

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA14-746
NORTH CAROLINA COURT OF APPEALS

Filed: 17 February 2015

STATE OF NORTH CAROLINA

v.

New Hanover County
No. 11 CRS 51860

JOSEPH DAVID SEGARRO

Appeal by defendant from judgment entered 6 February 2014 by Judge Jay D. Hockenbury in New Hanover County Superior Court. Heard in the Court of Appeals 7 January 2015.

Attorney General Roy Cooper, by Special Deputy Attorney General Heather H. Freeman, for the State.

Narendra K. Ghosh for defendant.

ELMORE, Judge.

Joseph David Segarro (defendant) appeals from judgment entered 6 February 2014 by Judge Jay D. Hockenbury in New Hanover Superior Court. A jury found defendant guilty of trafficking in marijuana by possession of more than ten but less than fifty pounds pursuant to N.C. Gen. Stat. § 90-95(H)(1). The trial court sentenced defendant to 25-30 months of active imprisonment and imposed a statutory fine of \$5,000. Defendant

now appeals. After careful consideration, we hold that defendant received a trial free from error.

I. Background

The following evidence was presented at trial: On 28 February 2011, Postal Inspector Chad Parnell of the Postal Inspection Service received a tip in the form of a text message from Inspector David Oakley that a package containing narcotics was in route to an address in Wilmington. The text message read: "312 Dogwood Lane in Wilmington, North Carolina. It appears to be 15, going to M. Segarra, 312 Dogwood in Wilmington, North Carolina[.]" Inspector Parnell interpreted this message to mean "15 pounds of marijuana headed to 312 Dogwood Lane."

That same day, Inspector Parnell was informed by the local mail carrier that a box addressed to "J. Segarra at 312 Dogwood Lane" had arrived at a local Wilmington post office. Detective Parnell testified that the sender's address listed on the box was fictitious, and that he discovered the package had originated from a marijuana stash house in Texas. Inspector Parnell contacted the Wilmington Police Department to conduct a canine sniff of the package. The canine sniffed a series of

packages and alerted that the package addressed to J. Segarra contained narcotics.

Thereafter, Inspector Parnell and Detective Desmond Willis of the Wilmington Police Department obtained a federal search warrant and opened the box. Inside the box was a Tupperware container containing twenty, one pound bundles of what appeared to be marijuana for a total weight of twenty point four pounds. After verifying that the bundles contained marijuana, Inspector Parnell returned the bundles to the box and resealed the package.

Detective Willis obtained an anticipatory search warrant for 312 Dogwood Lane, and he assembled a team of officers to execute a search of the residence. The officers were shown defendant's photograph and told that "J Segarra" named on the package was likely defendant, who lived next door at 314 Dogwood Lane. The address 312 Dogwood Lane was associated with defendant's aunt, who did not share the last name Segarra or Segarro.

Prior to the execution of the search warrant, the police conducted surveillance of the residence and observed defendant enter 312 Dogwood Lane. On 1 March 2011, Inspector Parnell, dressed in a mailman's uniform, knocked on the front door.

Defendant answered and Inspector Parnell delivered the package to defendant, returned to the mail truck, and witnessed defendant take the package into the residence. Approximately three minutes later, the officers executed the search warrant and entered the house. Upon entering, the officers announced their presence. The officers located the package just inside the front door and noted that the tape on the label had been partially ripped off. In an attempt to locate defendant, the officers breached a series of locked doors before finding defendant hiding in a locked upstairs bathroom. Defendant did not present any evidence at trial.

II. Analysis

Defendant contends that the trafficking charge should have been dismissed and not submitted to the jury because the State did not present sufficient evidence of his knowing possession of marijuana. We disagree.

"A motion to dismiss for insufficiency of the evidence is properly denied if substantial evidence exists to show: (1) each essential element of the offense charged; and (2) that defendant is the perpetrator of such offense." *State v. Fuller*, 166 N.C. App. 548, 554, 603 S.E.2d 569, 574 (2004). "The trial court's function is to test whether a reasonable inference of the

defendant's guilt of the crime charged may be drawn from the evidence. The evidence is to be considered in the light most favorable to the State." *Id.* (internal citation omitted).

Circumstantial evidence may withstand a motion to dismiss and support a conviction even when the evidence does not rule out every hypothesis of innocence. If the evidence presented is circumstantial, the court must consider whether a reasonable inference of defendant's guilt may be drawn from the circumstances. Once the court decides that a reasonable inference of defendant's guilt may be drawn from the circumstances, then it is for the jury to decide whether the facts, *taken singly or in combination*, satisfy [it] beyond a reasonable doubt that the defendant is actually guilty.

State v. Fritsch, 351 N.C. 373, 379, 526 S.E.2d 451, 455 (2000)
(quotations and citations omitted) (alterations in original).

N.C. Gen. Stat. § 90-95(h)(a) (2013), in relevant part,
states:

Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as 'trafficking in marijuana' and if the quantity of such substance involved:

- (a) Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon[.]

The offense of trafficking in marijuana by possession "requires knowing possession." *State v. Robledo*, 193 N.C. App. 521, 525, 668 S.E.2d 91, 94 (2008) (citation omitted). Whether the defendant was aware that marijuana was in the package is properly a question for the jury if there is sufficient evidence to go to the jury. *See State v. Fleming*, 26 N.C. App. 499, 501, 216 S.E.2d 157, 158 (1975). Direct evidence is not required because awareness or knowledge may be inferred from incriminating circumstances. *State v. Wiggins*, 185 N.C. App. 376, 387-88, 648 S.E.2d 865, 873-74 (2007); *see also* N.C.P.I.-Criminal 104.41 ("A person has constructive possession of a(n) [substance] [article] if the person does not have it on the person but is aware of its presence, and has (either alone or together with others), both the power and intent to control its disposition or use. A person's awareness of the presence of the [substance] [article] and the person's power and intent to control its disposition or use may be shown by direct evidence or may be inferred from the circumstances." (Brackets in original)).

"North Carolina Courts interpreting incriminating circumstances have found many examples of circumstances sufficient to allow a case to go to the jury." *State v. Neal*,

109 N.C. App. 684, 687, 428 S.E.2d 287, 290 (1993). In determining the issue of awareness or knowledge, this Court has considered (1) the degree of the defendant's control over the place where the contraband was found, *State v. Matias*, 354 N.C. 549, 552, 556 S.E.2d 269, 270-71 (2001) ("Where [contraband] materials are found on the premises under the [exclusive] control of an accused, this fact, in and of itself, gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury on a charge of unlawful possession; (2) the defendant's proximity to the contraband, and (3) "other incriminating circumstances," *id.* at 552, 556 S.E.2d at 271 ("[U]nless the person has exclusive possession of the place where the narcotics are found, the State must show other incriminating circumstances before constructive possession may be inferred.")).

Where a defendant receives a package that contains a controlled substance at a residence, this Court cannot sustain a conviction for trafficking in that substance by possession "based on [the substance] being surreptitiously introduce[ed] . . . into a defendant's residence." *State v. Rashidi*, 172 N.C. App. 628, 636, 617 S.E.2d 68, 74 (2005) (citation and quotations omitted). Rather, the State must show that a defendant "knew or

expected that the package contained [the controlled substance] and intended to control its disposition or use." *Id.* The State "must show more than the package was addressed to defendant and contained [the controlled substance], since such proof does not necessarily establish defendant's knowledge of the contents of the package and his intent to exercise control over the [controlled substance]." *Id.*

In the case at bar, there was sufficient evidence of defendant's knowing possession of the marijuana. Inspector David Oakley received a tip from the postal inspector in El Paso, Texas indicating that the package may contain marijuana. The Wilmington Police Department determined that the package did, in fact, contain 20 pounds of marijuana. The package was addressed to "J. Segarra," presumably defendant, yet delivered to 312 Dogwood Lane, defendant's aunt's residence, which was located next to defendant's residence. Defendant accepted the delivery of this package while he was the sole occupant of his aunt's residence. When the officers executed the search warrant, defendant hid in a locked upstairs bathroom. From the rear of the home, Detective Megan Reinhart observed a back window open slightly and she heard an officer warn, "[s]omebody's trying to come out the back."

Here, defendant had total control over the premises when the contraband was delivered and was in close proximity to the contraband. However, certain "other incriminating circumstances" more clearly demonstrate defendant's knowing possession of the marijuana. Specifically, defendant's conduct of hiding from the officers was incriminating, particularly because the residence was not his own. See *Rodelo*, ___ N.C. App. at ___, 752 S.E.2d at 772-73 (holding that sufficient incriminating circumstances beyond defendant's mere proximity to the controlled substance existed, in part, because defendant hid from officers when they entered a warehouse searching for contraband).

If defendant was unaware that the box contained contraband, he would have had no reason to avoid law enforcement. Instead, the evidence shows that defendant hid and possibly tried to escape out of a window. It is highly unlikely that an unknowing person who merely accepted a package at a neighboring relative's residence would feel compelled to hide from law enforcement. Drawing inferences in the State's favor, we conclude that the evidence before us supports an inference that defendant was aware of what the package contained, which in turn supports the element of knowing possession. Accordingly, we hold that the

trial court did not err in denying defendant's motion to dismiss.

No error.

Judges DAVIS and TYSON concur.

Report per Rule 30(e).