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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-1095

Filed: 15 September 2020

Onslow County, No. 17CRS051315-16

STATE OF NORTH CAROLINA

v.

MASSES ANDREW CAIN, Defendant.

Appeal by Defendant from judgments entered 13 March 2019 by Judge Phyllis M. Gorham in Onslow County Superior Court. Heard in the Court of Appeals 10 August 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General LeeAnne N. Lawrence, for the State.

Jarvis John Edgerton, IV, for the Defendant.

BROOK, Judge.

Masses Andrew Cain (“Defendant”) appeals from judgments entered upon jury verdicts for sale of cocaine, possession of cocaine with the intent to sell or deliver, and possession of drug paraphernalia. On appeal, Defendant argues that the trial court erred in denying his motion to dismiss the charge of sale of cocaine. We hold that Defendant has failed to demonstrate any error.

I. Background

In October 2016 the Onslow County Sheriff's office received a complaint concerning Defendant, a drug distributor, and on 28 February 2017 detectives with the department conducted an undercover "buy-bust" sting targeting him and resulting in his arrest. The agent central to the sting operation, Detective Gilbert De La Rosa, used an undercover Facebook account to find Defendant on Facebook and identified him using his Facebook profile picture and a photo from a prior arrest which Detective De La Rosa located in a law enforcement database. Detective De La Rosa initiated communication with Defendant through Facebook in January 2017, eventually asking him whether he could sell Detective De La Rosa cocaine and heroin. Defendant confirmed that he could get Detective De La Rosa "whatever he wanted."

Detective De La Rosa testified that after some communication back and forth, Defendant confirmed that he could sell Detective De La Rosa 21 grams of cocaine for \$2,000. Initially Detective De La Rosa objected that the price was too high, but, after Defendant assured him the cocaine was high quality, he agreed to the price. They arranged the sale for 28 February 2017 at 9:00 p.m., and Defendant instructed Detective De La Rosa to meet him at Legend's Shoe Store at 2025 North Marine Boulevard.

Detective Marshburn, who helped arrange the buy-bust operation including by recording evidence and providing Detective De La Rosa with cash for the transaction,

testified that he set up surveillance in a nearby hotel parking lot, and that nine other officers from the department were also on stand-by to assist. He issued Detective De La Rosa cash for the transaction and a recording device. Detective De La Rosa testified that he and Detective Marshburn originally agreed he would have \$2,000 on him for the sale, but he was ultimately only issued \$1,300. Detective De La Rosa explained that “we knew that we were going to take Mr. Masses into custody. So at that time, we don’t have to . . . put \$2,000. We just have to make it appear that it was a large sum of money.”

On 28 February, the day arranged for the transaction, Defendant got into Detective De La Rosa’s vehicle and asked about “letting the money walk,” meaning Detective De La Rosa would give Defendant the cash and Defendant would go pick up the cocaine and bring it back. Detective De La Rosa refused to give Defendant the money without the cocaine being present, so Defendant made a phone call that Detective De La Rosa presumed was to his supplier and then left to retrieve the cocaine. A little past 10:00 p.m., Defendant messaged Detective De La Rosa, asking him to relocate to a tobacco shop nearby on Commerce Road. Soon after, Defendant returned with a white towel over his hand that hid the cocaine. He got into Detective De La Rosa’s car and gave him the cocaine, instructing him to say “God Damn” to indicate that he had received it. Detective De La Rosa said “God Damn” as Defendant had requested and then handed him the money, instructing him to “start counting.”

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A few seconds later officers moved in and arrested Defendant. As he was being arrested, Defendant attempted to hide the money he had received from Detective De La Rosa between the passenger seat and the center console of the car.

On 9 January 2018, Defendant was indicted for conspiracy to possess cocaine with the intent to sell or deliver and conspiracy to manufacture, sell, and deliver cocaine, as well as possession of drug paraphernalia. Defendant was also indicted with the substantive offenses of possession with intent to sell or deliver cocaine, manufacture of cocaine, and sale of cocaine that same day. The case came on for trial on 11 March 2019 before the Honorable Phyllis Gorham in Onslow County Superior Court. Judge Gorham presided over a two-day trial. At trial, the State elected to proceed on the substantive offenses only, dropping the conspiracy charges. Defense counsel moved to dismiss the charge of sale of cocaine for insufficiency of the evidence at the close of all of the evidence, but the motion was denied.

The jury found Defendant guilty of delivery of cocaine, possession of drug paraphernalia, possession with intent to sell or deliver cocaine, and sale of cocaine. The State moved that the trial court arrest judgment on the charge of delivering cocaine, while Defendant moved that the court arrest judgment on the charge of sale of cocaine. The court denied Defendant's motion and granted the State's motion. The court went on to enter two judgments, consolidating the conviction for possession of drug paraphernalia with the conviction for possession with intent to sell or deliver,

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and sentencing Defendant to 11 to 32 months in prison for possession with the intent to sell or deliver and 19 to 23 months for sale of cocaine, the sentences to run consecutively.

Defendant timely appealed.

II. Analysis

On appeal, Defendant argues that the trial court erred in denying his motion to dismiss the charge for sale of cocaine because there was insufficient evidence of a sale of a controlled substance. We disagree.

i. Standard of Review

We review the denial of a motion to dismiss *de novo*. See *State v. Robledo*, 193 N.C. App. 521, 525, 668 S.E.2d 91, 94 (2008).

ii. Merits

The question for this Court on review of a denial of a motion to dismiss is “whether substantial evidence of each element of the offense charged has been presented, and that defendant was the perpetrator of the offense.” *State v. Carr*, 145 N.C. App. 335, 341, 549 S.E.2d 897, 901 (2001) (citation omitted). “Substantial evidence is that relevant evidence which a reasonable mind might accept as adequate to support a conclusion.” *Id.* We “consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit

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of every reasonable inference and resolving any contradictions in its favor.” *State v. Chekanow*, 370 N.C. 488, 492, 809 S.E.2d 546, 549-50 (2018) (citation omitted).

As defined by N.C. Gen. Stat. § 90-95(a)(1), “[t]he offense of sale of cocaine has two elements: (1) the sale or delivery of (2) a controlled substance (cocaine).” *State v. Neil*, 196 N.C. App. 100, 103, 674 S.E.2d 713, 716 (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).

This Court has found that “the distinction between delivery and sale of a controlled substance under the Controlled Substances Act is the payment for the controlled substance.” *State v. Freeman*, 202 N.C. App. 740, 744, 690 S.E.2d 17, 21 (2010). Our Supreme Court has held that a “sale” occurs where there is “a transfer of property for a specified price payable in money.” *State v. Creason*, 313 N.C. 122, 129, 326 S.E.2d 24, 28 (1985) (emphasis omitted).

While the above “specified price payable in money” language could lend itself to a rigid construction of the statutory elements, our case law does not support such a reading. For instance, we held in *Carr* that there was sufficient evidence that the requisite payment had been made where the defendant exchanged cocaine for three sweatshirts and a videogame. 145 N.C. App. at 341, 549 S.E.2d at 901. We have also held that a transfer of a controlled substance as payment for the performance of

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previous work can constitute a sale. *State v. Yelton*, 175 N.C. App. 349, 358, 623 S.E.2d 594, 599 (2006). The reason is plain enough: in each instance, some form of agreed-upon consideration changing hands resulted in the transfer of a controlled substance.

Defendant relies upon *State v. Fleig*, 232 N.C. App. 647, 754 S.E.2d 461 (2014), to argue that the transaction is not complete until each party has received the precise consideration they bargained for. In *Fleig*, an undercover informant who had paid the defendant \$20 for marijuana felt that the “dime bag” he provided was insufficient for the money she had tendered and thus she did not conclude the transaction until the defendant had returned with a second bag. 232 N.C. App. at 650-51, 754 S.E.2d at 463. *Fleig* is distinguishable from the instant case, however, because in *Fleig* the informant herself chose not to conclude the sale after the transfer of the initial bag of marijuana, instead prompting the defendant to produce more marijuana. *Id.*

Taken in the light most favorable to the State, the evidence was sufficient in this case to submit the charge of sale of cocaine to the jury. Defendant and Detective De La Rosa negotiated a price for a specific quantity of cocaine, and surveillance footage presented during the trial showed that when they met, Defendant handed Detective De La Rosa the cocaine and Detective De La Rosa handed Defendant a roll of cash. Though Defendant had not received the entire amount he had been promised, his possession of \$1,300 after providing Detective De La Rosa with the cocaine was

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evidence a reasonable mind might accept as adequate to show payment for a controlled substance at the time officers announced their presence and took Defendant into custody.

III. Conclusion

For the reasons stated above, we hold the trial court did not err in denying Defendant's motion to dismiss.

NO ERROR.

Judges BRYANT and STROUD concur.

Report per Rule 30(e).