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NO. COA01-356

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

STATE OF NORTH CAROLINA

v.

Wilson County  
No. 99 CRS 53475

KEITH DARNELL TAYBRON

Appeal by defendant from judgment entered 24 October 2000 by Judge G.K. Butterfield, Jr. in Wilson County Superior Court. Heard in the Court of Appeals 14 January 2002.

*Attorney General Roy Cooper, by Assistant Attorney General Amy L. Yonowitz, for the State.*

*Brian Paxton for defendant-appellant.*

BRYANT, Judge.

Defendant was charged by indictment on 8 November 1999 with sale and delivery of cocaine and possession with intent to sell or deliver cocaine in violation of N.C.G.S. § 90-95(a)(1). He was found guilty of the charges. The convictions were consolidated and defendant was sentenced to an active term of imprisonment of a minimum of twelve months and a maximum of fifteen months.

The State's evidence shows that on 19 March 1999, Westry Thorpe (Thorpe) of the Halifax County Sheriff's Department was working in an undercover capacity in Wilson County. Thorpe drove his vehicle to an area of Sims, North Carolina known as Wall

Street. Thorpe called defendant, who was standing in the area, over to his vehicle and asked for "a twenty." Defendant responded that he did not have "twenties" but he had "dimes." Defendant placed "three hits of crack" in Thorpe's hand. Thorpe gave defendant one of the pieces back to defendant, saying he only wanted two. Thorpe gave defendant a twenty dollar bill and departed. Thorpe delivered the substance to Detective Eddie Smith of the Wilson County Sheriff's Department, who forwarded it to the State Bureau of Investigation's laboratory for chemical analysis. The substance was analyzed as one tenth of a gram of cocaine base. Defendant did not present any evidence at trial.

Defendant presents two assignments of error on appeal. First, he contends the trial court erred by denying his motion to dismiss the charges for insufficient evidence. We disagree.

A motion to dismiss requires the trial court to determine whether there is substantial evidence to establish every element of the offense charged and the defendant's commission of the offense. *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990), *appeal after new trial*, 337 N.C. 415, 445 S.E.2d 581 (1994). Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion. *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). In deciding the motion, the court must consider the evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference that may be drawn and resolving all conflicts and discrepancies in its favor. *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649,

652-53 (1982).

The offense of possession with intent to sell or deliver a controlled substance in violation of N.C.G.S. § 90-95(a)(1) (1999) consists of two elements: (1) possession of a controlled substance; (2) with the intent to sell or deliver. *State v. Creason*, 313 N.C. 122, 129, 326 S.E.2d 24, 28 (1985). Sale or delivery of a controlled substance occurs when there is a transfer of the controlled substance from one person to another for a specified price payable in money. *Id.* at 129, 326 S.E.2d at 28.

Viewed in the light most favorable to the State, the evidence in the present case shows that defendant handed Thorpe two pieces of crack cocaine, a controlled substance, for a specified price and in return received a twenty dollar bill from Thorpe. We hold this evidence sufficed to defeat defendant's motion to dismiss.

Second, defendant contends that the trial court erred by denying his motion to dismiss the charges on the ground that the charges had been dismissed pursuant to a prior plea agreement. The prior plea agreement, executed in case numbers 98 CRS 16944 and 98 CRS 16945 on 7 September 1999, provided that defendant plead guilty to possession of cocaine "in return for the dismissing [of] all remaining charges in Wilson County Superior Court (per attached sheet)." Defendant argues the present charges were included in the remaining charges. We disagree.

The record does not support defendant's argument. The present charges are not among those noted on the sheet listing the charges being dismissed. Moreover, the present charges were not pending in

superior court at the time of execution of the plea because defendant was not indicted on the present charges until 8 November 1999, two months later. Until there has been an indictment or information, a prosecution has not been initiated in the superior court division. See N.C.G.S. §§ 15A-642(a) and 15A-923(a) (1999). We find no error.

No error.

Judges WYNN and THOMAS concur.

Report per Rule 30(e).