NO. COA06-776

NORTH CAROLINA COURT OF APPEALS

Filed: 01 May 2007

STATE OF NORTH CAROLINA

v. Onslow County
No. 05 CRS 51062, 51079

ANDER L.C. WRIGHT

Appeal by defendant from judgments entered 10 November 2005 by Judge Charles H. Henry in Onslow County Superior Court. Heard in the Court of Appeals 9 April 2007.

Attorney General Roy Cooper, by Assistant Attorney General James M. Stanley, Jr., for the State.

Paul F. Herzog for defendant-appellant.

STEELMAN, Judge.

Defendant appeals convictions resulting from the alleged erroneous admission of evidence at trial. Even assuming that the trial court erred in the admission of evidence under N.C. R. Evid. 404(b), we hold that defendant has failed to demonstrate any prejudice.

The State presented evidence at trial which tended to show the following: Sometime in late 2004, Detective Charles H. Carnes, Jr., of the Onslow County Sheriff's Office met with Sandra Overcash, a confidential informant. Overcash gave Detective Carnes

information regarding defendant. Overcash had known defendant for eight years, testifying that they were "partying buddies. We smoked together, [sic] hung out together." Based on this information, Detective Carnes took steps to set up a controlled drug buy.

On 4 December 2004, Overcash worked with detectives to make a purchase of cocaine from defendant. She was accompanied by a friend, Charles Farnell. Overcash and Farnell were first searched to ensure that they did not possess any contraband. Videotape equipment was also set up so that the transaction could be recorded. They were then given money and instructed to buy a twenty dollar rock of cocaine.

Overcash went to defendant's mobile home and found him in his shed. When she went into the shed, defendant was smoking crack with some other people. She asked defendant to get her "something," and defendant agreed. Defendant left the shed and went to Frost Lane to purchase the cocaine for her. He was not successful, so defendant, Overcash and Farnell went over to the "south side" in Farnell's car. Overcash gave defendant twenty dollars and he got out, got the drugs, got back in the car and handed Overcash a rock of cocaine. After receiving the cocaine from defendant, Overcash and Farnell drove defendant back to his house. They then immediately went to their meeting spot where Detective Carnes and Detective Michael Washington were waiting for them, and they handed them the rock of cocaine.

On 2 February 2005, Overcash again cooperated with the Onslow

County Sheriff's Office on a controlled drug buy. Overcash and Farnell were again searched to ensure they did not possess contraband, and the videotape equipment was set up to record the transaction. Overcash was again given money and instructions on how much cocaine she should purchase. Overcash and Farnell drove to defendant's house, and Overcash told defendant that she wanted him to purchase a fifty dollar rock of cocaine. Defendant walked to Frost Lane, but was unsuccessful in procuring any drugs. Defendant told Overcash that they would go to the "south side[.]" They went to a place called "Ma's house" and defendant went inside. However, defendant was again unsuccessful at procuring any drugs. They went back to defendant's house, and defendant walked back to Frost Lane. This time, defendant returned with a rock of cocaine and gave it to Overcash. Overcash broke off a piece, gave it to defendant, and left. After leaving defendant's house, Overcash and Farnell met with Detective Carnes and Detective Chris Fidler, and immediately handed them the cocaine.

A jury convicted defendant of two counts of sale of cocaine, two counts of possession with intent to sell or deliver cocaine, and two counts of delivery of cocaine. Defendant pled guilty to being an habitual felon. Defendant was sentenced to a term of 13 to 16 months imprisonment for one charge of sale of cocaine and one charge of possession with intent to sell or deliver cocaine. A consecutive term of 88 to 115 months imprisonment was imposed for one charge of sale of cocaine and one charge of possession with intent to sell or deliver cocaine as an habitual felon. The trial

court arrested judgment on the two counts of delivery of cocaine. Defendant appeals.

In his sole argument on appeal, defendant contends that the trial court erred by allowing the State to introduce evidence of an uncharged possession of cocaine that was alleged to have occurred on 6 January 2005, a date between the other two incidents. We disagree.

On 6 January 2005, defendant was apprehended while walking on Frost Lane at night, flicking a flashlight. Detective Washington testified at trial that the flashlight was a signal to prospective customers. Defendant was stopped and asked if he "ha[d] anything on him." Defendant admitted that he had a "little crack rock on him." Detective Washington retrieved a "chap stick tube" from defendant's pocket and found a rock of cocaine. Defendant contends that this evidence was not relevant to show anything other than his disposition to use and possess drugs. Defendant further claims that the incident was not substantially similar to the offenses for which he was on trial.

After careful review of the record, briefs, and contentions of the parties, we find no prejudicial error. "The erroneous admission of evidence requires a new trial only when the error is prejudicial." *State v. Chavis*, 141 N.C. App. 553, 566, 540 S.E.2d 404, 414 (2000) (citing *State v. Locklear*, 349 N.C. 118, 149, 505 S.E.2d 277, 295 (1998), *cert. denied*, 526 U.S. 1075, 143 L. Ed. 2d 559 (1999)). "To show prejudicial error, a defendant has the burden of showing that 'there was a reasonable possibility that a

different result would have been reached at trial if such error had not occurred.'" *Id.* (citing *Locklear*, at 149, 505 S.E.2d at 295; N.C. Gen. Stat. § 15A-1443(a)(1999)). Here, even assuming *arguendo* that admission of the evidence was error, we conclude it was harmless error in light of the overwhelming evidence of defendant's guilt.

At trial, Overcash testified regarding defendant's participation in both of the drug transactions for which he was convicted. A videotape of both transactions was admitted into evidence. Overcash identified defendant on the videotape and described the drug buys as the videotape was played for the jury. In light of this evidence, defendant has failed to demonstrate any prejudice. *See State v. Grant*, _ N.C. App. _, _, 632 S.E.2d 258, 266 (2006) ("'Erroneous admission of evidence may be harmless where there is an abundance of other competent evidence to support the state's primary contentions, or where there is overwhelming evidence of [the] defendant's guilt,'" quoting *State v. Weldon*, 314 N.C. 401, 411, 333 S.E.2d 701, 707 (1985)). Accordingly, we find no error.

NO ERROR.

Judges McCULLOUGH and LEVINSON concur.

Report per Rule 30(e).