, Deputy Hall ran the car's tags and learned that an order to seize the tag for lack of insurance had been issued. Deputy Hall signaled for the Buick to stop. As Deputy Hall pulled behind the stopped Buick, the car suddenly made a U-turn and re-entered the southbound highway at a high rate of speed.

Deputy Hall pursued the Buick which was travelling at 110 miles per hour in a 65 miles per hour zone and weaving between traffic. During this chase defendant, who was still a passenger in the vehicle, testified that she called Haislip for help, but "B" knocked the phone from her hand during the call. Deputy Hall noticed during the chase that a white bag was thrown from the passenger side of the car and landed in a ditch; Deputy Hall marked the location of the bag for later retrieval.

Shortly after the bag was thrown from the car, the car crashed into a ditch and Deputy Hall saw the driver flee into the nearby woods. As Deputy Hall pulled up to the wreck, defendant exited and stood next to the car holding her pocketbook. Deputy Hall ordered defendant to the ground and

handcuffed her. After placing defendant under arrest, Deputy Hall found $15.57 in her pocketbook and $660.00 in denominations of tens and twenties in her shoe. A marijuana cigar was found in defendant's pocketbook.

Deputy Hall, who was also a canine officer, attempted to track the fleeing driver of the car with his canine but was unsuccessful. The driver was never found. When Deputy Hall asked for the name of the driver, defendant responded that she did not know his name beyond "B." Defendant testified that she called Haislip after being arrested and that Haislip told her "B's" real name was Bobby Womack ("Womack"). However, Haislip testified at defendant's trial that while she had met Womack at a cookout, she was unsure as to whether she would describe that as "knowing [him]."[2] A detective for the State later testified that when he contacted Haislip several days after defendant's arrest to ask questions about the cookout and Womack, Haislip "told [him] at that point in time that she didn't know Mr.

[2] During cross-examination by the State, Haislip stated that she "told [the detective] we met him at a cookout." When the State then asked "[d]o you recall telling [the detective] that neither you nor your boyfriend had known this person?," Haislip responded: "I don't think so. But what you consider as knowing? Because knowing could be like knowing for years. Or knowing couldn't be as a definition I would say as knowing somebody, and meeting them two or three times and consider them as knowing them, because you really don't."

Womack, that he was not a friend of her or her boyfriend's, and that, in fact, the cookout had taken place a year earlier, not that day, and that she just didn't know [Womack]." Both defendant and Haislip were presented with photographs from the North Carolina Department of Motor Vehicles of black men with names similar or identical to "Bobby Womack;" neither defendant nor Haislip were able to identify Womack from the photographic lineups.

While searching the car after the wreck, Deputy Hall found a marijuana cigar on the front passenger floorboard which defendant admitted was hers and a digital scale on the front passenger seat. When Deputy Hall returned to the location where he had seen the white bag thrown from the passenger side of the car, he found a white paper bag in a ditch. Near the white bag were several baggies filled with substances. Two plastic baggies recovered contained a total of 1.185 ounces of marijuana, and two baggies contained a whitish substance later determined to be a total of 162.10 grams of cocaine.[3]

On 4 October 2010, a Rockingham County Grand Jury initially indicted defendant for trafficking in cocaine by possessing more than 28 grams but less than 200 grams, conspiracy to traffic in

[3] One bag contained 50.8 grams of cocaine hydrochloride and one bag contained 111.30 grams of cocaine base.

cocaine by transporting and possessing more than 28 grams but less than 200 grams, and possession of more than 0.5 ounces but less than 1.5 ounces of marijuana. On 6 June 2011, a Rockingham County Grand Jury returned a superseding indictment charging defendant with the same offenses. On 11 October 2012, defendant was found guilty of all three offenses charged. Defendant's convictions were consolidated, and she was sentenced to 35 to 42 months imprisonment.

Defendant appeals.

On appeal, defendant challenges whether the trial court erred in denying defendant's motions to dismiss: (I) the charge of conspiracy to traffic in cocaine; and (II) the charge of trafficking in cocaine by possession.

I.

Defendant first argues that the trial court erred in denying her motion to dismiss the charge of conspiracy to traffic in cocaine. We disagree.

As each of defendant's arguments concern the trial court's denial of a motion to dismiss a charge based on insufficiency of the evidence, the same standard of review is applicable to both issues on appeal.

> We review the trial court's denial of a motion to dismiss *de novo*. A motion to dismiss for insufficient evidence is properly denied if there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the perpetrator of such offense. Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. All evidence, both competent and incompetent, and any reasonable inferences drawn therefrom, must be considered in the light most favorable to the State. Additionally, circumstantial evidence may be sufficient to withstand a motion to dismiss when a reasonable inference of defendant's guilt may be drawn from the circumstances. If so, it is the jury's duty to determine if the defendant is actually guilty.

State v. Burton, ___ N.C. App. ___, ___, 735 S.E.2d 400, 404 (2012) (citations and internal quotations omitted). "The State is entitled to every reasonable inference to be drawn from the evidence. Contradictions and discrepancies do not warrant dismissal of the case; rather, they are for the jury to resolve. Defendant's evidence, unless favorable to the State, is not to be taken into consideration." *State v. Franklin*, 327 N.C. 162, 172, 393 S.E.2d 781, 787 (1990) (citations omitted).

Defendant contends that the trial court erred by denying her motion to dismiss because the State failed to produce sufficient evidence to show that she conspired with Womack to

traffic in cocaine.

> In order to find defendant is guilty of conspiracy to traffic in cocaine in the instant case, the State must prove that defendant entered into an agreement to traffic by possessing cocaine weighing at least 28 grams but less than 200 grams, and intended the agreement to be carried out at the time it was made.

State v. Jenkins, 167 N.C. App. 696, 700, 606 S.E.2d 430, 433 (2005) (citations omitted). "A criminal conspiracy is an agreement, express or implied, between two or more persons to do an unlawful act or to do a lawful act by unlawful means." *State v. Clark,* 137 N.C. App. 90, 95, 527 S.E.2d 319, 322 (2000) (citation omitted). "The reaching of an agreement is an essential element of conspiracy." *State v. Richardson,* 100 N.C. App. 240, 247, 395 S.E.2d 143, 148 (1990) (citation omitted). "[However,] to prove conspiracy, the State need not prove an express agreement; evidence tending to show a mutual, implied understanding will suffice. Nor is it necessary that the unlawful act be completed." *State v. Morgan*, 329 N.C. 654, 658, 406 S.E.2d 833, 835 (1991) (citations omitted). "A conspiracy may be shown by circumstantial evidence, or by a defendant's behavior." *State v. Choppy*, 141 N.C. App. 32, 39, 539 S.E.2d 44, 49 (2000). Conspiracy may also be inferred from the conduct of the other parties to the conspiracy. *State v. Batchelor,* 157

N.C. App. 421, 427, 579 S.E.2d 422, 427 (2003) (citation omitted). "[P]roof of a conspiracy [is generally] established by a number of indefinite acts, each of which, standing alone, might have little weight, but, taken collectively, they point unerringly to the existence of a conspiracy." *Jenkins*, 167 N.C. App. at 700, 606 S.E.2d at 433 (citation omitted).

Defendant contends that insufficient evidence was presented by the State to show conspiracy between herself and Womack. However, our Court has held that a motion to dismiss is properly denied where sufficient evidence is presented to create a reasonable inference of defendant's guilt. *See State v. Baldwin*, 161 N.C. App. 382, 588 S.E.2d 497 (2003) (affirming defendant's convictions for trafficking in cocaine and possession of cocaine where the State presented sufficient evidence to show a conspiracy between co-defendants). Moreover, this Court has held that where a case is "close" or "borderline" regarding whether the State has met its burden of presenting sufficient evidence of a defendant's guilt, the case must be presented to the jury. *See State v. Hamilton*, 77 N.C. App. 506, 512, 335 S.E.2d 506, 510 (1985); *see also State v. Jackson*, 103 N.C. App. 239, 405 S.E.2d 354 (1991) (holding that in a "close case," where the State presented sufficient circumstantial

evidence of the defendant's guilt, the trial court did not err in denying the defendant's motion to dismiss charges of trafficking in cocaine by possession and by transportation, and of conspiracy to traffic in cocaine). In affirming a trial court's denial of a defendant's motion to dismiss a charge of conspiracy, our Court has recognized that "[w]hile conspiracy can be proved by inferences and circumstantial evidence, it 'cannot be established by a mere suspicion, nor does a mere relationship between the parties or association show a conspiracy.'" *State v. Benardello*, 164 N.C. App. 708, 711, 596 S.E.2d 358, 360 (2004) (citation omitted). As such, where evidence presented by the State has established more than a mere suspicion or relationship between parties to a conspiracy, our Court has affirmed a trial court's denial of a defendant's motion to dismiss on a charge of conspiracy. *See Morgan*, 329 N.C. at 659, 406 S.E.2d at 835 (holding that the trial court properly denied the defendant's motion to dismiss a charge of conspiracy to traffic in cocaine where the defendant had been found with one ounce (28.3 grams) of cocaine, as "[t]he mere quantity of the controlled substance alone may suffice to support the inference of an intent to transfer, sell or deliver [cocaine]."); *State v. Villarreal*, No. COA08-244, 2008 N.C. App.

LEXIS 2219, at *10 (N.C. Ct. App. Dec. 16, 2008) ("Although defendant presented evidence that he did not know the bag contained cocaine, the credibility of the defense witnesses and the question whether defendant knew the contents of the bag were issues properly left to the jury to weigh and decide."); *Jenkins*, 167 N.C. App. 696, 606 S.E.2d 430 (finding evidence of a conspiracy where officers found large amounts of cash, cocaine, and a loaded handgun in the open cabin of the truck where defendants were sitting); *State v. Andrews*, No. COA04-1369, 2005 N.C. App. LEXIS 1498 (N.C. Ct. App. Aug. 2, 2005) (affirming the trial court's denial of defendant's motion to dismiss a charge of conspiracy to traffic in cocaine where the State presented evidence that defendant rode in a car with a co-defendant who had cocaine, defendant took the bag of cocaine from the co-defendant and attempted to conceal it, and the co-defendant attempted to flee when officers stopped the car);[4] *Batchelor*, 157 N.C. App. 421, 579 S.E.2d 422 (affirming the trial court's denial of the defendant's motion to dismiss a charge of conspiracy to traffic in cocaine where the State

[4] We note that *State v. Villarreal* and *State v. Andrews* are unpublished opinions; however, both cases are included here to illuminate instances where this Court has found that the State presented sufficient evidence on a charge of conspiracy to withstand a defendant's motion to dismiss that charge.

presented evidence that the defendant had ridden in a car with a co-defendant, the co-defendant intended to sell cocaine to an police informant, and although the defendant denied knowing about the cocaine, cocaine was found in the patrol car seat where the defendant had sat while being transported to the police station); *Jackson*, 103 N.C. App. 239, 405 S.E.2d 354 (holding that the defendant's motion to dismiss a charge of conspiracy to traffic cocaine was properly denied where the State presented evidence that the defendant had sat in the front seat of a car where cocaine was found, and firearms were found in the trunk of the defendant's car); *cf. State v. Euceda-Valle*, 182 N.C. App. 268, 641 S.E.2d 858 (2007) (finding insufficient evidence of a conspiracy to traffic in cocaine where the cocaine was found only in the trunk of the car, no drugs or drug paraphernalia were found in the car where the defendants sat, the defendants were not carrying large amounts of cash or firearms on or around their person, and officers did not observe either of the defendants engage in any unusual movements or actions).

Here, the State presented evidence of a number of acts that, taken together, point to the existence of a conspiracy. In its case against defendant, the State presented evidence that

defendant drove around for about two hours with a man named "B" she claimed to have just met; defendant drove with "B" to a friend's house located an hour away from Haislip's home; defendant smoked marijuana with "B" during the drive and allowed "B" to drive Haislip's car back to Haislip's home; defendant traveled in the passenger area of the car which contained a bag filled with two baggies of cocaine and digital scales; while "B" was driving, after he noticed Deputy Hall, "B" leaned backwards and towards defendant as if attempting to hide his face; while Deputy Hall was chasing them, defendant attempted to dispose of the cocaine and marijuana by throwing the bag out of the car window; defendant had $660.00 in small denominations of tens and twenties concealed in her shoe and only $15.57 in her pocketbook; the white bag thrown from the car was filled with 162.10 grams of cocaine separated into two baggies; SBI testing determined one baggie contained 50.8 grams of cocaine hydrochloride and the other baggie contained 111.30 grams of cocaine base; cocaine hydrochloride is a powdered form of cocaine that is typically sold in chunks and can be crushed and snorted; cocaine base is made by cooking cocaine hydrochloride with baking soda and water and is typically smoked; the digital scales were found in the front passenger seat where defendant

sat; and both defendant and Haislip gave inconsistent testimony regarding the identity of "B" or Womack. Moreover, the State presented testimony by Deputy Hall that in his opinion, when portions of cocaine are weighed for sale digital scales like the ones found in the front seat of the car are typically used. Deputy Hall further testified that defendant's carrying of $660.00, in small denominations of tens and twenties, and in her shoe rather than in her pocketbook is commonly associated with drug trafficking. This evidence, when viewed in a light most favorable to the State, is sufficient evidence of an implied understanding between defendant and Womack to conspire to traffic in cocaine so as to survive a motion to dismiss. *See Morgan*, 329 N.C. 654, 406 S.E.2d 833; *Villarreal*, 2008 N.C. App. LEXIS 2219; *Andrews*, 2005 N.C. App. LEXIS 1498.

Defendant also argues that the trial court erred in denying her motion to dismiss because she raised an affirmative defense of duress to explain her actions during the car chase. In support of her affirmative defense, defendant testified that she put her marijuana into the bag before throwing the bag from the car window in the hope that it would make Womack end the car chase, and that she was unaware the bag also contained cocaine. Defendant further argues she was not involved in a conspiracy to

traffic in cocaine. Defendant points to the facts that her fingerprints were not found on the white bag or baggies of cocaine and she did not leave the scene of the car crash when Deputy Hall arrived.

In reviewing a trial court's denial of a motion to dismiss, "[t]his Court may reverse the denial of a motion to dismiss based upon an affirmative defense only if the evidence in support of that affirmative defense is undisputed and does not require determination of a witness' credibility." *State v. Lockhart*, 181 N.C. App. 316, 321, 639 S.E.2d 5, 8 (2007). Where evidence in support of an affirmative defense is conflicting, "the cause must be submitted to the jury." *Hedgecock v. Jefferson Standard Life Ins. Co.*, 212 N.C. 638, 641, 194 S.E. 86, 88 (1937).

Here, defendant supported her affirmative defense through the testimony of two witnesses—herself and Haislip. At trial, defendant testified that "because I was in fear for my life . . . I figured if I threw the bag out [of the car], it would get [Womack] to stop [the car]." Haislip testified that defendant called her during the high-speed car chase to ask for help and that defendant "was hysterical" on the phone. However, while the testimony of both women tended to support defendant's

affirmative defense of duress, defendant's assertion that she threw a bag containing marijuana out the window, not knowing the bag also contained over 162 grams of cocaine, in order to get Womack to stop the car, strains the bounds of credibility such that it was proper for the jury to decide the issue. Further, defendant and Haislip gave conflicting testimony as to the identity of Womack. In contrast, the State disputed defendant's affirmative defense of duress by presenting evidence which tended to show that defendant knew the bag contained cocaine. Notwithstanding defendant's challenges to the sufficiency of the evidence, even if this were considered a "close" or "borderline" case, "our courts have consistently expressed a preference for submitting issues to the jury, both in reliance on the common sense and fairness of the twelve and to avoid unnecessary appeals." *Hamilton*, 77 N.C. App. at 512, 335 S.E.2d at 510. Therefore, the trial court did not err in denying defendant's motion to dismiss and properly presented the charge of conspiracy to traffic in cocaine to the jury. Accordingly, defendant's argument is overruled.

II.

Defendant next argues that the trial court erred in denying her motion to dismiss the charge of trafficking in cocaine by

possession contending there was insufficient evidence that she knowingly possessed cocaine. We disagree.

Trafficking in cocaine by possession has two elements: (1) knowing possession of cocaine, and (2) the cocaine weighed 28 grams or more. *State v. White*, 104 N.C. App. 165, 168, 408 S.E.2d 871, 873 (1991). We have held that possession of a controlled substance may be actual or constructive. *See Jenkins*, 167 N.C. App. at 700, 606 S.E.2d at 433. "An accused has possession of contraband material within the meaning of the law when he has both the power and intent to control its disposition and use." *State v. Barfield*, 23 N.C. App. 619, 623, 209 S.E.2d 809, 812 (1974). "Where [cocaine is] found [in a location] under the control of an accused, this fact, in and of itself, gives rise to an inference of knowledge and possession which [is] sufficient to carry the case to the jury on a charge of unlawful possession." *State v. Harvey*, 281 N.C. 1, 12, 187 S.E.2d 706, 714 (1972).

> An inference of [] possession can also arise from evidence which tends to show that a defendant was the custodian of the vehicle where the controlled substance was found. In fact, the courts in this State have held consistently that the "driver of a borrowed car, like the owner of the car, has the power to control the contents of the car." Moreover, power to control the automobile where a controlled substance was found is

> sufficient, in and of itself, to give rise to the inference of knowledge and possession sufficient to go to the jury.

State v. Hudson, 206 N.C. App. 482, 490, 696 S.E.2d 577, 583 (2010) (citation omitted). "As . . . possession depends on the totality of circumstances in each case . . . ordinarily the question will be for the jury." *State v. James*, 81 N.C. App. 91, 93, 344 S.E.2d 77, 79 (1986).

Here, defendant admitted to possessing marijuana and throwing a bag containing the marijuana from the car but denied knowing that the bag thrown from the car contained cocaine. When Deputy Hall located the bag after the car chase, he found two bags of marijuana, weighing a total of 1.185 ounces near it. Deputy Hall also recovered two bags which were later analyzed and found to contain 50.8 grams of cocaine hydrochloride and 111.30 grams of cocaine base, respectively. Notwithstanding defendant's denial of knowledge that the bag she threw out the window contained cocaine in addition to marijuana, the facts in this record clearly show defendant exerted possession over the cocaine. The State presented evidence which tended to show that defendant was the custodian of the car she borrowed from Haislip; rode with Womack for about two hours in the car; smoked marijuana with Womack during the drive; threw the bag containing

cocaine and marijuana from the car during the chase; had $660.00 in small denominations of tens and twenties in her shoe, but only $15.57 in her purse; occupied the passenger side of the car where the digital scales were found; and gave conflicting testimony about the identity of Womack.

Defendant's custodial possession of the car, the presence of digital scales in the car, the presence of two baggies of cocaine weighing over a third of a pound (162.10 grams), the amount and small denominations of money hidden in defendant's shoe rather than kept in her purse, and the discrepancies in testimony over Womack's identity provide compelling circumstantial evidence that defendant had knowledge of and was in control of the cocaine. *See Harvey*, 281 N.C. 1, 187 S.E.2d 706. As such, the totality of the circumstances regarding defendant's possession of the cocaine was sufficient to withstand defendant's motion to dismiss.

No error.

Judges HUNTER, Robert C., and STEELMAN concur.

Report per Rule 30(e).