NO. COA05-761

NORTH CAROLINA COURT OF APPEALS

Filed: 2 May 2006

STATE OF NORTH CAROLINA

v. Forsyth County
Nos. 04 CRS 56733, 15587

GEORGE RICHARD TAYLOR
Defendant

Appeal by defendant from a judgment dated 21 February 2005 by Judge Ronald E. Spivey in Forsyth County Superior Court. Heard in the Court of Appeals 27 March 2006.

Attorney General Roy Cooper, by Special Deputy Attorney General W. Richard Moore, for the State.

Daniel F. Read for defendant-appellant.

BRYANT, Judge.

George Richard Taylor (defendant) appeals from a judgment dated 21 February 2005 entered consistent with a jury verdict finding him guilty of possession with intent to sell and deliver cocaine and a plea of guilty to attaining the status of an habitual felon. For the reasons stated herein, we find no error.

Facts

On 1 June 2004, Officer Kim Jones of the Winston-Salem Police Department went to Room 619 of the Comfort Inn as part of a drug investigation. Officer Jones received consent from the room's

occupant, Bobby Laird, to search the room, and found a small baggie containing a white substance. The substance later tested positive for cocaine. Officer Jones told Laird that she wanted to know who the source was for the cocaine, and asked him to call his source to have more crack cocaine delivered. Laird agreed, and called his source and asked him to bring $200.00 worth of crack cocaine.

At approximately 11:20 a.m., there was a knock at the door. Laird looked out the peephole, and identified the person at the door as his supplier. The door was opened, and defendant was at the door. Officers grabbed defendant in a "bear hug" and placed him under arrest. Officers noticed defendant's hand was "clinched" and ordered him to open his fist. When defendant opened his hand, officers seized several off-white rocks that were consistent with crack cocaine. At trial, Special Agent Robert Evans of the State Bureau of Investigation testified the substance seized from the defendant was 2.3 grams of cocaine.

Procedural History

On 16 August 2004, defendant was indicted for possession with intent to sell and deliver cocaine and for attaining the status of an habitual felon. The case was tried before a jury at the 21 February 2005 Criminal Session of Forsyth County Superior Court, the Honorable Ronald E. Spivey presiding. Defendant was convicted of possession with intent to sell and deliver cocaine, pleaded guilty to attaining the status of an habitual felon, and was sentenced to a term of 107 to 138 months imprisonment. Defendant appeals.

Defendant presents three issues on appeal: (I) whether the trial court erred by allowing Agent Evans to testify that the substance seized by police was cocaine; (II) whether the trial court erred in allowing Officer Jones' testimony concerning her personal knowledge of defendant; and (III) whether there was sufficient evidence to sustain defendant's conviction.

I

We first consider whether the trial court erred by allowing Agent Evans to testify that the substance seized by police was cocaine. Agent Evans admitted he had never seen the substance prior to trial, and that the substance was actually tested by a co-worker, Special Agent Sheila Bayler. Defendant contends that expert testimony based on analyses conducted by someone other than the testifying expert violated his right to confrontation under the rationale of *Crawford v. Washington*, 541 U.S. 36, 158 L. Ed. 2d 177 (2004). We are not persuaded.

We find *State v. Bunn*, __ N.C. App. __, 619 S.E.2d 918 (2005) controlling. In *Bunn*, this Court found that:

> after a recitation of his credentials, Special Agent Robert Evans was tendered and accepted, without objection by Defendant, as an expert in forensic drug examination. Special Agent Evans, after a thorough review of the methodology undertaken by his colleague, relied on his colleague's analyses in forming his opinion that the substance sold to the undercover officers was cocaine, and his opinion was based on data reasonably relied upon by others in the field.

Id. at __, 619 S.E.2d at 920. The Court held that it was "clear

that Special Agent Evans's testimony was expert testimony as to the nature of the seized substance as cocaine" and that "the lab analysis was not tendered to prove the truth of the matter asserted therein, but to demonstrate the basis of Agent Evans's opinion." *Id.* The Court noted that "it is well established that an expert may base an opinion on tests performed by others in the field and [d]efendant was given an opportunity to cross-examine Special Agent Evans on the basis of his opinion[.]" *Id.* at __, 619 S.E.2d at 920-21. Thus, the Court concluded that *Crawford* did not apply and there was no violation of the defendant's right of confrontation. *Id.* *Bunn* is indistinguishable from the case at bar. *See also State v. Lyles*, __ N.C. App. __, __, 615 S.E.2d 890, 892-94 (2005) (no error in the admission of laboratory reports prepared by a non-testifying analyst as the basis for an expert witness' opinion). Accordingly, this assignment of error is overruled.

II

Defendant next argues that the trial court erred by allowing Officer Jones to testify that she recognized the name of Laird's supplier from her work in law enforcement, and that based on her knowledge of him, she called for the assistance of another detective. Defendant claims that this testimony was a prejudicial implication that he had been in trouble with the law before. However, defendant makes a different argument in his assignment of error, arguing that the trial court erred in admitting Officer Jones' testimony because it was hearsay. Accordingly, we decline to review defendant's argument because his assignment of error sets

forth a different ground for review than that argued on appeal. *See* N.C. R. App. P. 10(a), 10(c)(1), 28(b)(6).

III

Defendant finally argues there was insufficient evidence to sustain the conviction. 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)). Here, the State presented evidence that defendant arrived at Laird's hotel room after Laird called his supplier to order crack cocaine. Laird then identified defendant as his supplier. Upon his arrest, defendant was found in possession of rocks of an off-white substance. Agent Evans testified as to the chain of custody and procedures for testing the substance, and identified the substance as crack cocaine. Therefore, in the light most favorable to the State, a jury could properly infer that defendant possessed cocaine with intent to sell or deliver. Accordingly, this assignment of error is overruled.

No error.

Chief Judge MARTIN and Judge GEER concur.

Report per Rule 30(e).