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NO. COA01-658

NORTH CAROLINA COURT OF APPEALS

Filed: 19 March 2002

STATE OF NORTH CAROLINA

v.

Alamance County
Nos. 00CRS53025, 53027

ELIODORO HERRERA VELAZQUEZ

Appeal by defendant from judgment entered 26 February 2001 by Judge Ronald L. Stephens in Alamance County Superior Court. Heard in the Court of Appeals 18 February 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General James A. Wellons, for the State.

J. Darren Byers for defendant-appellant.

EAGLES, Chief Judge.

Defendant Eliodoro Herrera Velazquez was charged with felony possession of cocaine, possession with intent to sell and deliver cocaine, and trafficking in cocaine. The State's evidence tended to show that United States Custom Agents intercepted a United Parcel Service (UPS) package, containing cocaine hidden in a saddle, at the UPS hub in Louisville, Kentucky. The package was from Mexico and was addressed to Julpiano Perez Cortez, 423 Fulton Street, Burlington, North Carolina. Customs Agents in Louisville forwarded the package to Customs Agent Ronald R. Taylor, in

Charlotte, North Carolina via registered mail or FedEx. Customs Agent Taylor attempted to verify the identity of the package's addressee but was unable to locate that name in the records of the North Carolina Department of Motor Vehicles, U.S. Customs Intelligence Division, or Immigration Naturalization Services (INS). Agent Taylor did not open the package while it was in his custody. The agent subsequently forwarded the package to the Burlington Police Department so that the package could be delivered to the shipping address in a "controlled delivery."

On 29 March 2000, Officer Jonothan Weaver of the Burlington Police Department, impersonating a UPS delivery person, delivered the intercepted package to the 423 Fulton Street shipping address. When the officer knocked on the partially open front door of the residence, defendant answered the door. Officer Weaver informed defendant that he had a package for Mr. Cortez. Defendant did not respond, but just looked at the officer. Officer Weaver then pointed to the name on the package's shipping label, whereupon defendant nodded in the affirmative. Defendant signed for the package using the name "Eliodoro Herrera" Defendant then picked up the package from where Officer Weaver had placed it on the ground and took the package into the house.

Officer Weaver returned to the UPS van and drove to a prearranged destination, where other members of the controlled delivery team waited. After being informed that the package had been delivered, the waiting officers immediately left to execute

their search warrant. Officer Weaver changed out of his UPS uniform and followed.

As the officers approached the residence at 423 Fulton Street, they saw defendant standing in the driveway. Upon entry, the officers discovered that with the exception of a single plastic lawn chair, some bedding material, and a single piece of luggage, the residence was vacant. A radio and cellular phone were found on the living room floor. There were no kitchen utensils in the house. The only sign of food consisted of one or two cans of food and empty fast food bags. Searching officers found the package delivered by Officer Weaver and accepted by defendant on the floor of the back bedroom closet, completely concealed under two pieces of carpet remnants. Defendant was the only person in the vicinity of the residence when the officers searched the premises.

Officers seized the package and subsequently opened it at the Burlington Police Department. Inside the package, officers found a wooden riding saddle containing six bags of cocaine. Pursuant to department policy, Sergeant James Brett Taylor, of the Burlington Police Department, watched as Corporal Todd E. Saunders, also of the Burlington Police Department, weighed the bags of cocaine, labeled the bags, and listed each bag on the evidence sheet. Sergeant Taylor also watched Corporal Saunders place each bag of cocaine into a zip-lock bag and place the zip-lock bags into manila envelopes. On 30 March 2000, Corporal Saunders then delivered the cocaine to the State Bureau of Investigation (SBI) laboratory for analysis.

Defendant did not present any evidence. A jury found defendant guilty of felonious possession of cocaine, possession with intent to sell and deliver cocaine, and trafficking in cocaine. The trial court consolidated the convictions for judgment and sentenced defendant to 175-219 months imprisonment. Defendant appeals.

On appeal, defendant first argues that the trial court erred by allowing the State to introduce a controlled substance (contained in State's Exhibits 12, 12A, 12B, 12C, 12D, 12E, 12F and 12AA) into evidence when a full chain of custody was not established. We disagree.

Real evidence must pass a two-part test before it may be introduced at trial. First, the item must be identified as the same item involved in the incident at issue. *State v. Fleming*, 350 N.C. 109, 131, 512 S.E.2d 720, 736, *cert. denied*, 528 U.S. 941, 145 L. Ed. 2d 274 (1999). Second, it must be established that the item has not undergone a material change. *Id.* It is solely within the trial court's discretion to determine whether the evidence has undergone a material change. *State v. Taylor*, 332 N.C. 372, 388 420 S.E.2d 414, 424 (1992). A chain of custody is only necessary when the evidence is not readily identifiable or when the evidence is susceptible to alteration and there is reason to believe that an alteration has occurred. *Fleming*, 350 N.C. at 131, 512 S.E.2d at 735.

Here, the UPS package, intercepted by U.S. Customs and subsequently delivered to and accepted by defendant, was first

opened after its seizure by Corporal Saunders under the supervision of Sergeant Taylor. Sergeant Taylor testified extensively about the procedure that he and Corporal Saunders went through in weighing, bagging, and marking the evidence contained in the package seized at 423 Fulton Street. He further testified that the items contained in State's Exhibits 12A, 12B, 12C, 12D and 12E were those items retrieved from the package seized, weighed, bagged, and marked by him and Corporal Saunders. Sergeant Taylor testified on *voir dire* that the seals placed on the items by Corporal Saunders were in the same condition at trial as when they were originally placed on the items by the corporal on 29 March 2000. Corporal Saunders delivered State's Exhibits 12A, 12B, 12C, 12D, and 12E to the SBI lab on 30 March 2000.

Notably, the SBI lab report contained a complete record of the chain of custody of the evidence from the time it arrived at the SBI lab until the time it was given back to the Burlington Police Department. Additionally, Special Agent Gregory, a forensic drug chemist with the SBI, testified that she analyzed the contents of State's Exhibit 12, which contained five sealed manila envelopes identified as State's Exhibits 12A, 12B, 12C, 12D, and 12E, under the laboratory control number R-2725-0. She opened State's Exhibits 12A, 12B, 12C, 12D and 12E at the end opposite to Corporal Saunders' seals and performed preliminary tests on the contents of each. These tests confirmed that each of the innermost plastic bags contained cocaine. Special Agent Gregory then combined the contents of the plastic bags in State's Exhibits 12A, 12B, 12C, 12D

and 12E, weighed the combined contents, and performed an instrumental test on the combined contents. Finally, the special agent placed the cocaine from State's Exhibits 12A, 12B, 12C, 12D, and 12E into a single zip-lock bag, identified at trial as State's Exhibit 12F. The evidence was returned to the Burlington Police Department on 13 September 2000.

We conclude that the chain of custody, established by the State through the testimony of Sergeant Taylor and Special Agent Gregory, was sufficiently detailed to show that the substance analyzed by Special Agent Gregory was the same substance seized by Burlington police officers from 423 Fulton Street on 29 March 2000. A more detailed chain of custody was not necessary. Accordingly, this assignment of error fails.

Defendant next argues that the trial court erred by not instructing the jury to find defendant not guilty if the jury found that defendant did not know that the UPS package contained cocaine. Again, we disagree.

It is well settled that the trial court is only required to give a requested instruction if it is a correct statement of the law and is supported by the evidence. See *State v. Clegg*, 142 N.C. App. 35, 46, 542 S.E.2d 269, 277, *appeal dismissed and disc. review denied*, 353 N.C. 453, 548 S.E.2d 529 (2001) (noting that the evidence must be viewed in the light most favorable to the defendant when determining whether a defendant is entitled to a requested instruction). Here, the requested instruction may have been a correct statement of the law but there was no evidence on

the record showing that defendant did not know that the package he took possession of on 29 March 2000 contained cocaine. In *State v. Bogle*, 324 N.C. 190, 195, 376 S.E.2d 745, 748 (1989) (citation omitted) (internal quotations omitted), our Supreme Court stated:

Knowledge is a mental state that may be proved by offering circumstantial evidence to prove a contemporaneous state of mind. Jurors may infer knowledge from all the circumstances presented by the evidence. It may be proved by the conduct and statements of the defendant . . . and by [other] circumstantial evidence from which an inference of knowledge might reasonably be drawn.

Here, the State's evidence showed that after defendant took possession of the UPS package, defendant placed the package in a back bedroom closet under carpet remnants. This evidence supports an inference that defendant knew the package contained cocaine. Defendant did not present any evidence at trial. Accordingly, there was no evidence before the jury rebutting the State's evidence as to defendant's knowledge about the contents of the UPS package. Accordingly, we hold that the trial court properly declined to give defendant's requested instruction.

No error.

Judges TIMMONS-GOODSON and McCULLOUGH concur.

Report per Rule 30(e).