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NO. COA05-354

NORTH CAROLINA COURT OF APPEALS

Filed: 4 April 2006

STATE OF NORTH CAROLINA

v.

Mecklenburg County
Nos. 03 CRS 216887-88

DOMINIC PUGH

Appeal by defendant from judgment entered 13 August 2004 by Judge Albert Diaz in Mecklenburg County Superior Court. Heard in the Court of Appeals 6 March 2006.

Roy A. Cooper, III, Attorney General, by Philip A. Lehman, Assistant Attorney General, for the State.

D. Tucker Charns for defendant-appellant.

MARTIN, Chief Judge.

Defendant appeals his conviction for trafficking in ecstasy and carrying a concealed gun. At trial, the State presented evidence tending to show the following: On 9 April 2003, Steven Lamont, a confidential informant, called Detective Chris Long of the Charlotte Mecklenburg Police Department. Lamont told Detective Long that he had an individual, Justin Roser, who wanted to purchase 500 ecstasy pills. Detective Long arranged to meet Lamont and Roser at the Aquatic Center in Charlotte to consummate the transaction. Roser testified that he did not have sufficient funds to buy the minimum amount of ecstasy pills that Lamont would sell,

so he asked defendant and another man, Tavarus, if they would loan him the money for the pills and they agreed.

Roser testified that on 9 April 2003, he met Lamont and informed him that he had to pick up the rest of the money from defendant and Tavarus. They traveled together in Lamont's car and drove to defendant's apartment complex. Defendant and Tavarus were outside in their car, and Lamont pulled up beside them. Roser then received approximately \$500 from them, as well as five pills of ecstasy to make up for a shortfall in cash. Defendant and Tavarus told Roser they were going to follow them to make sure everything was all right. Lamont noticed that they were being followed and pulled over because he was afraid defendant and Tavarus were going to rob him. Lamont asked Roser to tell defendant and Tavarus they could not follow, which Roser did. Defendant and Tavarus refused, informed Roser that someone had to watch their money, and that defendant had a gun and would go with Lamont and Roser. Defendant got into Lamont's car, introduced himself, and told him he was "trying to protect my investment."

Lamont allowed defendant to ride with them, afraid that otherwise he would be robbed or "the deal wouldn't have gone down." While riding with Lamont and Roser, defendant expressed concerns about the quality of the pills they would be receiving. Lamont was concerned about defendant's presence, so he called Detective Long and told him someone else was in the car. Detective Long informed Lamont that defendant could not come to the meeting and instructed him to drop defendant off at the bus station, which Lamont did.

Detective Long explained at trial that defendant could not come to the meeting because they were prepared to arrest only one individual, and he would have a hard time relaying to his arrest team that there would be another party.

Lamont, Roser and Detective Long met at the Aquatic Center. Roser handed Detective Long money and five ecstasy pills and was arrested. Since defendant had put in part of the money, officers went to the bus station and arrested him as well; Lamont accompanied the officers to the bus station to identify defendant. Defendant was detained and frisked, and a gun was seized from his waistband.

The trial court instructed the jury that it could find defendant guilty of trafficking in ecstasy under the theory of constructive possession or the theory of accessory before the fact. Defendant was convicted of trafficking in ecstasy under the theory of accessory before the fact and carrying a concealed gun. He was sentenced to a term of seventy to eighty-four months imprisonment. Defendant appeals.

Defendant first argues that the trial court erred by denying his motion to dismiss for insufficiency of the evidence. Defendant contends that the State failed to offer sufficient evidence that he actually possessed the pills, knew of their presence, or aided in the crime. Specifically, defendant asserts that there was no evidence that he "counseled, procured or commanded" Roser to commit

the offense. *State v. Sauls*, 291 N.C. 253, 257, 230 S.E.2d 390, 392 (1976), *cert. denied*, 431 U.S. 916, 53 L. Ed. 2d 226 (1977).

After careful review of the record, briefs and contentions of the parties, we find no error. 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).

“The elements of ‘accessory before the fact’ are as follows: (1) defendant advised and agreed, or urged the parties or in some way aided them to commit the offense; (2) defendant was *not present* when the offense was committed; and (3) the principals committed the crime.” *State v. Agudelo*, 89 N.C. App. 640, 643-44, 366 S.E.2d 921, 923 (1988) (emphasis in original), *overruled on other grounds by State v. Barnes*, 324 N.C. 539, 540, 380 S.E.2d 118, 120 (1989); see also *State v. Willis*, 332 N.C. 151, 176-77, 420 S.E.2d 158, 170 (1992) (recounting the elements of accessory before the fact). Defendant disputes the sufficiency of the evidence to show that he aided in the commission of the offense. However, the State

presented evidence that defendant: (1) provided Roser with part of the money required to complete the transaction; (2) insisted on riding with Lamont and Roser in order to "protect my investment;" (3) discussed with Lamont how he planned to sell the pills for \$15.00 to \$25.00 per pill; and (4) asked Lamont for assurances that the pills were of good quality. Based on this evidence, taken in the light most favorable to the State, we conclude that a reasonable mind could find that defendant "counseled, procured or commanded" Roser to commit the offense. Accordingly, the assignment of error is overruled.

Defendant next argues that the trial court erred by denying his motion to arrest judgment. Defendant renews his contention that the State failed to prove each and every element of the offense of trafficking in ecstasy under the theory of accessory before the fact. However, we have already determined that there was sufficient evidence to support the verdict. Therefore, we conclude that the trial court did not abuse its discretion by denying defendant's motion for appropriate relief and motion to arrest judgment. See *State v. Haywood*, 144 N.C. App. 223, 236, 550 S.E.2d 38, 46, *disc. review denied*, 354 N.C. 72, 553 S.E.2d 206 (2001) ("The disposition of a motion for appropriate relief is subject to the sentencing judge's discretion and will not be overturned absent a showing of abuse of discretion.").

No error.

Judges WYNN and STEPHENS concur.

Report per Rule 30(e).