

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA01-1442

NORTH CAROLINA COURT OF APPEALS

Filed: 6 August 2002

STATE OF NORTH CAROLINA

v.

Union County
Nos. 00 CRS 14204, 53945

FERRELL JAMES MASSEY

Appeal by defendant from judgment entered 12 July 2001 by Judge Sanford L. Steelman, Jr. in Union County Superior Court. Heard in the Court of Appeals 22 July 2002.

Attorney General Roy Cooper, by Assistant Attorney General M. Janette Soles, for the State.

Haakon Thorsen for defendant-appellant.

WALKER, Judge.

Defendant was charged with possession with intent to sell and deliver cocaine, sale and delivery of cocaine, and of attaining the status of habitual felon. The State's evidence tended to show that on 20 August 1999, Officer James Bowden of the Siler City Police Department was acting as a street buyer as part of an undercover drug operation with the Monroe Police Department. Detectives Gabe Broome and James Hughes of the Monroe Police Department monitored Officer Bowden's actions through a wire listening device he was

wearing on his body. Officer Bowden's undercover vehicle also had a video camera set up to record drug buys.

At approximately 6:30 p.m., Officer Bowden drove near the intersection of Kerr and Scott Avenues, a section of Monroe where Officer Bowden previously had made drug buys. Officer Bowden noticed defendant and two other men sitting on the porch of a brick house. He turned left on Scott Avenue and eventually worked his way back to the brick house on Kerr Avenue. As Officer Bowden drove, one of the men sitting on the porch flagged him down. Officer Bowden spoke into the wire listening device to inform Detectives Broome and Hughes that he had been flagged down and he was stopping at a brick house.

After Officer Bowden and the man slapped hands, defendant approached the vehicle. Defendant asked Officer Bowden whether he was with the police and Officer Bowden responded negatively. The man in the gray shirt went back to the porch and defendant squatted down next to the driver's side of the vehicle. Officer Bowden asked defendant for twenty dollars' worth of cocaine. Defendant and Officer Bowden exchanged the money for the cocaine. Because defendant squatted down, the video camera only captured defendant's hands. Officer Bowden then left.

As Officer Bowden drove away, he relayed to Detectives Broome and Hughes, via the wire listening device, descriptions of defendant and the other man. Defendant was approximately five feet eleven inches tall, weighed approximately 185 pounds, and wore a camouflage shirt and baggy jeans. He also wore medium length

dreads on the top of his head and short hair on the sides of his head. The man who flagged Officer Bowden down had medium length hair, was approximately five feet ten inches tall, weighed approximately 175 pounds, and wore a gray t-shirt. The third man was young, slender, and his hair was close cut. Once Officer Bowden was out of the area, he used his cellular phone to verify that the officers had received his communication.

Five minutes later, Officer Bowden met with Detectives Broome and Hughes at the Law Enforcement Center for Monroe. Officer Bowden put the cocaine in an evidence control bag and gave it to Detective Broome. He then confirmed the descriptions of defendant and the two men. After the meeting, Detectives Broome and Hughes drove to the brick house where the drug exchange took place. Detectives Broome and Hughes observed defendant, who had dreads on the top of his head and wore a camouflage shirt and baggy blue jean shorts, standing on the porch of the house.

Defendant did not present any evidence. A jury found defendant guilty as charged. Defendant admitted to attaining the status of an habitual felon. The trial court sentenced defendant to 116 to 149 months in prison. Defendant appeals.

Defendant contends the trial court erred by denying his motion to dismiss the charges of possession of cocaine with intent to sell and deliver and sale and delivery of cocaine, in violation of N.C. Gen. Stat. §§ 90-95(a)(1) and (2)(2001), respectively. Defendant asserts there was insufficient evidence to prove he was the man who sold the cocaine to Officer Bowden. 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).

Here, defendant approached Officer Bowden in his undercover vehicle, bent down next to the driver's side, and gave Officer Bowden cocaine in exchange for twenty dollars. After observing defendant at close range during the drug transaction, Officer Bowden gave a description of defendant to Detectives Broome and Hughes over the wire listening device. Five minutes after the transaction, Officer Bowden confirmed his description of defendant and the location of the drug transaction at the meeting with the detectives. Furthermore, the detectives verified Officer Bowden's description of defendant when they drove by the brick house and saw

defendant standing on the porch. Accordingly, the trial court properly denied defendant's motion to dismiss.

Defendant has failed to argue his two remaining assignments of error. Accordingly, they are deemed abandoned. *State v. Bonney*, 329 N.C. 61, 82, 405 S.E.2d 145, 157 (1991).

No error.

Judges THOMAS and BIGGS concur.

Report per Rule 30(e).