

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA11-597
NORTH CAROLINA COURT OF APPEALS

Filed: 15 November 2011

STATE OF NORTH CAROLINA

v.

Pitt County
Nos. 10 CRS 50740-41

JASON LAMONT BURNEY

Appeal by Defendant from judgments entered 16 November 2010 by Judge W. Russell Duke, Jr. in Pitt County Superior Court. Heard in the Court of Appeals 26 October 2011.

Attorney General Roy Cooper, by Assistant Attorney General Joel L. Johnson, for the State.

McCotter, Ashton & Smith, P.A., by Rudolph A. Ashton, III and Charles K. McCotter, Jr., for Defendant.

STEPHENS, Judge.

Defendant Jason Lamont Burney was indicted on two counts of possession of cocaine with intent to sell or deliver and two counts of sale of cocaine. Burney pled not guilty to the charges and was tried before a jury at the 15 November 2010 Criminal Session of Pitt County Superior Court, the Honorable W. Russell Duke, Jr. presiding. Following the presentation of the evidence, the court instructed the jury on possession of cocaine

with intent to sell or deliver and sale of cocaine. The jury returned verdicts finding Burney guilty of all the charges, and the trial court imposed consecutive sentences of 15 to 18 months imprisonment for each charge of possession of cocaine with intent to sell or deliver and 21 to 26 months imprisonment for each charge of sale of cocaine. Burney gave notice of appeal in open court.

On appeal, Burney first argues that the trial court erred by denying his motion to dismiss all charges for insufficiency of the evidence. We disagree.

When reviewing a trial court's decision on a defendant's motion to dismiss, "the question for the Court is whether 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." *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993) (quoting *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980)). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Franklin*, 327 N.C. 162, 171, 393 S.E.2d 781, 787 (1990). The evidence must be considered in the light most favorable to the State, and the State is entitled to every reasonable inference

to be drawn therefrom. *Powell*, 299 N.C. at 99, 261 S.E.2d at 117.

In this case, the evidence presented by the State tended to show the following: An officer with the Pitt County Sheriff's Office testified that on 3 November 2009, a confidential informant set up a drug transaction with Burney. Prior to Burney's arrival at the transaction location, the officer searched the confidential informant and found no contraband. The officer then gave the informant \$60.00 for the transaction and equipped her with an audio recording device. Thereafter, Burney, whom the officer knew from high school, arrived at the transaction location in the passenger seat of an unknown vehicle. The officer observed Burney walk over to the informant, conduct a brief conversation, and leave. The officer then searched the informant and found cocaine.

On 10 December 2009, the same officer and informant staged a similar drug transaction with Burney. The officer again searched the informant before and after the transaction and found cocaine afterward. The informant was also given money and equipped with an audio recording device.

The informant testified at trial that she purchased cocaine from Burney on 3 November 2009 and 10 December 2009.

This evidence, taken in the light most favorable to the State, is plainly sufficient to show that (1) Burney possessed cocaine with the intent to sell or deliver, and (2) Burney sold cocaine. Accordingly, Burney's argument is overruled.

As for his remaining arguments on appeal, Burney raises these arguments only for the stated purposes of "preserving [each] issue for any possible further judicial review" and "urging re-examination" of several of our Supreme Court's prior decisions. As we are powerless to overturn 20-year precedent of our State's highest appellate court, these arguments are overruled.

Based on the foregoing, we conclude that Burney received a fair trial, free of error.

NO ERROR.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).