NO. COA07-187

NORTH CAROLINA COURT OF APPEALS

Filed: 4 September 2007

STATE OF NORTH CAROLINA

v. Cabarrus County
Nos. 06 CRS 5895, 7891

EDWIN DEWAYNE MOORE

Appeal by defendant from judgment entered 18 October 2006 by Judge W. Erwin Spainhour in Cabarrus County Superior Court. Heard in the Court of Appeals 27 August 2007.

Attorney General Roy Cooper, by Assistant Attorney General Karen A. Blum, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defenders David W. Andrews and Benjamin Dowling-Sendor, for defendant-appellant.

WYNN, Judge.

Defendant Edwin Dewayne Moore appeals his convictions for drug-related crimes related to a transaction on 20 December 2005. After a careful review of Defendant's arguments on appeal and the record before us, we affirm Defendant's conviction.

On 18 October 2006, a jury found Defendant guilty of possession of cocaine with intent to sell or deliver, sale of cocaine, delivery of cocaine, and habitual felon status, in connection with a drug transaction on 20 December 2005. At trial, the State offered evidence tending to show that Investigator Jack

Blalock and Detective Laura Carden employed Johnny K. Melton to purchase forty dollars' worth of crack cocaine from Defendant on 20 December 2005, as part of a "buy-bust" drug interdiction program conducted by the Kannapolis Police Department in 2005 and 2006. Prior to the transaction, Investigator Blalock searched Ms. Melton's car for contraband and equipped it with audio and video recording equipment, a microphone, and a transmitter. Detective Carden also searched Ms. Melton's person and gave her forty dollars and a plastic evidence bag. Ms. Melton's friend, Debbie Charles, served as her driver.

Before proceeding to Murphy Street, Ms. Melton used a cellular phone to call Defendant, whom she knew as "Wayne" or "Wheezy." Uncertain of Defendant's specific address, Ms. Melton phoned him a second time from Murphy Street and asked him to come outside. At trial, the State introduced testimony from a cellular phone company representative that the two calls placed by Ms. Melton were to the phone number of a subscriber named Edwin D. Moore, whose billing address was 716 Murphy Street, Kannapolis, North Carolina.

After the second phone call, Defendant emerged from a house and approached Ms. Melton's car, then handed her two rocks of what appeared to be crack cocaine, took her forty dollars, and walked away. Ms. Melton immediately placed the rocks in the evidence bag, called Detective Carden, and returned to their rendezvous location, where Detective Carden secured the evidence bag from Ms. Melton. Detective Carden then conducted a field test on the substance, which registered positive for cocaine, before sealing the bag with

tape and labeling it with the case number, item number, and the date and location of the transaction. She paid Ms. Melton forty dollars in cash for her assistance. The videotape of Ms. Melton's trip, including the transaction with Defendant, was admitted into evidence and played for the jury.

Ms. Melton testified that she first met Defendant eight years before the incident through his brother, "Kingy," who was a friend of her son's father. Detective Carden explained to the jury how she determined Defendant's name based on information from Ms. Melton that "Kingy" had previously been arrested in Concord, North Carolina. Detective Carden contacted Sergeant Joe O'Donnell of the Concord Police Department, who reported that "Edwin DeWayne Moore had been in the house with Kingy when Kingy was arrested[,]" and that Mr. Moore used an address of 716 Murphy Street. Sergeant O'Donnell corroborated this account in his own testimony and also identified Defendant in court as the person who "was arrested with Kingy Moore" in the "undercover drug operation in 2004."

Detective Carden then obtained four photographs of Edwin Dewayne Moore from the websites of the North Carolina Division of Prisons and the Cabarrus County Jail; Ms. Melton subsequently identified the subject of the photographs as the man she knew as "Wayne" or "Wheezy." Following that identification, Detective Carden added Defendant's name to the evidence bag and submitted it to the State Bureau of Investigation (SBI) for testing. SBI forensic chemist Lisa Edwards testified that she analyzed the rock-like substance received from Detective Carden and determined that

it was .23 grams of cocaine base.

Following the jury's guilty verdicts, the trial court arrested judgment on the conviction for delivery of cocaine and consolidated the remaining offenses for judgment, sentencing Defendant to an active term of ninety-six to one hundred twenty-five months' imprisonment. Defendant now appeals, arguing that the trial court (I) erred by denying his motion to dismiss because the State failed to show that the substance sold to Ms. Melton was cocaine, and (II) committed plain error by admitting testimony concerning Defendant's prior drug arrest in 2004.

I.

Defendant first asserts that the trial court erred by denying his motion to dismiss because the State failed to show that the substance sold to Ms. Melton was cocaine, in light of conflicting evidence as to the amount and packaging of the substance exchanged. We disagree.

In reviewing the denial of a defendant's motion to dismiss, we must determine whether the evidence, when viewed in the light most favorable to the State, would allow a reasonable juror to find the defendant guilty of the offense beyond a reasonable doubt. *State v. Irwin*, 304 N.C. 93, 98, 282 S.E.2d 439, 443 (1981). For purposes of our review, the State is accorded all favorable inferences reasonably drawn from the evidence, and its witnesses are deemed to be credible. *State v. Robinson*, 355 N.C. 320, 336, 561 S.E.2d 245, 256, *cert. denied*, 537 U.S. 1006, 154 L. Ed. 2d 404 (2002). Moreover, "[e]videntiary contradictions and discrepancies

are for the jury to resolve and do not warrant dismissal." *State v. McNeil*, 359 N.C. 800, 804, 617 S.E.2d 271, 274 (2005) (internal quotation omitted).

Defendant points to a discrepancy between Ms. Melton's and Detective Carden's respective descriptions of the substance obtained by each on 20 December 2005 to support his contention that the State failed to prove the substance in question was cocaine. Ms. Melton testified at trial that Defendant placed two unwrapped rocks in her open hand, but Detective Carden stated that the evidence bag she received from Ms. Melton contained three pieces, wrapped in a piece of aluminum foil. As such, Defendant argues that the State failed to establish that the material Detective Carden provided to and had analyzed by the SBI was the same material sold and delivered to Ms. Melton.

Nevertheless, we note that the State also introduced evidence that Ms. Melton did not have any controlled substances with her in the car prior to the transaction, that she immediately placed the rocks she obtained from Defendant into the plastic evidence bag, and that she then turned the evidence bag over to Detective Carden. Although Defendant speculates that Ms. Melton's driver friend could have brought crack cocaine into the car, there was no evidence to support this theory. To the contrary, Ms. Melton provided the jury with a complete account of the cocaine's journey from Defendant to Detective Carden, testifying that she immediately called Detective Carden after buying the cocaine and then turned over the rocks to Detective Carden shortly thereafter.

Moreover, although Detective Carden testified that there were "three pieces" of cocaine in the evidence bag, rather than two, she also explained that "[o]ne of them looked like it was broke[n]." Detective Carden and Ms. Melton testified that Ms. Melton had engaged in approximately twenty-five such transactions for the Kannapolis police during 2005 and 2006. During her testimony, Ms. Melton was unable to recall such details as the terms of her written contract with the police and whether she met Detective Carden at a garage or the police department on the occasion in question, on 20 December 2005. Under the circumstances, we find it unremarkable that a frequent witness such as Ms. Melton might not recall the packaging of a controlled substance purchased almost a year prior to trial.

As finder of fact, the jury was entitled to find credible Ms. Melton's testimony that she delivered the rocks obtained from Defendant directly to Detective Carden. Additionally, Ms. Melton's account of two unwrapped rocks and Detective Carden's description of three rocks wrapped in foil represented a "contradiction or discrepancy" for the jury to consider in weighing the evidence. Accordingly, this assignment of error is overruled.

II.

Next, Defendant asserts the trial court committed plain error by allowing Sergeant O'Donnell to testify that Defendant was arrested by Concord police during an undercover drug investigation in 2004. Defendant claims that this evidence of a prior involvement in a drug crime was inadmissible for any purpose and

was particularly prejudicial given the nature of the instant charge. In light of what Defendant characterizes as the "weak" case against him, he argues that this improper testimony had a probable effect on the jury's verdict. We disagree.

To establish plain error, a defendant must show an error so grave as to "'seriously affect the fairness, integrity or public reputation of judicial proceedings'" or otherwise undermine the validity of the jury's verdict. *State v. Scott*, 343 N.C. 313, 339, 471 S.E.2d 605, 620-21 (1996) (quoting *State v. Odom*, 307 N.C. 655, 660, 300 S.E.2d 375, 378 (1983)). "Thus, in our review of the record for plain error, defendant is entitled to a new trial only if the error was so fundamental that, absent the error, the jury probably would have reached a different result." *State v. Walters*, 357 N.C. 68, 85, 588 S.E.2d 344, 354 (internal quotation omitted), *cert. denied*, 540 U.S. 971, 157 L. Ed. 2d 320 (2003).

Under the North Carolina Rules of Evidence, evidence of a defendant's prior actions is admissible for the purpose of proving the identity of the perpetrator of an offense. N.C. Gen. Stat. § 8C-1, Rule 404(b) (2005). In his testimony, Sergeant O'Donnell corroborated Detective Carden's description of the means by which the police were able to determine the name of their suspect based upon Ms. Melton's account of a man named "Wayne" or "Wheezy" who was the brother of "Kingy." Thus, Sergeant O'Donnell's testimony was proper under Rule 404(b) to help explain why the Concord Police Department had a record of Defendant's name and address based on Kingy's arrest.

Moreover, we conclude that, in light of the extensive evidence presented by the State against Defendant, any error in the admission of Sergeant O'Donnell's testimony did not rise to the level of plain error. *See State v. Bellamy*, 172 N.C. App. 649, 667, 617 S.E.2d 81, 93-94 (2005), *appeal dismissed and disc. review denied*, 360 N.C. 290, 628 S.E.2d 384 (2006); *State v. Riley*, 159 N.C. App. 546, 552, 583 S.E.2d 379, 384 (2003). The State offered compelling evidence of Ms. Melton's purchase of cocaine on 20 December 2005, including a videotape shown to the jury, as well as of Defendant's identity as the seller. Any potential prejudice from Sergeant O'Donnell's testimony was also mitigated by Detective Carden's earlier testimony – elicited by defense counsel on cross-examination – that she obtained photographs of Defendant from the state prison system and the county jail, and by Ms. Melton's testimony that she bought marijuana from Defendant two weeks prior to 20 December 2005. We therefore overrule this assignment of plain error.

The record on appeal includes additional assignments of error not addressed by Defendant in brief to this Court. Pursuant to N.C. R. App. P. 28(b)(6), we deem them abandoned.

No error.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).