

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA08-567

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2008

STATE OF NORTH CAROLINA

v.

Onslow County
No. 06 CRS 53781-82

FREDDIE BELL, JR.

Appeal by Defendant from judgment entered 10 January 2008 by Judge John W. Smith Jr. in Onslow County Superior Court. Heard in the Court of Appeals 8 December 2008.

Attorney General Roy Cooper, by Assistant Attorney General Letitia C. Nichols, for the State.

Gilda Rodriguez, for Defendant.

ARROWOOD, Judge.

Freddie Bell, Jr. (Defendant) appeals from a judgment entered upon jury verdicts finding him guilty of two counts each of possession with intent to sell or deliver cocaine and selling cocaine upon his admission to habitual felon status. The court consolidated the offenses and sentenced Defendant within the mitigated range to a minimum term of 70 months and a maximum term of 93 months. We find no error.

Two questions are presented for our decision. First, Defendant contends he was entitled to specific performance of a purported promise by the State to dismiss the charges if Defendant

assisted law enforcement officers by acting as a confidential informant. On the day trial commenced, Defendant filed a motion entitled "Motion for Benefit of Bargain" in which he sought an order compelling the State to comply with a purported promise to dismiss the charges if Defendant helped the Onslow County Sheriff's Department apprehend a drug trafficker. After the jury had rendered its verdicts, but prior to sentencing, the court conducted a *voir dire* hearing on the motion.

Defendant testified during the *voir dire* hearing that following his arrest on the current charges, he went to the Onslow County Sheriff's Department and offered his assistance "if they could help me out on my charges." The officers promised that Defendant's charges "would be disappeared" [sic] for helping them. He went with Officers Springs and Holden to Wilmington and, wearing a body wire, made a controlled purchase from a dealer who was charged with a trafficking offense as a result of the purchase.

Detective Jack Springs of the Onslow County Sheriff's Department testified at the *voir dire* hearing that Defendant came to the department offering to assist in apprehending a drug dealer in New Hanover County and that Defendant followed through with his promise in helping law enforcement officers to arrest this dealer. He denied ever promising Defendant that no other charges would be filed against him, that the pending charges would be dismissed for his cooperation, and that a specific sentence or recommendation would be made based upon his assistance. He stated that he only told Defendant that he would make the district attorney and court

system aware of the assistance that Defendant rendered.

"When the *voir dire* evidence is conflicting, as here, the trial judge must weigh the credibility of the witnesses, resolve the crucial conflicts and make appropriate findings of fact. When supported by competent evidence, his findings are conclusive on appeal." *State v. Jenkins*, 300 N.C. 578, 584, 268 S.E.2d 458, 463 (1980). Here, the court found as a fact that the officers never made any promise to Defendant that the charges would "go away" or "that there would be any specific mitigation of any sentence. . . ." This finding is supported by the testimony of Detective Springs and thus is conclusive. As no promise was made to dismiss the charges, we conclude the court properly refused to order specific performance of any such promise.

We further note that the record shows the court found that Defendant did render substantial assistance and that the officers led Defendant to believe he would receive some benefit from such assistance. Consistent with a request made by Defendant's counsel's request in open court, the court consolidated the offenses and imposed the least possible sentence.¹ Defendant thus ultimately received some benefit from the assistance he rendered.

Defendant next contends that his constitutional right to confront witnesses against him was violated because he was not

¹Person convicted of a felony offense other than a Class A, B1 or B2 felony and adjudged to be a habitual felon must be sentenced as a Class C felon. N.C. Gen. Stat. §14-7.6 (2007). Permissible range of minimum sentences for a Class C felony at Defendant's prior record level of III is 70-93 months. N.C. Gen. Stat. §15A-1340.17 (c).

afforded an opportunity to cross examine the chemist who actually performed the chemical analysis of the substance seized during the first of two transactions. The record shows that the chemist who conducted an analysis of the substance seized during the second transaction was allowed, without objection, to testify regarding the results of testing performed by another chemist on the first-seized substance.

In the absence of an objection at trial to the admission of evidence, our review is limited to determining whether the court committed plain error. *State v. Black*, 308 N.C. 736, 741, 303 S.E.2d 804, 807 (1983). To obtain relief, the defendant must show that the court committed 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).

We conclude the court did not commit plain error. Rule 703 of the Rules of Evidence provides that expert testimony may be based upon tests performed by another expert if the tests are of the type reasonably relied on by experts in that field. N.C. Gen. Stat. § 8C-1, Rule 703 (2007). We have thus held that expert testimony regarding the chemical analysis of drugs, which are based on analyses conducted by someone other than the testifying expert, does not violate a defendant's right of confrontation when the defendant has the opportunity to cross examine the testifying expert. *State v. Delaney*, 171 N.C. App. 141, 144, 613 S.E.2d 699, 701 (2005). Here, the State Bureau of Investigation (SBI) chemist,

Shane Moore, testified that it is not unusual for items of evidence from the same law enforcement agency to be tested by different analysts within the SBI. Moore reviewed the records and documents pertaining to the analysis conducted by the other chemical analyst and found them to be in order and accurate. Defendant had the opportunity to cross examine the testifying expert witness.

We hold Defendant received a fair trial, free of prejudicial error.

No Error.

Judges TYSON and BRYANT concur.

Report per Rule 30(e).