An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA09-1674

NORTH CAROLINA COURT OF APPEALS

Filed: 20 July 2010

STATE OF NORTH CAROLINA

v. Mecklenburg County
Nos. 08 CRS 54573, 219683

LOY WRIGHT

Appeal by defendant from judgment entered 28 July 2009 by Judge Richard D. Boner in Mecklenburg County Superior Court. Heard in the Court of Appeals 19 July 2010.

Attorney General Roy Cooper, by Special Deputy Attorney General Elizabeth N. Strickland, for the State.

Michael E. Casterline for defendant appellant.

BRYANT, Judge.

Defendant was indicted for sale of a controlled substance, delivery of a controlled substance, and possession with intent to sell or deliver a controlled substance. On 11 August 2008, defendant was indicted for having attained habitual felon status. The case proceeded to trial on 27 and 28 July 2009. A jury found defendant guilty of selling cocaine and possession of cocaine with intent to sell or deliver. Thereafter, defendant entered a plea of guilty to having attained habitual felon status. The charges were consolidated for sentencing and defendant was sentenced to a term

of 151 to 191 months imprisonment. From the judgment entered, defendant appeals. We find no error.

Facts

The State's evidence tended to show that on 30 October 2007 at approximately 11:55 a.m. Patrol Officer Kimberly Blackwell and Detective Jorge Olmeda of the Charlotte Mecklenburg Police Department were working undercover in the Pine Valley neighborhood attempting to purchase illegal drugs. The officers were driving in an unmarked car when they were flagged down by a black male who asked them what they wanted. Officer Blackwell asked the man for twenty dollars worth of "hard" or crack cocaine. The man then told the officers to pull over, and he would go get it. The man walked up to a house on Longleaf Drive and engaged in a conversation with defendant. Defendant then walked toward the officers' car and waved them up to him. Detective Olmeda drove the car toward defendant, and defendant approached Officer Blackwell who was sitting in the front passenger seat. Defendant asked if they had given the money to the other man, and Officer Blackwell replied that they had not. Officer Blackwell asked defendant if he had the "twenty dollars worth," and defendant replied, "yeah I got it." Defendant then pulled out and handed Officer Blackwell a napkin with what looked like a broken crack rock, and Officer Blackwell gave defendant twenty dollars. Defendant told them he would give them thirty dollars worth because it was broken. He told them to pull up and he would "come back with another dime."

The officers moved the car up to turn around, looked at the napkin's contents, and realized the substance was fake. Less than a minute later, defendant approached Detective Olmeda, and they had a conversation about the contents of the napkin being fake. Defendant then handed Detective Olmeda another rock of crack cocaine, and the fake crack was given back to defendant. The officers took the crack cocaine purchased from defendant to Property Control and turned it in as evidence. A forensic chemist in the police department's crime laboratory tested the substance and determined the substance was cocaine, weighing 0.09 grams.

Defendant moved to dismiss the charges at the close of the State's evidence. Defendant presented no evidence, and renewed his motion at the close of all evidence. The trial court denied defendant's motions.

On appeal, defendant argues (I) the trial court erred in denying his motions to dismiss because there was insufficient evidence to support his conviction for the principal felonies and, as a result, (II) his sentence as an habitual felon is void. We find no error.

I

Defendant first argues the trial court erred in denying his motions to dismiss because there was insufficient evidence to support his conviction for sale of a controlled substance, delivery of a controlled substance, and possession with intent to sell or deliver a controlled substance. We disagree.

In ruling on a motion to dismiss, "[t]he question is whether there is substantial evidence (1) of each essential element of the offense charged and (2) that defendant is the perpetrator of the offense." *State v. Lynch*, 327 N.C. 210, 215, 393 S.E.2d 811, 814 (1990). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *State v. Earnhardt*, 307 N.C. 62, 66, 296 S.E.2d 649, 652 (1982) (quoting *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980)). The evidence is viewed "in the light most favorable to the State, and the State is entitled to every reasonable inference and intendment that can be drawn therefrom." *State v. Olson*, 330 N.C. 557, 564, 411 S.E.2d 592, 595 (1992).

It is unlawful "[t]o manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance[.]" N.C. Gen. Stat. § 90-95(a)(1) (2009). "To prove sale and/or delivery of a controlled substance, the State must show a transfer of a controlled substance by either sale or delivery, or both." *State v. Carr*, 145 N.C. App. 335, 341, 549 S.E.2d 897, 901 (2001). "[T]he term 'sale,' in the context of the North Carolina Controlled Substances Act, means the exchange of a controlled substance for money or any other form of consideration." *Id.* at 343, 549 S.E.2d at 902.

Defendant argues he sold the fake cocaine for twenty dollars, but then exchanged the real cocaine for the fake cocaine. Defendant contends the exchange of the fake cocaine for the real cocaine was not a sale because the fake cocaine had no value. The

evidence tended to show that during a transaction lasting approximately ten minutes, defendant accepted twenty dollars cash from Officer Blackwell and gave Officer Blackwell a fake substance in return. Defendant then promised additional cocaine because the rock delivered was broken. Less than a minute later, the officers realized they had received a fake substance, and defendant gave the officers another rock of crack cocaine. Clearly, the exchange of the real crack cocaine was part of the original transaction for which the officers paid the twenty dollars. We find the evidence presented was sufficient to show defendant received money in exchange for cocaine, a controlled substance.

Defendant also argues that the evidence was insufficient to show that the cocaine introduced into evidence was the same substance acquired from defendant. Defendant notes that nearly three hours elapsed between the transaction with defendant at 11:55 a.m. and when the crack cocaine was logged into evidence at the Property Room at 2:48 p.m. Also, defendant states that the weight of the cocaine recorded by the officers was inconsistent with that recorded by the forensic chemist. Defendant contends, given this evidence, the State's case raises suspicion and conjecture that the substance analyzed by the lab was the same substance obtained from defendant.

Here, the evidence tended to show that the officers placed the cocaine purchased from defendant in a small envelope. The officers completed an evidence envelope with a complaint number marking the time and date the evidence was acquired. They marked the evidence

envelope with the complaint number 20071030115500. The numbers were distinguished as follows: 2007 the year; 1030 the date; 1155 the hour; and 00 meant it was the first entered report at 11:55 a.m. on 30 October 2007. There was also a control number associated with the piece of evidence, which was 200739792. The forensic chemist testified that the envelope she opened in the laboratory contained the complaint number 20071030115500, and control number 200739792. She further testified that it is normal for there to be a slight difference between the weight at the Property Control Room and at her laboratory because the officers often weigh the bag the substance was in while she weighs the substance without any packaging. The State's evidence established a clear chain of identity between the substance defendant sold the officers and the substance tested by the forensic chemist. *State v. Rogers*, 43 N.C. App. 475, 480, 259 S.E.2d 572, 576 (1979). Based on the foregoing, we conclude the trial court did not err in denying defendant's motions to dismiss.

II

Defendant also argues that his sentence as an habitual felon is void because there was insufficient evidence to support his conviction for the principal felonies. However, as set forth above, the principal felony convictions were supported by sufficient evidence. The exchange of the fake cocaine for the real crack cocaine was part of the original transaction. Therefore, the defendant received money in exchange for cocaine, a controlled substance. This argument is overruled.

No error.

Judges HUNTER, Robert C., and STEELMAN concur.

Report per Rule 30(e).