

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-758

Filed 19 March 2024

Union County, Nos. 21CRS50781, 22CRS789

STATE OF NORTH CAROLINA

v.

ANTHONY LAVON HANCOCK, Defendant.

Appeal by defendant from judgment entered 25 January 2023 by Judge Jonathan Wade Perry in Union County Superior Court. Heard in the Court of Appeals 20 February 2024.

Attorney General Joshua H. Stein, by Special Deputy Attorney Generals Rory Agan and Daniel P. O'Brien, for the State-appellee.

Appellate Defender Glenn Gerding, by Assistant Appellant Defender Katy Dickinson-Schultz, for defendant-appellant.

GORE, Judge.

Defendant, Anthony Lavon Hancock, appeals the denial of his motion to dismiss the charge of possession of cocaine with intent to sell or deliver. Defendant was convicted of possession of cocaine with intent to sell or deliver and of having attained habitual felon status. Defendant was sentenced to 125 to 162 months imprisonment. Upon review of the record and the briefs, we discern no error.

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I.

On 2 March 2021, Officer Eiss created a Facebook page under the cover name DopeBoy Chaney to investigate drugs and narcotics in the county. On the date of the incident, Officer Eiss reached out to a “BigBaby Hancock” on Facebook Messenger to purchase narcotics. A picture of defendant holding cash in a hotel room taking a selfie was a photo on BigBaby Hancock’s Facebook page. Officer Eiss saw another photo on the Facebook page of a black BMW. Officer Eiss decided to message BigBaby Hancock through Facebook Messenger to ask for “chit”; Officer Eiss explained “chit” is slang for narcotics. Officer Eiss requested a “ball” and explained this was slang for 3.5 grams of a narcotic substance. BigBaby Hancock responded asking whether Officer Eiss wanted “hardware or girl” and Officer Eiss explained these are slang terms for crack cocaine and soft powder cocaine.

Around 2 p.m., BigBaby Hancock asked where Officer Eiss was. Officer Eiss first attempted to meet this dealer at Captain D’s. Officer Eiss was in the Captain D’s parking lot at the time in an unmarked car. Officer Eiss testified he saw a black BMW drive through the parking lot, but it did not stop. Officer Eiss continued messaging BigBaby Hancock to determine a meeting location. BigBaby Hancock and Officer Eiss suggested other locations like Camp Sutton, Bojangles, and a Super 8 motel, but finally selected CVS to meet around 5 p.m. in the parking lot. Officers were set up at both the Bojangles by the Super 8 motel, and the CVS. Officers saw a black BMW that looked “identical” to the black BMW in the picture on BigBaby

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Hancock's Facebook page leave the Super 8 motel (across the street) and drive to the CVS parking lot. Officer Eiss had just received a message from BigBaby Hancock that he was heading to the CVS.

The police officers approached the black BMW and found defendant in the driver seat, and his friend, Chastity Massey, in the passenger seat. Police officers discovered a small amount of marijuana and \$1,352.00 in cash on defendant's person, and a small amount of marijuana in Massey's purse. Upon searching the vehicle, Officer Birchmore found a plastic bag with what was later determined to be 2.96 grams of crack cocaine. Officer Eiss testified that defendant told him the cocaine was his.

Defendant was indicted with two charges: possession of cocaine with intent to sell or deliver and delivering cocaine within 1000 feet of a childcare facility. Defendant testified at trial and denied admitting the cocaine was his. Defendant also testified that the cash on hand was from the stimulus checks of his girlfriend, her son, and his own. Additionally, defendant testified he had \$800 of the cash withdrawn in ones to make it look like a lot of money. Defendant denied the Facebook page, BigBaby Hancock, was used by him, and he denied sending any of the messages Officer Eiss received. Defendant testified his friend Massey made the BigBaby Hancock (a nickname from his childhood) Facebook page for him when he was in prison to keep in touch with people and not be forgotten. He testified he had no reason

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to use the Facebook page when he left prison because he had his own page, and claimed the pictures on the BigBaby Hancock page were screenshots of his pictures.

Defendant testified he had a pinched nerve from work, that he obtained a prescription on 1 March 2021 for the pain, and that Massey could get him a cheaper price for the prescription with her pharmacy card. Defendant testified he arranged to pick her up and help her get groceries (because she could not drive) if she would help him get his prescription. Defendant provided extensive testimony about the arrest at CVS, why he had a large sum of money, that he had checks to prove the money was from his girlfriend's and her son's stimulus checks, and that he had a prescription.

Additionally, Massey testified she sent the Facebook messages to Officer Eiss and placed the photos of defendant on the BigBaby Hancock Facebook page she created for him. Massey also testified she obtained the crack cocaine to sell to Officer Eiss and that the crack cocaine that was in the car fell out of her pocket. Massey testified to obtaining a plea deal for marijuana and that the cocaine charge was dropped. Massey also testified in detail about the Facebook messages but did not know some of the terms used in the messages, and she denied going to Captain D's in a black BMW.

Defense counsel objected to the admission of the Facebook pictures and the screenshots of the Facebook messages when the State sought to admit them as exhibits during Officer Eiss's testimony. The State and defense counsel were given

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opportunity to question Officer Eiss on voir dire regarding the messages and pictures. Defense specifically objected on the grounds of authentication and lack of foundation under Rule 901. The trial court overruled the objections and allowed the State to admit the exhibits of the Facebook photos and messages. The trial court also included an instruction in the jury charge that the diagrams and pictures admitted into evidence were admitted for illustrative purpose. Defense moved to dismiss both charges after the State rested and again at the close of all the evidence. The trial court denied the motion for the charge of possession of cocaine with intent to sell or deliver but granted the motion to dismiss the charge to deliver cocaine within 1000 feet of a childcare facility. The jury returned a guilty verdict for the possession of cocaine with intent to sell or deliver and found defendant guilty of having attained a habitual felon status. Defendant entered a timely oral notice of appeal.

II.

Defendant appeals of right pursuant to sections 7A-27 and 15A-1444. Defendant primarily argues the trial court erroneously denied his motion to dismiss the possession of cocaine with intent to sell or deliver. Defendant also includes an alternative argument challenging the admission of the Facebook text messages in case this Court determines the exhibits were admitted as substantive evidence rather than solely as illustrative evidence in support of the witness's testimony. We only consider defendant's motion to dismiss argument, because the outcome of the alternate issue has no bearing upon our determination of the first issue.

We review a motion to dismiss de novo. *State v. Dover*, 381 N.C. 535, 547 (2022).

In ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator. Substantial evidence only requires more than a scintilla of evidence, or the amount necessary to persuade a rational juror to accept a conclusion. In evaluating the sufficiency of the evidence to support a criminal conviction, the evidence must be considered in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom. Moreover, any contradictions or conflicts in the evidence are resolved in favor of the State, and evidence unfavorable to the State is not considered. Courts considering a motion to dismiss for insufficiency of the evidence should not be concerned with the weight of the evidence. The test of the sufficiency of the evidence to withstand the motion to dismiss is the same whether the evidence is direct, circumstantial, or both.

Id. (cleaned up).

Defendant argues the State only presented enough evidence for possession of cocaine but failed to present sufficient evidence of the intent to sell or deliver element to overcome a motion to dismiss. In arguing this, defendant states this Court may not consider Officer Eiss's testimony of what was said in the text messages because the text message exhibits were admitted for illustrative purposes only. We disagree with this alleged limitation.

Defendant objected to the admission of the text message exhibits as substantive evidence on lack of foundation and authenticity grounds under Rule 901. There is an apparent dispute between parties regarding the trial court's decision to admit the exhibits either substantively or for illustrative evidence to support Officer

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Eiss's testimony. This dispute has no effect on the evidence before this Court when considering the motion to dismiss. An objection to the lack of foundation for an exhibit is a separate legal question from the reading of text messages into evidence upon the witness stand.

Defendant points to a couple unpublished opinions as support for his position that the witness's testimony of what the text messages said were not substantive evidence. However, both cases refer to questions about hearsay, and one case demonstrates that the content of the evidence coming in through witness testimony overcame any prejudicial error of admitting the exhibits as substantive evidence. *See State v. Bumpers*, 247 N.C. App. 900, 2016 WL 3166603, *1, *6 (unpublished) (admitting an exhibit with a witness's police statement for the "purpose of corroboration" and not "for the truth of the matter asserted"); *State v. Malone*, 149 N.C. App. 977, 2002 WL 857409, *1, *6 (unpublished) (discussing the photographs admitted for illustrative purposes only was not prejudicial when the judge suggested they were admitted substantively because the content of the exhibits were admitted through witness testimony). The question of Officer Eiss reading the texts of his conversation with BigBaby Hancock during his testimony is a question of hearsay and is separately considered for purposes of admissibility, but considering defendant did not raise a hearsay objection at trial, nor raises it now, we limit our review to what the parties argue.

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The State argues there was sufficient evidence to overcome the motion to dismiss for the intent to sell or deliver element. The State must provide substantial evidence of all the following elements for the possession of cocaine with intent to sell or deliver charge: “(1) possession; (2) of a controlled substance; with (3) the intent to sell or deliver that controlled substance.” *State v. Blakney*, 233 N.C. App. 516, 519 (2014) (quoting N.C.G.S. § 90-95(a)(1) (2013)). To prove the element of “intent to sell or deliver,” the State typically relies upon circumstantial evidence and infers intent through that evidence. *State v Wilkins*, 208 N.C. App. 729, 731 (2010) (cleaned up). Both a defendant’s activities and the presence of cash or drug paraphernalia may infer this intent element. *Id.*

The State offered the following evidence to prove defendant had the intent to sell or deliver the cocaine: Officer Eiss’s testimony he asked to buy a “ball” that is approximately 3.5 grams of crack cocaine; the crack cocaine discovered in a baggy in defendant’s vehicle was 2.96 grams in weight; Officer Eiss’s testimony he first attempted to meet defendant at the Captain D’s, and saw a black BMW that looked identical to the picture of the black BMW on BigBaby Hancock’s Facebook page, with whom he was communicating; the seller of the cocaine told Officer Eiss he was at the Super 8 Motel and for DopeBoy Chaney to meet him at the CVS parking lot across the street; the picture on BigBaby Hancock’s Facebook page looked like defendant; testimony the officers saw a black BMW drive from the Super 8 motel to the CVS parking lot around the time scheduled to meet for the cocaine deal; officer testimony

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they found marijuana on both defendant and his girlfriend, Chastity Massey, in addition to the crack cocaine in the vehicle; testimony defendant had approximately \$1,300.00 in cash that he testified \$800 was in ones to make it look like more money; and Officer Eiss's testimony defendant told him the crack cocaine was his, although defendant denied making this statement.

Even if we were to determine the reading of the text messages was in error, there is still evidence on the record to support the denial of the motion to dismiss because Massey testified about the Facebook messages and the cocaine deal. Further, Officer Eiss's testimony that he had a conversation with a BigBaby Hancock to buy crack cocaine, the pictures on the Facebook page that looked like defendant and matched the vehicle that drove to the CVS parking lot, the timing of the BMW coming to the CVS, the timing of the black BMW in the Captain D's parking lot, the large amount of cash on defendant, and the amount of crack cocaine that Officer Eiss sought to buy and that was the approximate size found in the vehicle, would all still be circumstantial evidence to consider. Considering the circumstantial evidence altogether, the trial court did not err in determining there was sufficient evidence of the intent to sell or deliver the cocaine element to overcome the motion to dismiss.

III.

For the foregoing reasons, we determine the trial court did not err in denying the motion to dismiss the possession of cocaine with intent to sell or deliver.

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NO ERROR.

Judges ZACHARY and GRIFFIN concur.

Report per Rule 30(e).