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NO. COA06-849

NORTH CAROLINA COURT OF APPEALS

Filed: 3 April 2007

STATE OF NORTH CAROLINA

v.

CHAZTANIOUS LINTAYE BLACKBURN

Catawba County
Nos. 05 CRS 2011
05 CRS 2015

Appeal by defendant from judgments entered 12 January 2006 by Judge David S. Cayer in Catawba County Superior Court. Heard in the Court of Appeals 26 March 2007.

Attorney General Roy Cooper, by Assistant Attorney General J. Bruce McKinney, for the State.

Brian Michael Aus for defendant appellant.

McCULLOUGH, Judge.

Chaztanious Lintay Blackburn ("defendant") appeals from trial court judgments entered consistent with jury verdicts finding him guilty of possession with intent to sell and deliver cocaine, sale and delivery of cocaine, and of being an habitual felon. We determine defendant received a fair trial, free from prejudicial error.

FACTS

On 7 February 2005, the Catawba County grand jury indicted defendant on charges of possession with intent to sell and deliver cocaine, sale and delivery of cocaine, and of being an habitual

felon. At trial, beginning on 11 January 2006, the State introduced evidence tending to show the following: Detective Sergeant Melissa Johnson testified she was working with the Hickory Police Department as an undercover agent during September of 2004. She stated she met with defendant on the 15th and 21st of September and on the 4th and 14th of October that year. Defendant objected to this testimony, but the trial court overruled the objection. Detective Johnson then related that she called a telephone number on 21 September 2004 which defendant had given to her the previous week. When defendant returned her call about fifteen minutes later, Detective Johnson told defendant that she "was looking to buy a quarter, the same thing from the previous time." They agreed to meet at a car wash, and Detective Johnson arrived there at 8:55 p.m. Detective Johnson said the vehicle which she was driving was equipped with four video cameras and a microphone.

Upon defendant's arrival at the car wash, he pulled alongside Detective Johnson's vehicle and told her that he would be back shortly after taking care of two other ladies behind her at the car wash. Defendant subsequently returned and got into the passenger side of Detective Johnson's vehicle. Detective Johnson said she had not expected him to get into her vehicle because they previously "spoke beside each other in cars." Defendant then handed Detective Johnson what was later identified as 6.31 grams of cocaine base or "crack" cocaine, and she gave \$280.00 to defendant. Defendant also gave Detective Johnson a new telephone number with which to contact him.

After defendant got out of her vehicle, Detective Johnson drove away. She met with narcotics officers, and she turned over the drugs which she had purchased from defendant to Investigator Patrick Clark. Detective Johnson identified defendant in open court as the individual from whom she had purchased the drugs. She also testified that her transaction with defendant was recorded by the video cameras and the microphone in her vehicle, and the videotape was played for the jury.

At the close of the State's evidence, defendant moved to dismiss the charges for lack of evidence. The trial court denied the motion, and defendant declined to present any evidence. After the jury found defendant guilty of the two substantive offenses, the State presented evidence to prove defendant's habitual felon status. The jury then found defendant to be an habitual felon, and the trial court imposed two consecutive sentences having a combined term of 240 to 306 months' imprisonment. Defendant appeals.

ANALYSIS

Defendant contends the trial court committed plain error by permitting Detective Johnson to testify that: (1) she had met with defendant prior to the date of the alleged offense; (2) she was looking to buy the same amount of drugs as the previous time; and (3) they had met on two occasions following the date of the alleged offense. We disagree.

In order to prevail under a plain error analysis, a defendant must show an error "so fundamental as to amount to a miscarriage of justice or which probably resulted in the jury reaching a different

verdict than it otherwise would have reached." *State v. Bagley*, 321 N.C. 201, 213, 362 S.E.2d 244, 251 (1987), *cert. denied*, 485 U.S. 1036, 99 L. Ed. 2d 912 (1988). Defendant complains that the trial court failed to conduct a balancing test under N.C. R. Evid. 403 after it overruled his initial objection and that it should have given a limiting instruction as to the N.C. R. Evid. 404(b) evidence.

Here, even if the contested evidence was inadmissible, defendant has not shown that the jury would have reached a different verdict because of the overwhelming evidence of defendant's guilt. For example, the sale and delivery of the cocaine by defendant on 21 September 2004 was recorded by video and audio equipment in the officer's vehicle. Also, the transaction was under surveillance by other officers. Accordingly, we disagree with defendant's contentions.

No prejudicial error.

Judges STEELMAN and LEVINSON concur.

Report per Rule 30(e).