NO. COA05-1620

NORTH CAROLINA COURT OF APPEALS

Filed: 15 August 2006

STATE OF NORTH CAROLINA

v. Mecklenburg County
No. 04 CRS 243297

DANIEL DEMETRIOUS BLAKENEY

Appeal by defendant from judgment entered 8 September 2005 by Judge David S. Cayer in Mecklenburg County Superior Court. Heard in the Court of Appeals 24 July 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General Mabel Y. Bullock, for the State.

Bryan Gates for defendant-appellant.

MARTIN, Chief Judge.

Defendant was indicted for conspiracy to sell a controlled substance. At trial, the State presented evidence which tended to show the following: On 22 September 2004, Detectives Mark Temple and Jeffrey Fletcher of the Charlotte-Mecklenburg Police Department were undercover as part of a street drug interdiction unit. At approximately 4:00 p.m., the officers drove into the parking lot of the Queen City Motel in a rented U-Haul truck. The defendant was walking outside the hotel in the parking lot. Temple, who was in the passenger seat of the truck, asked defendant if he knew where

"[he] could get some weed." Defendant replied that "he was looking for some himself." Temple said "okay" and the detectives began to drive away. However, as they began to pull away, defendant yelled for them to stop. Defendant came to the vehicle and told the detectives that "I'm going to go see if my man has some." At that point, defendant went to room 78 of the hotel.

A few minutes later he returned to the truck with a man later identified as George Dillworth. Dillworth approached the truck on the driver's side where Fletcher was seated, while defendant approached the truck on the passenger side, where Temple was seated. At that point, Temple asked Dillworth for a "twenty sack," which referred to twenty dollars worth of marijuana. Dillworth replied that he had "hard," or crack cocaine, and Temple asked him if he would sell him hard. Dillworth opened his hand and showed him one rock of crack cocaine which was packaged in a clear plastic baggie. Temple handed Dillworth a twenty dollar bill in exchange for the cocaine, which Dillworth handed to him. However, a few seconds later, defendant pointed out that Dillworth had only handed Temple a ten dollar rock in exchange for the twenty dollars. Dillworth told the detectives to "wait here" and he and defendant both walked back to the hotel. Temple then made contact with his arrest team, and both men were arrested.

Defendant was convicted of conspiracy to sell cocaine and was sentenced to a term of sixteen to twenty months imprisonment. Defendant appeals.

Defendant's sole argument on appeal is that there was

insufficient evidence to sustain the conviction. Defendant contends that there was no evidence that he had joint or constructive possession of the drugs, that he negotiated a price with the officers or was to receive any portion of the money paid for the drugs, or that he knew what Dillworth had to sell. Defendant asserts that mere passive knowledge of a crime is not sufficient to establish conspiracy.

To survive a motion to dismiss, the State must present substantial evidence of each essential element of the charged offense. *State v. Cross*, 345 N.C. 713, 716-17, 483 S.E.2d 432, 434 (1997). "'Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.'" *Id.* at 717, 483 S.E.2d at 434 (quoting *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992)). When reviewing the sufficiency of the evidence, "[t]he trial court must consider such evidence in the light most favorable to the State, giving the State the benefit of every reasonable inference to be drawn therefrom." *State v. Patterson*, 335 N.C. 437, 450, 439 S.E.2d 578, 585 (1994)(citing *State v. Vause*, 328 N.C. 231, 237, 400 S.E.2d 57, 61 (1991)).

"A criminal conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way or by unlawful means. To constitute a conspiracy it is not necessary that the parties should have come together and agreed in *express* terms to unite for a common object: A mutual, implied understanding is sufficient, so far as the combination or

conspiracy is concerned, to constitute the offense." *State v. Johnson*, 164 N.C. App. 1, 17, 595 S.E.2d 176, 185 (emphasis in original)(quoting *State v. Bindyke*, 288 N.C. 608, 615-16, 220 S.E.2d 521, 526 (1975)), *disc. review denied*, 359 N.C. 194, 607 S.E.2d 659 (2004). We conclude the evidence was sufficient to show a mutual understanding between defendant and Dillworth.

The State's evidence tended to show that defendant located Dillworth inside the hotel and brought him outside so that he could sell drugs to the detectives. Additionally, after Dillworth gave the rock of crack cocaine to Temple, defendant pointed out that Dillworth had not given Temple enough cocaine for the money he had paid. The defendant and Dillworth then walked back to the hotel together, presumably to retrieve more crack cocaine for Temple.

Defendant contends that there was no evidence that he agreed with Dillworth to sell cocaine to Temple and Fletcher. However, "[d]irect proof of conspiracy is rarely available, so the crime must generally be proved by circumstantial evidence. A conspiracy may be, and generally is, established by a number of indefinite acts, each of which, standing alone, might have little weight, but, taken collectively, they point unerringly to the existence of a conspiracy." *State v. Clark*, 137 N.C. App. 90, 95, 527 S.E.2d 319, 322 (2000)(quotation and citation omitted). Here, from the evidence considered in the light most favorable to the State, a jury could reasonably conclude that defendant conspired with Dillworth to sell cocaine. *Cross*, 345 N.C. at 717, 483 S.E.2d at 434. Accordingly, we find no error.

No error.

Judges CALABRIA and JACKSON concur.

Report per Rule 30(e).