

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA07-897

NORTH CAROLINA COURT OF APPEALS

Filed: 7 October 2008

STATE OF NORTH CAROLINA

v.

LAMIN CEESAY,
Defendant.

Wake County
Nos. 01 CRS 29491
01 CRS 29492
01 CRS 29493
01 CRS 29494

Appeal by defendant from judgments entered 17 October 2001 by Judge J.B. Allen, Jr. in Wake County Superior Court. Heard in the Court of Appeals 17 March 2008.

Attorney General Roy Cooper, by Assistant Attorney General Barry H. Block, for the State.

Richard G. Roose for defendant-appellant.

GEER, Judge.

Defendant Lamin Ceesay appeals from his convictions of trafficking in methylenedioxymethamphetamine by transportation, conspiracy to traffic in methylenedioxymethamphetamine by transportation, maintaining a vehicle for keeping and/or selling controlled substances, and trafficking in methylenedioxymethamphetamine by possession. We agree with defendant that this Court's opinions in *State v. Ledwell*, 171 N.C. App. 328, 614 S.E.2d 412, *disc. review denied*, 360 N.C. 73, 622 S.E.2d 624 (2005), and *State v. Ahmadi-Turshizi*, 175 N.C. App. 783, 625 S.E.2d 604, *disc. review denied*, 360 N.C. 484, 631 S.E.2d 133

(2006), are controlling and require us to vacate the convictions for trafficking and conspiracy to traffic. We remand for resentencing on the charge of maintaining a vehicle for keeping and/or selling controlled substances.

Facts

The State's evidence tended to show the following facts. On 28 March 2001, a controlled drug purchase of 10 pills was arranged between a police informant and defendant. The next day, defendant agreed to sell the informant 1,100 pills. Once the informant saw the pills, he told defendant he needed to get the money, but, when he was out of defendant's sight, he called the police officers to inform them that defendant had the pills in his possession. The officers took defendant into custody and seized the pills. The City-County Bureau of Investigation ("CCBI") determined that the pills were 3, 4-methylenedioxymethamphetamine ("MDMA"), also known as ecstasy.

On 15 May 2001, defendant was indicted for trafficking in MDMA by transportation, conspiracy to traffic in MDMA by transportation, trafficking in MDMA by possession, and maintaining a vehicle for keeping and/or selling controlled substances. A jury found defendant guilty of all four charges. The trial court consolidated the conviction for trafficking in MDMA by transportation with the conviction for maintaining a vehicle for keeping and/or selling controlled substances and sentenced defendant to 175 to 219 months imprisonment. That sentence was ordered to run concurrent with defendant's sentence of 175 to 219 months imprisonment for

conspiracy to traffic in MDMA by transportation. Those sentences were ordered to run consecutive to defendant's sentence of 175 to 219 months imprisonment for trafficking in MDMA by possession. This Court granted defendant's petition for writ of certiorari for review of these judgments on 1 November 2005.

Discussion

Defendant contends that the indictments for trafficking in a controlled substance and conspiracy to traffic in a controlled substance were insufficient under *Ledwell* and *Ahmadi-Turshizi*. The indictment for trafficking in MDMA by transportation stated: "The jurors for the State upon their oath present that on or about the 29th day of March, 2001, in the county named above the defendant named above unlawfully, willfully, and feloniously did traffick [sic] by transporting 1,000 dosage units or more of methylenedioxymethamphetamine, a controlled substance which is included in Schedule I of the North Carolina Controlled Substances Act." The indictment for conspiracy to traffic in MDMA by transportation similarly alleged that defendant conspired "to commit the felony of trafficking by transporting 1,000 dosage units or more of methylenedioxymethamphetamine." Finally, the indictment for trafficking in MDMA by possession stated that defendant "unlawfully, willfully, and feloniously did traffick [sic] by possessing 1,000 dosage units or more of methylenedioxymethamphetamine, a controlled substance which is included in Schedule I of the North Carolina Controlled Substances Act."

Schedule I of the North Carolina Controlled Substances Act identifies "3, 4-methylenedioxymethamphetamine" as a controlled substance. N.C. Gen. Stat. § 90-89(3)(c) (2007). Thus, the indictments in this case omitted "3, 4-" from the description of the drug involved.

In *Ledwell*, 171 N.C. App. at 331, 614 S.E.2d at 414, the indictment alleged, similar to the indictment in this case, that the defendant "did possess Methylenedioxyamphetamine (MDA), a controlled substance included in Schedule I of the North Carolina Controlled Substances Act." This Court vacated the defendant's indictment because "the substance listed in Defendant's indictment does not appear in Schedule I of the North Carolina Controlled Substances Act." *Id.* at 333, 614 S.E.2d at 415.

Likewise, in *Ahmadi-Turshizi*, 175 N.C. App. at 785, 625 S.E.2d at 605, the indictments identified the controlled substance that the defendant possessed, sold, and delivered as "methylenedioxymethamphetamine a controlled substance which is included in Schedule I of the North Carolina Controlled Substances Act." As in *Ledwell*, this Court vacated the defendant's convictions, holding that the indictment was fatally flawed because "the substance listed in defendant's indictment does not appear in Schedule I of our Controlled Substances Act." *Ahmadi-Turshizi*, 175 N.C. App. at 786, 625 S.E.2d at 606. The Court held that "when an indictment fails to list a controlled substance by its chemical name as it appears in Schedule I of North Carolina General

Statutes, section 90-89, the indictment must fail." *Id.* at 785, 625 S.E.2d at 605.

Ledwell and *Ahmadi-Turshizi* are indistinguishable from this case. We must, therefore, vacate defendant's convictions for trafficking by transportation, conspiracy to traffic by transportation, and trafficking by possession. The State's contention that those appeals were wrongly decided is an issue for the Supreme Court. See *In re Appeal from Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.").

Defendant does not challenge his conviction for maintaining a vehicle for keeping and/or selling controlled substances. That charge was, however, consolidated with the trafficking by transportation conviction for sentencing purposes, and we must, therefore, remand for resentencing on the maintaining a vehicle charge. See *State v. Brown*, 350 N.C. 193, 213, 513 S.E.2d 57, 70 (1999) ("[T]he judgment on [the offense of murder as an accessory] must be remanded for resentencing because the trial court consolidated it with the solicitation conviction, which we have now vacated"). Because of our disposition of this appeal, we do not address defendant's remaining contentions.

Vacated in part and remanded for sentencing.

Chief Judge MARTIN and Judge CALABRIA concur.

Report per Rule 30(e).