NO. COA01-811

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STATE OF NORTH CAROLINA

v. Sampson County
Nos. 00 CRS 51768, 51769, 2308, 2309

STEVEN WAYNE BELL

Appeal by defendant from judgment entered 11 January 2001 by Judge Paul Jones in Sampson County Superior Court. Heard in the Court of Appeals 8 April 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General Lars F. Nance, for the State.

Christopher Wyatt Livingston for defendant-appellant.

TYSON, Judge.

Steven Wayne Bell ("defendant") appeals his convictions following a jury verdict of guilty for possession of cocaine with intent to sell or deliver, maintaining a vehicle for the use, sale or keeping of a controlled substance, and felony speeding to elude arrest. We find no error.

The State's evidence tended to show that defendant led Sergeants Fred Petty and James K. Wright, Jr., of the Cumberland County Sheriff's Department, on a high-speed chase from the Cumberland County courthouse into Sampson County through Roseboro

and Bennetsville on 18 April 2000. Roseboro Police Detective Joseph Byrd apprehended defendant after his car's tires were flattened by "stop sticks" placed in the road. Defendant's wife was in the car with him and was also taken into custody.

Police found $2,235.50 in cash, primarily in twenty-dollar bills, on defendant's person. At the police station, defendant told an officer that he had been driving "to the Rainbow in Warsaw to a female named Scooby Doo to get more cocaine." Defendant stated that he knew how to process powder cocaine into crack cocaine, and that he and his wife supported themselves by purchasing cocaine in Warsaw, "beating it" into crack, and selling it. He acknowledged that he and his wife had been smoking cocaine in the car. Defendant explained that he used to work as an electrician for $900 a week but was able to make more money selling crack cocaine. He claimed that he used each of his four vehicles for "running" drugs, that he sometimes sold drugs with his brother, and that he "could sell [crack] to anyone." Finally, defendant claimed that his wife had thrown their "dope" out of the car's window during the chase.

During a search of defendant's car, police discovered three small rocks of cocaine on the driver's seat, as well as an open box of baking soda and an open box of plastic baggies on the floorboard in front of the passenger's seat. Police testimony disclosed that baking soda was frequently used to process cocaine for sale.

Defendant moved to dismiss the charges at the conclusion of the State's evidence. The trial court denied the motion.

Defendant offered no evidence but renewed his motion to dismiss, which was again denied.

Defendant first claims the trial court erred in denying his motion to suppress the cocaine and other evidence found during the search of his automobile. However, defendant failed to object to the introduction of the evidence at trial and has not argued that its admission by the trial court was plain error. Accordingly, he has not preserved this issue for appeal. *See State v. Bright*, 78 N.C. App. 239, 241, 337 S.E.2d 87, 88 (1985).

Defendant also contends that the trial court erred in denying his motion to dismiss. In reviewing the denial of defendant's motion to dismiss, this Court must determine whether the evidence, taken in light most favorable to the State, is sufficient to allow a reasonable juror to find defendant guilty of the essential elements of the offense beyond a reasonable doubt. *See State v. Jones*, __ N.C. App. __, __, 556 S.E.2d 644, 655 (2001). The State is entitled to all favorable inferences reasonably drawn from the evidence. *State v. Tucker*, 347 N.C. 235, 243, 490 S.E.2d 559, 563 (1997), *cert. denied*, 523 U.S. 1061, 140 L. Ed. 2d 649 (1998). Issues of credibility are left to the jury. *See State v. Locklear*, 322 N.C. 349, 368 S.E.2d 377 (1988).

Defendant concedes the evidence was sufficient to support his conviction for speeding to elude arrest. He further concedes the State adduced sufficient evidence that he possessed the cocaine found in his car for personal use. However, he claims there was no evidence of his intent to sell or deliver this particular cocaine

or that he maintained the car for the purpose of selling or keeping cocaine.

In order to support a charge of possession with intent to sell or deliver a controlled substance, "[t]he State must present substantial evidence of defendant's possession of a controlled substance and of defendant's intent to sell or deliver that substance." *State v. Hamilton*, 145 N.C. App. 152, 155, 549 S.E.2d 233, 235 (citing N.C. Gen. Stat. § 90-95(a)(1) (1999); *State v. Carr*, 122 N.C. App. 369, 470 S.E.2d 70 (1996)). An intent to sell or deliver may be demonstrated by circumstantial evidence, even where only a small quantity of drugs is found. *State v. James*, 81 N.C. App. 91, 94, 344 S.E.2d 77, 80 (1986). Circumstances tending to support a finding of such intent may include "the presence of packaging materials and a chemical which the evidence showed is commonly used to dilute cocaine[,]" *State v. Rich*, 87 N.C. App. 380, 383, 361 S.E.2d 321, 323 (1987) (citing *State v. Williams*, 307 N.C. 452, 298 S.E.2d 372 (1983)), as well as the presence of large amounts of cash or other accouterments of the drug trade. *See State v. Mercer*, 89 N.C. App. 714, 716, 367 S.E.2d 9, 11 (1988).

We find substantial evidence of defendant's intent to sell or deliver the cocaine found in his car. At the time of his arrest, defendant's car contained three small rocks of the drug, as well as open boxes of a processing agent and plastic baggies. Defendant was carrying more than $2,200 in cash, primarily in $20 bills. Moreover, he admitted he was a cocaine dealer by trade and that he

and his wife were driving the car to pick up more cocaine from their source. Defendant explained his custom of "beating" cocaine into crack before selling it. Finally, defendant told police that his wife had thrown their "dope" from her window during the chase. Taken together, the physical evidence and defendant's admissions permit a reasonable inference that defendant intended to sell or deliver the cocaine found in the car.

Defendant also challenges the sufficiency of the evidence that he maintained his vehicle for the purpose of keeping or selling a controlled substance in violation of N.C. Gen. Stat. § 90-108(a)(7). In order to support a conviction for this offense, "the State must prove that the defendant did (1) knowingly (2) keep or maintain (3) a vehicle (4) which is used for the keeping or selling (5) of controlled substances." *State v. Mitchell*, 336 N.C. 22, 31, 442 S.E.2d 24, 29 (1994). A defendant's temporary possession of a controlled substance inside of a vehicle is insufficient to support a conviction under N.C. Gen. Stat. § 90-108(a)(7). *Id.* at 32-33, 442 S.E.2d at 30. Rather, the State must prove that the vehicle was kept "over a duration of time" for use in the keeping or selling of controlled substances. *Id.* at 32, 442 S.E.2d at 30. "The determination of whether a vehicle . . . is used for keeping or selling controlled substances will depend on the totality of the circumstances." *Id.* at 34, 442 S.E.2d at 30.

We find the State's evidence sufficient to survive a motion to dismiss. When apprehended by police, defendant had more than $2,200 in cash on his person, and his car contained rocks of

cocaine, processing agent and packaging materials. Defendant admitted he was a cocaine dealer, claimed he made more than $900 per week by selling cocaine, and told police he had been driving to Warsaw to pick up additional cocaine from his source. Defendant further claimed that his wife had thrown their "dope" from the car during the police chase. Finally, defendant stated that he used each of four different vehicles he owned to run drugs. Such evidence allows a reasonable juror to conclude that defendant maintained his car for the purpose of selling cocaine. *Cf. Mitchell*, 336 N.C. at 34, 442 S.E.2d at 30 (citing *State v. Bright*, 78 N.C. App. 239, 240, 337 S.E.2d 87, 87-88 (1985), *disc. review denied*, 315 N.C. 591, 341 S.E.2d 31 (1986)).

No error.

Judges GREENE and HUDSON concur.

Report per Rule 30(e).