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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-942

Filed: 6 August 2019

Sampson County, Nos. 16 CRS 52798, 52808-10, 53237

STATE OF NORTH CAROLINA

v.

JAMES EDWARD RAYNOR, JR.

Appeal by defendant from judgment entered 2 February 2018 by Judge Ebern T. Watson III in Sampson County Superior Court. Heard in the Court of Appeals 26 March 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Lee J. Miller, for the State.

Cooley Law Office, by Craig M. Cooley, for defendant.

DIETZ, Judge.

Defendant James Edward Raynor, Jr. appeals his convictions on multiple charges related to methamphetamine trafficking. He contends that the trial court erred in denying his motion to dismiss all charges, arguing that the State failed to produce sufficient evidence of the possession element common to each.

We reject Raynor’s arguments. The State’s evidence showed that Raynor was present at a home that contained equipment being used to manufacture methamphetamine, including a plastic bottle with a white, crystalline substance connected to a tube, cooled by electric fans, and surrounded by methamphetamine precursors and drug paraphernalia. In addition, an informant told officers that he saw Raynor “cooking meth” by adding things to the plastic bottle. This evidence readily is sufficient to infer constructive possession, even though there was another person present in the home when officers arrived. We therefore find no error in the trial court’s judgment.

Facts and Procedural History

In 2016, a confidential informant reported to the Sampson County Sheriff’s Office that a house at 324 McKoy Street was being used as a “meth lab.” Officers began surveilling the residence. An officer saw Defendant James Raynor, Jr. exit the house, enter the informant’s car, drive off with the informant, and return to the house thirty-five minutes later.

Afterwards, the informant contacted law enforcement and explained that there was methamphetamine production occurring inside the residence. The informant also sent a text message containing a photograph purportedly of the inside of the home. The photograph showed drug paraphernalia and what appeared to be an individual actively manufacturing methamphetamine.

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Eventually, an officer approached the house and smelled a “very strong chemical odor” at the back door that he recognized as “the result of the manufacture of methamphetamine.” The officer then entered the residence by breaking a window in the back of the house and unlocking the back door. The officer saw Raynor standing by the front door in the living room while another man ran out from the kitchen. The officer ordered Raynor to lie on the floor and placed him in handcuffs. When the officer asked Raynor whether there was anything harmful inside the house, Raynor replied “No. Not really, just that stuff in there, but it’s not really harmful.” Raynor nodded his head toward the dining room as he spoke.

Additional law enforcement officers entered the home and conducted a search. In the dining room, they found a plastic bottle with tubing containing a “white, crystalline substance.” Officers also found several items containing methamphetamine precursors, such as cold packs, drain cleaner, lithium batteries, and white rectangular pills. Forensic testing revealed traces of methamphetamine residue on some of the items.

The State indicted Raynor on charges of illegally possessing six chemical precursors of methamphetamine, manufacturing methamphetamine, possessing drug paraphernalia, and trafficking methamphetamine.

Detective Irvin, the officer who primarily dealt with the informant, testified at Raynor’s trial. When asked whether the informant said anything about Raynor’s

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activity at 324 McKoy Street, Detective Irvin replied, “He did state to me that he was preparing items for the manufacture of methamphetamine,” and that Raynor was “adding items to” a “two-liter, plastic bottle.” According to Detective Irvin, the informant made these statements “during his debrief, preparing for trial.” Detective Irvin admitted that he did not know what Raynor’s specific role was in the manufacturing process, but asserted that the informant “did say [Raynor] was cooking methamphetamine.”

The informant also testified at Raynor’s trial but recalled very few specifics from the night of the arrest. The State asked the informant specifically what he saw Raynor do inside the house. The informant replied, “I don’t remember him -- I don’t know where he was at. He must have been in another room or something. I don’t remember.” The State also asked who the informant saw making methamphetamine using the plastic bottle found at the house. The informant replied, “I mean, I can’t say who was doing it, but, I mean, [Raynor] was there. I mean, I can’t say he was actually -- that was his bottle. I can’t say whose bottle it is. It’s in the house and somebody was there.”

Eventually, the informant asserted that he saw Raynor “making meth or getting stuff ready to do it,” and that Raynor “was there. I’m sure he was doing something.” But when again asked for specifics, the informant could only say “I don’t know. I didn’t see him.”

Raynor moved to dismiss all charges after the State rested and again at the close of evidence. The trial court dismissed the manufacturing methamphetamine charge and one of the two trafficking charges, but otherwise denied Raynor's motion to dismiss. On 1 February 2018, the jury found Raynor guilty of the remaining charges. The trial court consolidated the counts for sentencing under the trafficking count and sentenced Raynor to 70 to 93 months in prison.

Raynor appealed.

Analysis

I. Jurisdiction

We first address some procedural errors in Raynor's appeal. Raynor's notice of appeal was timely but did not include a certificate of service. It also had other procedural defects. *See* N.C. R. App. P. 4(b)–(c), 26(d).

In a criminal case, defects in an otherwise timely notice of appeal should not result in the loss of the right to appeal unless the State suffered some prejudice as a result of the procedural violations. *State v. Sitosky*, 238 N.C. App. 558, 560–61, 767 S.E.2d 623, 624–25 (2014). The State does not assert that it suffered any prejudice. Thus, because the timely notice of appeal conferred jurisdiction on this Court, we will proceed to the merits of the appeal.

II. Motion to Dismiss

Raynor's sole challenge on appeal concerns the sufficiency of the evidence. He

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contends that the trial court erred by denying his motion to dismiss. We review this issue *de novo*. *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007).

When a defendant moves to dismiss a criminal charge for insufficiency of the evidence, the trial court must determine whether there was “substantial evidence” that the defendant committed each essential element of the offense. *Id.* “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.*

Here, Raynor was convicted of three types of drug offenses: possession of chemical precursors to methamphetamine, possession of drug paraphernalia, and trafficking methamphetamine by possession. N.C. Gen. Stat. §§ 90-113.22, 90-95(d1)(2), 90-95(h)(3b). Raynor argues that the State produced insufficient evidence of the “possession” element common to all three. We disagree.

“Possession” may be actual or constructive. *State v. Loftis*, 185 N.C. App. 190, 197, 649 S.E.2d 1, 6 (2007). A defendant has actual possession if the substance is on his person, he 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. Boyd*, 177 N.C. App. 165, 175, 628 S.E.2d 796, 805 (2006).

Constructive possession, by contrast, requires an inference. It exists when the defendant has sufficient “intent and capability to maintain control and dominion” over the substance so that possession can be inferred. *State v. Matias*, 354 N.C. 549,

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552, 556 S.E.2d 269, 270–71 (2001). Notably, when relying on constructive possession, if the defendant does not have exclusive possession of the place where the substance is found, “the State must show other incriminating circumstances before constructive possession may be inferred.” *Id.* at 552, 556 S.E.2d at 271.

Raynor’s argument focuses on the informant’s testimony. Specifically, at trial, the informant testified that he could not remember what Raynor was doing inside the residence at 324 McKoy Street, and acknowledged that he could not recall other important details from that night. Because there was another person present at the home, Raynor argues that there was insufficient evidence to connect Raynor to the methamphetamine, the drug precursors, and the drug paraphernalia recovered by law enforcement.

The flaw in this argument is that it ignores Detective Irvin’s testimony about what the informant told him. Detective Irvin testified at trial that, according to statements by the informant, the informant saw Raynor manufacturing methamphetamine inside 324 McKoy Street by adding items to a plastic bottle. When officers searched 324 McKoy Street they found a plastic bottle matching that description by the informant. The bottle contained a white, crystalline substance with a tube protruding from the top. There was an electric fan pointed toward the bottle and there were methamphetamine precursors and other drug paraphernalia nearby.

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This evidence is sufficient to send all the charges to the jury. Although there was another person present at 324 McKoy Street when the officers entered, the State presented testimony that Raynor was not merely present, but actively engaged in manufacturing methamphetamine using substances and devices inside the residence. This evidence, directly tying Raynor to the manufacture of the methamphetamine, is an “other incriminating circumstance” sufficient to permit an inference of constructive possession by the jury. *State v. Coffield*, 235 N.C. App. 424, 763 S.E.2d 926, 2014 WL 3827181, at *3 (2014) (unpublished).

To be sure, the informant’s own trial testimony, in which he could not remember what Raynor was doing inside the home that night, conflicts with Detective Irvin’s account of what the informant said before trial. But that credibility issue is one for the jury. On a motion to dismiss, the trial court (and this Court on *de novo* review) “must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994). Viewing the competing evidence in the light most favorable to the State, there was substantial evidence of the essential elements of all the charged offenses. Thus, the trial court properly denied Raynor’s motion to dismiss.

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Conclusion

We find no error in the trial court's judgment.

NO ERROR.

Judges TYSON and HAMPSON concur.

Report per Rule 30(e).