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NO. COA12-7
NORTH CAROLINA COURT OF APPEALS

Filed: 4 September 2012

STATE OF NORTH CAROLINA

v.

Johnston County
Nos. 10 CRS 57477-81; 11 CRS
1782

NESTER ANTONIO EASON

Appeal by defendant from judgment entered 13 July 2011 by Judge Russell J. Lanier, Jr. in Johnston County Superior Court. Heard in the Court of Appeals 14 August 2012.

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

Jarvis John Edgerton, IV for appellant-defendant.

STEELMAN, Judge.

The trial court did not abuse its discretion in admitting drugs purchased by an undercover officer from defendant. Any weakness in the State's chain of custody goes to the weight of the evidence, not its admissibility.

I. Factual and Procedural History

During the early morning hours of 16 January 2010, Sergeant Samuel Jones ("Sergeant Jones") of the Smithfield Police Department was working undercover, making drug buys in a known drug neighborhood. Sergeant Jones was traveling on East Street, when he observed a black male, later identified as Nester Antonio Eason ("defendant"), waving his arms as if he wanted Sergeant Jones to stop. The man approached Sergeant Jones' window and asked him what he wanted. Sergeant Jones responded that he wanted "a dime." Sergeant Jones paid defendant \$10.00 in exchange for an off-white rock-like substance that Sergeant Jones believed to be crack cocaine.

Sergeant Jones and another officer, Officer Steve Greer ("Officer Greer"), who had been riding in the vehicle with Sergeant Jones at the time of the purchase, returned to the police station. Sergeant Jones gave the substance received from defendant to Officer Greer, watched him place it into an evidence bag, fill out the information identifying the source of the substance, seal the bag and fill out an evidence sheet. Sergeant Jones then verified all the information filled out by Officer Greer, and signed off on it. Sergeant Jones then saw Officer Greer place the evidence into the evidence locker.

Later that evening Sergeant Jones returned to 711 East Street and bought more of the off-white rock-like substance from defendant for \$20.00. Sergeant Jones witnessed Officer Greer package the item in an evidence envelope, reviewed and signed off on the package, then watched Officer Greer place the package into the evidence locker.

On 21 January 2010 and into 22 January 2010 Sergeant Jones and Officer Greer returned to the residence and again purchased an off-white rock-like substance for \$20.00. Sergeant Jones again watched as the evidence was packaged and the information form was filled out, reviewed the information, and then witnessed Officer Greer put the evidence into the evidence locker.

On 27 January 2010, Sergeant Jones was driving alone in an undercover capacity. He again approached 711 East Street and saw defendant in the yard waving his hands. Sergeant Jones purchased an off-white rock-like substance for \$20.00. He later filled out the information to log in the evidence, and in Officer Greer's presence, placed it in the evidence locker.

On 2 February 2010, Sergeant Jones and Officer Greer again approached 711 East Street in their undercover capacities. Defendant approached the vehicle and sold Sergeant Jones an off-

white rock-like substance for \$20.00. Sergeant Jones filled out the information relating the evidence, and Officer Greer sealed it and placed it in the evidence locker.

Each of these pieces of evidence was initially placed in the evidence locker by Officer Greer, and all but one of the five pieces of evidence were then subsequently moved from the evidence locker, after being logged onto an evidence sheet by a technician, to the bin assigned to Officer Greer. The other item of evidence was placed in Sergeant Jones' bin. When Officer Greer left the Smithfield Police Department, the cases were transferred to Sergeant Jones and the remaining four items of evidence were moved to Sergeant Jones' evidence bin. This transfer was documented by stickers that were placed on each evidence bag showing that while they were initially been stored in Officer Greer's bin, they were subsequently transferred to Sergeant Jones' bin.

The evidence was then taken by Officer Greg Whitley to the State Bureau of Investigation ("SBI") laboratory for testing. It was determined by the SBI laboratory that the substance in each bag contained crack cocaine. After testing was complete Sergeant Jones and Officer R.A. Connerly went to the SBI laboratory,

picked up the evidence and returned it to the evidence locker at the Smithfield Police Department.

On 13 January 2011, defendant was indicted for five counts of sale of cocaine, five counts of possession of cocaine with intent to sell or deliver, five counts of maintaining a dwelling for keeping controlled substances, and being an habitual felon. The State subsequently dismissed the five counts of maintaining a dwelling. On 13 July 2011, the jury found defendant guilty of five counts of sale of cocaine and five counts of possession of cocaine with intent to sell or deliver. Defendant pled guilty to being an habitual felon.

All of the charges were consolidated into one judgment, and defendant was sentenced to an active term of 76-101 months imprisonment. This sentence was from the mitigated range.

Defendant appeals.

II. Admission of Challenged Evidence

In his sole argument on appeal, defendant contends that the trial court erred in allowing the admission of the five pieces of crack cocaine (State's Exhibits 1-5) into evidence absent a showing of a sufficient chain of custody. We disagree.

A. Standard of Review

A trial court's decision to admit evidence when the chain of custody is questioned is reviewed for abuse of discretion. *State v. Campbell*, 311 N.C. 386, 388-89, 317 S.E.2d 391, 392 (1984).

"Evidentiary errors are harmless unless a defendant proves that absent the error a different result would have been reached at trial." *State v. Ferguson*, 145 N.C. App. 302, 307, 549 S.E.2d 889, 893, *disc. review denied*, 354 N.C. 223, 554 S.E.2d 650 (2001).

B. Analysis

On appeal, defendant argues that there were three different defects in the chain of custody as follows: (1) the State's evidence failed to demonstrate adequate possession, safekeeping, and delivery of State's Exhibits 1-5 from the moment of purchase to the moment the evidence logs were generated at the police station; (2) the State failed to provide a detailed account of the storage and movement of the exhibits; and (3) discrepancies in the dates that the evidence was actually received at the SBI testing facility. We hold that all of these arguments are without merit.

A party offering a substance into evidence must satisfy the

following two pronged test: (1) the item offered must be identified as the same item involved in the incident; and (2) the item must be shown to have undergone no material change. *State v. Fleming*, 350 N.C. 109, 131, 512 S.E.2d 720, 736, cert. denied 528 U.S. 941, 145 L. Ed. 2d 274 (1999). However, the determination of whether a party has satisfied this test "lies within the trial court's sound discretion." *Id.* An abuse of discretion only occurs when the trial court's ruling could be said to be "so arbitrary that it could not have been the result of a reasoned decision." *State v. Hayes*, 314 N.C. 460, 471, 334 S.E.2d 741, 747 (1985).

The State offered plenary evidence regarding the chain of custody of the five pieces of crack cocaine from the time they were purchased to the time of trial, including testimony by Sergeant Jones that established that the contents of the exhibits were in the same or substantially the same condition as they were when he purchased the items from defendant. Agent Carroll, a forensic chemist for the SBI, testified that the exhibits appeared to be in the same or substantially the same condition as when she first received them.

In *State v. Detter*, 298 N.C. 604, 634, 260 S.E.2d 567, 588 (1979), our Supreme Court held that, "[d]efendant's showings on

cross-examination of potential weak spots in the chain of custody relate only to the weight to be given this testimony," and explained that the possibility of a break in the chain of custody that actually resulted in the contamination of the evidence was too remote to require the exclusion of the evidence. *See also Campbell*, 311 N.C. at 389, 317 S.E.2d at 392 (1984) (holding "any weak links in a chain of custody relate only to the weight to be given the evidence and not to its admissibility."). We hold that the trial court's decision to admit the challenged evidence could not be said to be arbitrary or manifestly unreasonable.

Even assuming *arguendo* that defendant's arguments raise legitimate concerns about weak spots in the chain of custody, under *Detter* and *Campbell* any weak spots do not go to the admissibility of the crack cocaine, but rather to the weight of the evidence. The weight of the evidence is for the jury to determine. *State v. Utley*, 126 N.C. 997, 997, 35 S.E. 428, 428 (1900).

Defendant's arguments are without merit.

NO ERROR.

Judges MCGEE and ERVIN concur.

Report per Rule 30(e).