IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-418

No. COA20-598

Filed 3 August 2021

Wake County, No. 18 CRS 216077

STATE OF NORTH CAROLINA

v.

BRANDON DION GREENE

Appeal by defendant from judgment entered 1 August 2019 by Judge G. Bryan Collins, Jr., in Wake County Superior Court. Heard in the Court of Appeals 14 April 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General Shelby N. Smith, for the State.

Sarah Holladay for defendant.

DIETZ, Judge.

¶ 1 Defendant Brandon Greene appeals his conviction for possession with intent to sell or deliver crack cocaine within 1,000 feet of a school. He contends that the trial court erred by denying his motion to dismiss.

¶ 2 As explained below, we reject Greene's challenges to the sufficiency of the evidence. The State's evidence showed that the arresting officers approached Greene

while he was on a greenway within 1,000 feet of a school. The officers saw Greene extend his hand and then attempt to flee. They searched the area near Greene and recovered a baggie with enough crack cocaine to be divided into ten or twelve separate uses. The crack cocaine was "wet," indicating that it was not yet ready for sale and consumption but suitable to be separated for later sale. The officers also recovered empty cellophane baggies and testified that these baggies customarily were "cornered" and used to package drugs. This is substantial evidence of all the essential elements of the charged offense. We therefore find no error in the trial court's judgment.

Facts and Procedural History

¶ 3 On the evening of 28 August 2018, Officer Matthew Michael and Officer Matthew Lane encountered Defendant Brandon Greene on a public greenway in Raleigh approximately 760 feet from the grounds of Carnage Middle School. The officers testified that this greenway has a known drug house close by and that drug transactions occur frequently on the greenway.

¶ 4 One of the officers saw Greene trying to conceal something in his waistband and shined his flashlight on Greene's hand. Greene turned his body away from the officers to conceal the contents of his hand. As the officers followed Greene with the flashlight, Greene hid behind a large tree. When the officers approached him, Greene attempted to flee and extended his left arm as he fell to the ground.

¶ 5 The officers then searched Greene and the area immediately around Greene's body where Greene had extended his arm. The officers found cash, a pocketknife, and some empty cellophane baggies. Nearby on the ground, the officers recovered several rocks of crack cocaine in a cellophane baggie. Greene stipulated to the fact that the substance the officers recovered was crack cocaine.

¶ 6 The State charged Greene with possession with intent to sell or deliver cocaine within 1,000 feet of a school and several related charges. At trial, one of the officers testified that, at the time of the arrest, the seized crack cocaine was still "wet," indicating that the product was freshly prepared. The officer testified that drug users typically do not purchase wet cocaine, as it is more effective to smoke when dry. He estimated that the drugs weighed approximately a gram, which would be worth around $100. The officer also testified that when cocaine is packaged for sale, it is distributed in "corner bags."

¶ 7 Greene moved to dismiss at trial and the trial court denied the motion. The jury later convicted Greene of possession with intent to sell or deliver within 1,000 feet of a school. The trial court sentenced Greene to 29 to 47 months in prison, suspended for 18 months of supervised probation. Greene appealed.

Analysis

¶ 8 Greene challenges the trial court's denial of 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). A

trial court properly denies a motion to dismiss if there is substantial evidence that the defendant committed each essential element of the charged offense. *Id.* "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.*

¶ 9 Greene argues that there was insufficient evidence of three essential elements of the charged offense: the "possession" element; the "intent to sell or deliver" element; and the "within 1,000 feet of a school" element. We address these arguments in turn below.

¶ 10 We begin with possession. "Possession" in this criminal statute 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).

¶ 11 By contrast, constructive possession 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, 552, 556 S.E.2d 269, 270–71 (2001). 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.

¶ 12 Here, the State presented evidence Greene constructively possessed the crack cocaine. The officers testified that they were patrolling the greenway where they encountered Greene because that greenway was near a known drug house. Both officers described Greene's behavior as he attempted to conceal his hands, hide behind a tree, and run away. The officers then saw Greene extend his left arm as he attempted to flee. After searching the immediate area where Greene extended his arm, the officers discovered the bag on the ground. Greene's behavior in extending his arm as if to drop something, and the officer's search of the area near Greene immediately after he extended his arm, is sufficient evidence to support the inference of Greene's constructive possession of the crack cocaine discovered nearby. *Id.* at 552, 556 S.E.2d at 270–71.

¶ 13 Next, Greene contends that the State failed to present sufficient evidence regarding his intent to sell or deliver. Specifically, Greene focuses on the fact that the crack cocaine recovered nearby was not packaged for sale.

¶ 14 Although intent to sell or deliver "may be shown by direct evidence, it is often proven by circumstantial evidence from which it may be inferred." *State v. Yisrael*, 255 N.C. App. 184, 188, 804 S.E.2d 742, 744 (2017), *aff'd per curiam*, 371 N.C. 108, 813 S.E.2d 217 (2018). "The intent to sell or deliver 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. Although quantity of the controlled substance alone may suffice to support the inference of an intent to transfer, sell, or deliver, it must be a substantial amount." *Id.* (citations omitted). This is a fact-specific inquiry that examines the totality of the circumstances. *State v. Coley*, 257 N.C. App. 780, 788–89, 810 S.E.2d 359, 365 (2018).

¶ 15 Here, a law enforcement officer testified that the packaging of Greene's crack cocaine was indicative of someone who intended to sell drugs. At the time of Greene's arrest near a known drug house, the officer testified that the crack cocaine in Greene's possession was wet, indicating that it was freshly manufactured and ready to be portioned for sale. If Greene had been purchasing cocaine for personal use, the officer explained, he would have bought dry product.

¶ 16 The officers also recovered multiple empty cellophane bags that the officers testified were often "cornered" to create smaller packages to sell drugs to others. Finally, the officers testified that the quantity of crack cocaine seized from Greene was sufficient to create an estimated ten to twelve separate portions suitable for use. This evidence, viewed in its totality, is sufficient for a reasonable jury to infer that Greene had the intent to sell or deliver the crack cocaine. *See Yisrael*, 255 N.C. App. at 192–93, 804 S.E.2d at 47.

¶ 17 Finally, Greene alleges that the State failed to present evidence that he intended to sell or deliver the cocaine within 1,000 feet of a school. Specifically, he

argues that school was not in session and thus the statutory language does not apply to his conduct.

¶ 18 We review this statutory interpretation question *de novo*. *State v. Skipper*, 214 N.C. App. 556, 557, 715 S.E.2d 271, 272 (2011). "Our task in statutory interpretation is to determine the meaning that the legislature intended upon the statute's enactment." *State v. Rieger*, 267 N.C. App. 647, 833 S.E.2d 699, 700–01 (2019). "The intent of the General Assembly may be found first from the plain language of the statute, then from the legislative history, the spirit of the act and what the act seeks to accomplish." *Id.* at 649, 833 S.E.2d at 701.

¶ 19 Greene's argument ignores the plain language of N.C. Gen. Stat. § 90-95(e)(8). The statute provides that any "person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) . . . within 1,000 feet of the boundary of real property used for a child care center, or for an elementary or secondary school . . . shall be punished as a Class E felon." The law applies based on the defendant's proximity to the school property itself, not to whether school is in session at the time. Because the language of the statute is plain and unambiguous, our analysis ends there. *State v. Beck*, 359 N.C. 611, 614, 614 S.E.2d 274, 277 (2005). But even if we were to look beyond the statute's plain language, Greene's argument is unpersuasive. Areas around a school, such as the greenway in this case, are locations with which children may be more familiar and thus areas where they are more likely to congregate. A plain reading of

the statutory language achieves the General Assembly's likely objective of providing increased punishment for drug dealers engaged in their illegal conduct near children. Thus, the State presented sufficient evidence of this element of the offense.

¶ 20 Finally, Greene argues that, even if he was *present* within 1,000 feet of the school property, there was insufficient evidence that he had the intent to sell or deliver the drugs at that location. But for the reasons explained above, the State presented sufficient evidence for the jury to infer that Greene had the intent to sell or deliver crack cocaine at the time the officers encountered him on the greenway, within 1,000 of the school property. Thus, the trial court did not err by denying the motion to dismiss.

Conclusion

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

NO ERROR.

Judges ZACHARY and HAMPSON concur.

Report per Rule 30(e).