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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-918

Filed: 1 December 2020

Wake County No. 18 CRS 209112-18

STATE OF NORTH CAROLINA

v.

BARSHIRI SANDY, Defendant.

Appeal by Defendant from judgments entered 26 April 2019 by Judge Keith O. Gregory in Wake County Superior Court. Heard in the Court of Appeals 12 May 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General T. Hill Davis, III, for the State.

Michael E. Casterline for defendant-appellant.

MURPHY, Judge.

Offenses based on the same act or transaction that constitute parts of a single scheme or plan are transactionally connected and may be joined together for trial. We consider the following factors in determining the existence of a transactional connection: (1) the nature of the offenses charged; (2) any commonality of facts

STATE V. SANDY

Opinion of the Court

between the offenses; (3) the lapse of time between the offenses; and (4) the unique circumstances of each case. When there is a transactional connection, joinder is appropriate if the trial court, in its sound discretion, determines a defendant can receive a fair trial. A transactional connection exists between the trafficking charges and the conspiracy charge in the present case; the trial court did not abuse its discretion in concluding joinder would not unfairly deprive Defendant of a fair trial.

BACKGROUND

In November 2017, Bykim Fleming, a confidential source for the Raleigh Police Department, informed Detective Jeff Ladd that Defendant, Barshiri Sandy, had been trafficking heroin in the Raleigh area. Ladd launched an investigation of Defendant with the assistance of Sergeant Joel Wilkins and agents from the Federal Bureau of Investigation and the Drug Enforcement Agency. As part of this investigation, Fleming conducted controlled purchases of heroin from Defendant on three separate occasions, each occurring in December 2017 and in amounts in excess of four grams. Ladd and other officers observed, videotaped, and audio-recorded each transaction. The officers recorded several phone calls and text messages related to these transactions as well.

During a transaction in December 2017, Defendant sold counterfeit heroin to Fleming. Defendant was not indicted on any charges arising out of this transaction, but officers used this incident to introduce Defendant to another confidential source,

STATE V. SANDY

Opinion of the Court

Angel Price, by giving the impression Fleming worked for Price. Fleming informed Defendant Price was unhappy about being sold counterfeit drugs, and Defendant agreed to meet with Price to “make things right.” On 13 February 2018, Defendant met Price at a Mini-City parking lot in Raleigh. Ladd and Wilkins monitored and recorded the meeting, just as they had during the December 2017 transactions. During the meeting, Defendant and Price called Defendant’s drug source and cousin, Elijah Barnett, and discussed meeting in Delaware to purchase heroin. Defendant and Price agreed they would travel to Delaware on 28 March 2018 to purchase heroin from Barnett.

However, on the morning of the scheduled trip, Defendant decided not to travel with Price. Defendant called Barnett to let him know Price was on the way to Delaware and gave Barnett’s phone number to Price. While Price traveled to Delaware, Defendant called Price to coordinate the logistics of the trip. Barnett called Defendant upon Price’s arrival to get a description of Price. Price then purchased approximately 40 grams of heroin from Barnett.

Defendant was arrested on 16 May 2018. On 25 June 2018, Defendant was indicted on twelve charges of trafficking heroin (“trafficking charges”) and one charge of conspiracy to traffic heroin (“conspiracy charge”) involving Defendant’s interactions with Barnett. On 22 January 2019, the State filed a motion to join all the indicted charges for trial. Over Defendant’s objection, the trial court granted the

STATE V. SANDY

Opinion of the Court

State's motion and entered an order joining the conspiracy charge and the trafficking charges for trial. By jury verdict on 26 April 2019, Defendant was found guilty on all counts. Defendant timely appealed.

ANALYSIS

Defendant argues we should vacate his convictions because the trial court erred by joining the conspiracy charge with the trafficking charges. Specifically, Defendant contends the joinder was improper, because the conspiracy charge and the trafficking charges do not possess a sufficient transactional connection, and (2) the joinder prejudiced Defendant. The State argues the trial court did not abuse its discretion in joining the conspiracy charge with the trafficking charges because the charges are transactionally connected and arose from a single investigation. We hold there was a transactional connection between the conspiracy charge and the trafficking charges, and the trial court did not abuse its discretion in joining the charges for trial.

“Two or more offenses may be joined in one pleading or for trial when the offenses . . . are based on the same act or transaction or on a series of acts or transactions connected together or constituting parts of a single scheme or plan.” N.C.G.S. § 15A-926(a) (2019).

Pursuant to this rule, a two-step analysis is required for all joinder inquiries. First, the two offenses must have some sort of transactional connection. Whether such a connection exists is a question of law, fully reviewable on

appeal. If such a connection exists, consideration then must be given as to whether the accused can receive a fair hearing on more than one charge at the same trial, i.e., whether consolidation hinders or deprives the accused of his ability to present his defense. This second part is addressed to the sound discretion of the trial judge and is not reviewable on appeal absent a manifest abuse of that discretion.

State v. Montford, 137 N.C. App. 495, 498, 529 S.E.2d 247, 250 (2000) (internal quotation marks and citations omitted). “[I]f there is no transactional connection, then the consolidation is improper as a matter of law.” *State v. Simmons*, 167 N.C. App. 512, 516, 606 S.E.2d 133, 136 (2004) (citation and internal quotation marks omitted). “A trial court may be reversed for abuse of discretion only upon a showing that its ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision.” *State v. Manning*, 139 N.C. App. 454, 459, 534 S.E.2d 219, 223 (2000) (quoting *State v. Riddick*, 315 N.C. 749, 756, 340 S.E.2d 55, 59 (1986)), *aff’d*, 353 N.C. 449, 545 S.E.2d 211 (2001).

A. Transactional Connection

We first conduct a de novo review of whether the trafficking charges and the conspiracy charge possess a transactional connection. *Montford*, 137 N.C. App. at 498, 529 S.E.2d at 250. We consider the following factors in determining the existence of a transactional connection: “(1) the nature of the offenses charged; (2) any commonality of facts between the offenses; (3) the lapse of time between the offenses; and (4) the unique circumstances of each case.” *Simmons*, 167 N.C. App. at 516, 606

S.E.2d at 136-37 (citation omitted). We hold there was a sufficient transactional connection between the conspiracy charge and the trafficking charges.

1. Nature of the Offenses

The trafficking charges and the conspiracy charge are similar in nature because both arose out of Defendant's sale and distribution of heroin. In *State v. Harding*, we approved of the trial court's joinder of fifteen heroin related charges, including trafficking heroin and conspiracy to traffic heroin, that the trial court characterized as an "unbelievably complicated spider web" because "the transactions were closely related in . . . nature under the circumstances." *State v. Harding*, 110 N.C. App. 155, 161-62, 429 S.E.2d 416, 421 (1993). Here, like in *Harding*, the trafficking charges and conspiracy charge arise from Defendant's participation in the heroin market and were "closely related" in nature in light of the similar circumstances outlined below. *Id.*

2. Commonality of Facts Between the Offenses

The charges also share a significant amount of common facts. Primarily, the conspiracy charge and the trafficking charges involve heroin transactions among the same cast of characters. Defendant built a relationship with Fleming through their December 2017 heroin transactions, which ultimately led to the trafficking charges. Defendant sold Fleming counterfeit drugs during the December 2017 transactions; Fleming introduced Defendant to Price under the guise that Price, as Fleming's

superior, was unhappy about the counterfeit drugs. In an attempt to “make things right,” Defendant then conspired with his cousin, Barnett, to sell Price a larger amount of heroin because Defendant did not have access to the amount of heroin Price sought, leading to the conspiracy with Barnett. Further, all of the charges resulted from a single investigation involving the Raleigh Police Department, the FBI, and the DEA. Ladd worked the entire case, and Wilkins assisted nearly the entire time.

3. Lapse of Time Between the Offenses

We have held crimes separated by six months to be part of the same transaction or series of transactions. *See Manning*, 139 N.C. App. at 461, 534 S.E.2d at 223; *see also State v. Chandler*, 324 N.C. 172, 186-88, 376 S.E.2d 728, 737-38 (1989) (holding crimes separated by four and a half months to have a transactional connection); *State v. Street*, 45 N.C. App. 1, 5-6, 262 S.E. 2d 365, 368 (1980) (holding crimes separated by five months to have a transactional connection). The transactions underlying the trafficking charges occurred in December 2017. Defendant’s specific actions that led to the conspiracy charge began no later than 13 February 2018, when Defendant met with Price in a Mini-City parking lot, and ended by 29 March 2018. As such, the lapse of time between the conspiracy and the acts leading to the trafficking charges was at the least two months and at the most four months. By either measure, the lapse does not exceed the allowable bounds.

Manning, 139 N.C. App. at 461, 534 S.E.2d at 223; *Street*, 45 N.C. App. at 5-6, 262 S.E. 2d at 368; *Chandler*, 324 N.C. at 186-88, 376 S.E.2d at 737-38.

4. Unique Circumstances of Each Case

There are several circumstances appearing to render the trafficking charges unique from the conspiracy charge. Namely, the specific purchasers and sellers of the heroin were different people, the actual sales occurred in different states, and the amounts of heroin were different. However, these ostensible differences do not sever the transactional connection between the charges. Although the specific purchasers and sellers of the heroin were different people, they were all characters in the same plot. Officers used Defendant's relationship with Fleming to introduce Price as Fleming's boss. Defendant then introduced Price to his drug source and cousin, Barnett, to atone for selling counterfeit drugs to Fleming. The significant interrelation of these individuals overshadows the fact that the specific purchasers and sellers were distinct. Further, the differences between the transaction locations and heroin amounts are explicable because Defendant needed to involve Barnett to sell the large quantity of drugs requested by Price.

Based on our analysis of the *Simmons* factors, we hold the charges were transactionally connected.

B. Prejudice

STATE V. SANDY

Opinion of the Court

We next address “whether [D]efendant has shown that the joinder deprived him of a fair hearing[.]” *Simmons*, 167 N.C. App. at 517, 606 S.E.2d at 137. “[T]he question posed is whether the offenses are so separate in time and place and so distinct in circumstances as to render a consolidation unjust and prejudicial to an accused.” *Id.* (emphasis and citation omitted).

Public policy favors consolidation because it expedites the administration of justice, reduces congestion of trial dockets, conserves judicial time, lessens the burden upon citizens who must sacrifice both time and money to serve upon juries and avoids the necessity of recalling witnesses who will be called upon to testify only once if the cases are consolidated.

Chandler, 324 N.C. at 187, 376 S.E.2d at 737 (citation omitted). “In the context of joinder of charges, this Court has explained that “[w]hile the admissibility of [the] evidence pursuant to Rule 404(b) is not conclusive evidence of the absence of prejudice, it is a factor that we may consider.” *Simmons*, 167 N.C. App. at 517, 606 S.E.2d at 137 (quoting *State v. Bowen*, 139 N.C. App. 18, 29, 533 S.E.2d 248, 255 (2000)).

In *State v. Montford*, the defendant was indicted on two separate counts of sale and delivery of cocaine. *Montford*, 137 N.C. App. at 497, 529 S.E.2d at 249. The trial court consolidated the two offenses, the defendant made no motion to sever, and the jury convicted the defendant of both offenses. *Id.* at 497-98, 529 S.E.2d at 250. On appeal, the defendant challenged the joinder of the charges. *Id.* at 498, 529 S.E.2d at 250. Regarding whether the defendant received a fair trial, we held:

STATE V. SANDY

Opinion of the Court

First of all, the State used the same witnesses to present the evidence as to both offenses. Furthermore, the same evidence would have been introduced had the trials been separated. Specifically, evidence of the [first offense] still would have been admissible at a trial on just the [second offense] (and vice versa), because such evidence would have been admissible under Rule 404(b) to show intent and/or knowledge.

Id. at 499-500, 529 S.E.2d at 251. As such, we concluded the trial court did not abuse its discretion. *Id.* at 500, 529 S.E.2d at 251.

Here, like in *Montford*, evidence of the conspiracy charge could have been admissible at a separate trial on the trafficking charges, and vice versa, in order to show a common scheme or plan. N.C.G.S. § 8C-1, Rule 404(b) (2019); *State v. Richardson*, 36 N.C. App. 373, 375, 243 S.E.2d 918, 919 (1978), *disapproved of on other grounds by State v. Weldon*, 314 N.C. 401, 407, 333 S.E.2d 701, 705 (1985) (“In drug cases, evidence of other drug violations is relevant and admissible if it tends to show plan or scheme, . . . knowledge of the presence and character of the drug, or presence at and possession of the premises where the drugs are found.”). The jury could have heard the same evidence from the same witnesses even if the charges were tried separately, and as such, their joinder did not unfairly deprive Defendant of a fair trial. *See Simmons*, 167 N.C. App. at 518, 606 S.E.2d at 137; *see also Montford*, 137 N.C. App. at 499-500, 529 S.E.2d at 251.

STATE V. SANDY

Opinion of the Court

The trial court's decision to join the conspiracy charge with the trafficking charges was not manifestly unsupported by reason and was the result of a reasoned decision. *Manning*, 139 N.C. App. at 459, 534 S.E.2d at 223.

CONCLUSION

The trial court could properly join the conspiracy charge with the trafficking charges as the charges were transactionally connected. Further, because evidence of each charge could have been admissible at a separate trial for the other charge, the trial court did not abuse its discretion in concluding joinder would not unfairly deprive Defendant of a fair trial.

NO ERROR.

Judges BRYANT and BERGER concur.

Report per Rule 30(e).