NO. COA01-595

NORTH CAROLINA COURT OF APPEALS

Filed: 19 March 2002

STATE OF NORTH CAROLINA

v.

Guilford County
99 CrS 51771-72
99 CrS 23625-26

DAVID WAYNE HOLT

Appeal by defendant from judgment entered 29 June 2000 by Judge W. Douglas Albright in Superior Court, Guilford County. Heard in the Court of Appeals 13 February 2002.

Attorney General Roy Cooper, by Assistant Attorney General Daniel P. O'Brien, for the State.

Shannon R. Joseph and Michelle Kaemmerling, for the defendant-appellant.

WYNN, Judge.

Following his convictions on various drug charges, defendant contends on appeal that the trial court should have instructed the jury on the defense of entrapment. He also contends that his plea of guilty to being an habitual felon was not entered knowingly and voluntarily. We disagree with both contentions.

As to defendant's entrapment argument, the State's evidence supporting his conviction of drug offenses tended to show that on 27 January 1999, Officer Jeanette Brower and a confidential

informant were driving in the informant's car, looking to purchase drugs as part of an undercover operation, when they saw defendant walking on the street. Defendant tried to flag them down and motioned for them to stop. They drove up to defendant and pulled over; the informant knew defendant and introduced him to Officer Brower. Officer Brower asked defendant if he knew where she could get some cocaine. He replied that he did and asked her how much she wanted; she replied, an "eightball" worth of crack. Defendant said that he could get that; got into the car, driven by the informant; and directed them to a residence. Officer Brower gave defendant $120 in cash and defendant went into the house. Shortly thereafter, defendant returned to the car with an "eightball" of crack and gave it to Officer Brower. They drove with defendant in the car and dropped him off at his residence.

On 3 February 1999, Officer Brower saw defendant walking, stopped him and asked for $25 worth of crack cocaine. Defendant took the money from the officer and walked to a house on the corner. When he returned, he got into the car and gave her the crack. Defendant was later arrested and after indicating that he understood his rights, he gave a statement to police that he participated in the cocaine transactions with Officer Brower.

At trial, defendant's only witness was his mother, Betty Holt. Mrs. Holt testified that defendant who was forty-two years old at the time of the trial, was a special education child. She also testified that he could not read or write, and that he was very easily influenced. Defendant requested that the trial court

instruct the jury on the defense of entrapment, the trial court denied his request.

"Entrapment is the inducement of a person to commit a criminal offense not contemplated by that person, for the mere purpose of instituting a criminal action against him." *State v. Davis*, 126 N.C. App. 415, 417, 485 S.E.2d 329, 331 (1997) (citations omitted).

> The defense of entrapment consists of two elements: (1) acts of persuasion, trickery or fraud carried out by law enforcement officers or their agents to induce a defendant to commit a crime, (2) when the criminal design originated in the minds of the government officials, rather than with the innocent defendant, such that the crime is the product of the creative activity of the law enforcement authorities.

State v. Walker, 295 N.C. 510, 513, 246 S.E.2d 748, 749 (1978). Law enforcement "may rightfully furnish to the players of [the drug] trade opportunity to commit the crime in order that they may be apprehended. It is only when a person is induced by the officer to commit a crime which he did not contemplate that we must draw the line." *State v. Stanley*, 288 N.C. 19, 33, 215 S.E.2d 589, 598 (1975).

In the subject case, the evidence at trial showed that defendant flagged down the car and initiated the transaction. Even if the officer had made the first move and approached defendant, such an action would not constitute persuasion, trickery or fraud. Officer Brower merely afforded defendant opportunity to commit the offenses by asking him if he knew where she could get some cocaine; he was not induced by Officer Brower to commit the crime. *See*

State v. Stanback, 19 N.C. App. 375, 377, 198 S.E.2d 759, 760, *cert. denied*, 284 N.C. 258, 200 S.E.2d 658 (1973), *cert denied*, 415 U.S. 990, 94 S. Ct. 1589, 39 L. Ed. 2d 887 (1974).

Defendant further argues that evidence of his mental limitations and impressionability was sufficient to require submission of the entrapment defense to the jury. Indeed, the State may not play on the weaknesses of an innocent party and beguile him into committing crimes which he otherwise would not have attempted. *See Sherman v. United States*, 356 U.S. 369, 376, 78 S.Ct. 819, 822, 2 L. Ed. 2d 848, 853 (1958). The defendant cites, *State v. Stanley*, 288 N.C. 19, 215 S.E.2d 589 (1975), where our Supreme Court held that a teenage defendant was entrapped as a matter of law where a twenty-eight year old undercover officer ingratiated himself into the confidence and the affection of the teenager by continually calling his home and seeking his companionship.

However, the facts in the present case are distinguishable from *Stanley* and other cases in which our appellate courts have found sufficient evidence of repeated urgings, trickery, and control over the defendant's life to entitle a defendant to an instruction on entrapment or find entrapment as a matter of law. *See State v. Walker*, 66 N.C. App. 367, 311 S.E.2d 329 (1984)(defendant declined repeated requests over a period of days to purchase cocaine and only through a trick scheme urged by informant did the defendant make a transfer of cocaine); *State v. Board*, 29 N.C. App. 440, 224 S.E.2d 650 (1976) (officer used his

position as a basketball coach and friend of the defendant to induce the defendant to commit offenses); *see also State v. Jamerson*, 64 N.C. App. 301, 307 S.E.2d 436 (1983) (officer and informant initiated conversation about drugs, officer repeatedly urged the defendant to get the drugs and informant located the supplier); *State v. Grier*, 51 N.C. App. 209, 275 S.E.2d 560 (1981) (undercover officer gave the defendant beer, food, cigarettes and money to fix her car and basement).

In the present case, defendant's mother testified that defendant had mental limitations and was very easily influenced. However, the record shows that the undercover officer in this case, had no relationship with defendant. When Officer Brower asked defendant, on the first occasion, if he knew about getting drugs, the officer did not know defendant and was introduced to him by an informant. After only asking one time, defendant directed the officer to a supplier and took money from the officer and returned with drugs. Moreover, the record also shows that defendant was sophisticated enough to be able to procure "four or five" ounces of crack from various sources. Since the court can find entrapment only where the undisputed testimony and required inferences compel a finding that defendant was lured by the officers into an action he was not predisposed to take, we cannot find defendant was entitled to a jury instruction on entrapment. *See State v. Broome*, 136 N.C. App. 82, 89, 523 S.E.2d 448, 455 (1999), *cert. denied*, 361 N.C. 362, 543 S.E.2d 136 (2000). Thus, this assignment of error is rejected.

Defendant secondly assigns error to the trial court's acceptance of his habitual felon guilty plea as not comporting with N.C. Gen. Stat. § 15A-1022 (a) (1999) which provides:

> [A] superior court judge may not accept a plea of guilty or no contest from the defendant without first addressing him personally and:
> (1) Informing him that he has a right to remain silent and that any statement he makes may be used against him;
> (2) Determining that he understands the nature of the charge;
> (3) Informing him that he has a right to plead not guilty;
> (4) Informing him that by his plea he waives his right to trial by jury and his right to be confronted by the witnesses against him;
> (5) Determining that the defendant, if represented by counsel, is satisfied with his representation . . . .

In interpreting the effect of this statute, we are guided by our Supreme Court holding that where the evidence supports the findings that defendant entered a plea of guilty voluntarily and with full knowledge of his rights, the acceptance of the plea will not be disturbed. *State v. Jones*, 179 N.C. 259, 264, 179 S.E.2d 433, 436-37 (1971). Moreover, it is sufficient to show that the plea was entered into freely, understandingly and voluntarily when there is evidence that shows that defendant signed a plea transcript and the judge made careful inquiry of the defendant regarding his plea. *See State v. Thompson*, 16 N.C. App. 62, 63, 190 S.E.2d 877, 878, *cert. denied*, 282 N.C. 155, 1919 S.E.2d 604 (1972); *State v. Hunter*, 279 N.C. 498, 183 S.E.2d 665 (1971), *cert. denied*, 405 U.S. 975, 92 S.Ct. 1195, 31 L. Ed. 2d 249 (1972); *State v. Cadora*, 13 N.C. App. 176, 185 S.E.2d 297 (1971).

In the present case, the trial court informed defendant of his

right to remain silent and addressed him personally using his transcript of plea to determine whether 1) he understood the nature of his charges, 2) his plea was the product of improper pressure and 3) he was satisfied with his counsel. In response, defendant stated that he personally pled guilty and was guilty of being an habitual felon.

Nonetheless, defendant further argues that he was not apprised of the direct consequences of his guilty plea. Under N.C. Gen. Stat. § 15A-1022 (a)(6) (1999), a trial court may not accept a defendant's guilty plea without:

> Informing him of the maximum possible sentence on the charge for the class of offense for which the defendant is being sentenced, including that possible from consecutive sentences, and of the mandatory minimum sentence, if any, on the charge . . . .

In the present case, the worksheet attached to the transcript of plea listed the maximum punishment for the offenses. Defendant's transcript of plea indicates that he understood that he was pleading guilty to two counts of habitual felon status and that they each carried a maximum total punishment of 261 months imprisonment. Indeed, defendant answered yes to the question, "Do you understand that you are pleading guilty to the charges shown on the attached sheet, which carry the total punishments listed?" Since the record reveals that defendant signed the transcript of plea and that the trial court, after defendant was sworn to tell the truth, carefully questioned defendant regarding his pleas of guilty, we reject this assignment of error. *See State v. Thompson*, 16 N.C. App. 62, 63, 190 S.E.2d 877, 878, *cert denied*, 282 N.C.

155, 191 S.E.2d 604 (1972); *see also State v. Hendricks*, 138 N.C. App. 668, 670, 531 S.E.2d 896, 898 (2000); *State v. Crain*, 73 N.C. App. 269, 271-72, 326 S.E.2d 120, 122 (1985).

No error.

Judges TIMMONS-GOODSON and TYSON concur.

Report per Rule 30(e).