NO. COA14-752

NORTH CAROLINA COURT OF APPEALS

Filed: 20 January 2015

STATE OF NORTH CAROLINA

v. Wake County
No. 13 CRS 203743

VAN LAMAR MCKNIGHT

Appeal by Defendant from judgment entered 6 December 2013 by Judge R. Allen Baddour in Wake County Superior Court. Heard in the Court of Appeals 6 November 2014.

Attorney General Roy Cooper, by Special Deputy Attorney General R. Marcus Lodge, for the State.

Appellate Defender Staples Hughes, by Assistant Appellate Defender Jason Christopher Yoder, for Defendant.

STEPHENS, Judge.

Defendant Van Lamar McKnight was convicted in Wake County Superior Court of one count of trafficking in marijuana by possession and one count of trafficking in marijuana by transportation. Defendant now appeals from the trial court's denial of his motion to suppress evidence that he alleges was obtained in violation of his Fourth Amendment rights. Defendant also contends that the trial court committed plain error by

denying his motion *in limine* to exclude evidence that was both irrelevant and prejudicial. After careful review, we hold the trial court did not err in denying Defendant's motion to suppress, nor did it commit plain error by admitting the evidence Defendant challenges.

I. Facts and procedural history

On 5 August 2013, Defendant was indicted by a Wake County grand jury on one count of trafficking in marijuana by possession and one count of trafficking in marijuana by transportation. Those charges arose from Defendant's arrest on 14 February 2013 after officers from the Raleigh Police Department ("RPD") stopped and searched his vehicle and discovered more than ten pounds of marijuana concealed in two packages during their ongoing investigation of Defendant's friend, Travion Stokes.

The evidence introduced at Defendant's trial tended to show that in November 2012, the RPD learned from a confidential informant that Stokes, who at the time was on probation for a federal cocaine trafficking conviction, was trafficking in large amounts of marijuana. On 12 February 2013, after conducting several weeks of undercover surveillance and a controlled buy using the confidential informant, RPD Detective James Battle

searched a trash can left by the curb at Stokes' residence at 601 Sawmill Road in Raleigh and found a plastic baggie containing less than one-tenth of a gram of marijuana residue. Based on this information, Detective Battle obtained a search warrant for Stokes and his residence.

On the morning of 14 February 2013, Detective Battle and RPD Detective Sarah Goree stationed themselves in unmarked police vehicles near Stokes' residence to conduct pre-raid surveillance prior to executing the search warrant, while RPD Officer Keith Pickens parked his marked patrol car farther away at a nearby intersection as back-up. The officers did not have access to a S.W.A.T. team that day, so their plan was to stop Stokes in his automobile after he left his home and then execute the search warrant for his residence. Around 8:30 a.m., Stokes drove a pickup truck into his driveway, parked at the rear of the house, and went inside. Around 8:45 a.m., Defendant——whom RPD officers had not previously seen during the course of their investigation——arrived at Stokes' home driving a GMC Acadia sport utility vehicle, which he parked in the front. Stokes then came out of the house and the two men removed two large white boxes from Stokes' pickup truck, carried them around to the front of the house, and placed them in the back of Defendant's

vehicle. The boxes were sealed shut and did not appear very heavy.

When Defendant got back in his Acadia and drove away, Detective Goree and Sergeant Charles Lynch, another officer in an unmarked vehicle, followed him, as did Officer Pickens at a distance to avoid being seen in his patrol car. The officers followed Defendant for roughly ten to fifteen minutes, during which they did not observe any traffic violations, until Defendant unexpectedly backed his Acadia into a residential driveway at 7202 Shellburne Drive. Detective Goree continued past the driveway and lost visual contact with Defendant. Sergeant Lynch continued past the driveway as well and saw Defendant pull back out into the road without getting out of his car. Officer Pickens, who had not yet reached the driveway, heard over the radio that his colleagues were unable to continue following Defendant, and thereupon activated his patrol car's lights and pulled Defendant over.

Officer Pickens, who later testified that he noticed Defendant seemed slightly nervous but was otherwise acting normally, ordered Defendant out of the Acadia and had him sit on the curb until RPD Detective Kenneth Barber joined them a few minutes later. Detective Barber later testified that upon his

arrival, he smelled burnt marijuana through the Acadia's open window and decided to conduct a search. No burnt marijuana was found during the search of Defendant's vehicle, but when the officers inspected the two boxes Defendant had taken from Stokes' house, they discovered that inside each box was another, smaller box containing a shrink-wrapped orange plastic bucket. These buckets, in turn, contained 5.8 and 4.9 pounds of marijuana in sealed plastic bags.

Defendant was arrested and taken to a police station for interrogation, during which Detective Battle found a key among the contents of Defendant's pockets. Detective Battle subsequently discovered the key fit the lock on the front door of the residence at 7202 Shellburne Drive, where he smelled marijuana through the doorframe. After obtaining a search warrant, RPD officers returned to that residence and found 91 grams of marijuana hidden above a kitchen cabinet. They also found paraphernalia including two digital scales, Ziploc bags, and a vacuum food saver machine in the kitchen. In the attic of the home, the officers found a freezer-sealed bag of marijuana, a black trash bag with sealed marijuana inside, and a small orange-red bucket. The officers also searched for documents to show who owned the house and found bank records in the name of

Revaune Moe, who had two prior drug arrests, as well as a uniform citation for a man named Cory Robinson and letters addressed to him and a man named Andre Turner. They found no evidence linking Defendant to the house, and he was not charged with possession of any of the drugs recovered there.

When Defendant's trial in Wake County Superior Court began on 2 December 2013, his primary defense was that he did not know there was marijuana in the boxes he received from Stokes. Defendant first moved to suppress the marijuana found in his Acadia, arguing that it was the product of an unconstitutional seizure because the RPD officers lacked reasonable suspicion to stop his vehicle. Defendant's *voir dire* examination of the officers involved in his arrest showed that: (1) prior to arriving at Stokes' home on 14 February 2013, Defendant had not previously been a target of the investigation and was not listed on the search warrant for Stokes' residence; (2) no money changed hands when Defendant accepted the boxes from Stokes; and (3) Defendant had not been driving erratically or committed any traffic violations before being stopped by Officer Pickens. The State opposed the motion to suppress, arguing that: (1) the RPD officers did not initiate a search of Defendant while he was still on Stokes' property due to safety concerns given the lack

of a S.W.A.T. team but were still justified in stopping Defendant after he left under a theory that he was taking evidence from a crime scene; and (2) Defendant's backing into the driveway at 7202 Shellburne Drive and then leaving without getting out of his vehicle constituted evasive action sufficient to support a reasonable suspicion that criminal activity was afoot. The trial court denied Defendant's motion, concluding, *inter alia*, that:

> 2. The officers possessed probable cause to search the residence and person of Travion Stokes for controlled substances, as evidenced by a lawfully issued search warrant.
>
> 3. The officers determined that their manpower did not permit the safe execution of the search warrant while [D]efendant was on the premises with Travion Stokes, and the observation of the officers of the transfer of two large packages into [D]efendant's vehicle, [D]efendant's evasive action of pulling into a residence momentarily, when viewed in light of the totality of the circumstances, support a finding of a reasonable, articulable suspicion justifying the officers in stopping the [D]efendant's vehicle.

Defendant failed to object when this evidence was introduced at trial.

Defendant also filed both a motion to suppress the evidence found at 7202 Shellburne Drive and a motion in *limine* to exclude

it after the State gave notice that it planned to introduce that evidence for the purpose of proving Defendant's knowledge of the contents of the boxes he received from Stokes, given the fact that he "was taking [the boxes] from one residence where [police] found marijuana directly to another residence where they found marijuana," as well as the similarities in packaging between the marijuana found in the Acadia and the marijuana found in the attic. The trial court denied Defendant's motion to suppress because, apart from possessing a key to 7202 Shellburne Drive, Defendant could not establish any basis that would give him a legitimate expectation of privacy at that residence. In his motion in *limine*, Defendant argued that the evidence was irrelevant, prejudicial, and would confuse the issues for the jury because he had not been charged with any crime involving 7202 Shellburne Drive. Defendant also highlighted dissimilarities between the evidence seized from his car and the evidence seized from the attic, including differences in the grade of marijuana, the types of bags containing it, and the colors of the buckets found nearby. The trial court denied Defendant's motion, and Defendant failed to timely object when the evidence was admitted at trial to preserve the issue for review.

Defendant chose to testify at his trial, and although he acknowledged to having pled guilty to possession of marijuana with intent to sell and deliver in 2009, he insisted that he had no knowledge that the boxes he received from Stokes on 14 February 2013 contained marijuana. Instead, he testified that Stokes had called him that morning and said he was running late for a doctor's appointment, asked him to drop off the boxes at 7202 Shellburne Drive as a favor, and given him a key to the residence. Defendant testified that he had known Stokes for about a year and that the two men had become friends through their shared enthusiasm for motorcycles. Defendant admitted that he had been aware that Stokes was on federal probation for drug charges, but assumed that this actually provided a strong incentive for Stokes to avoid further illegal activity. In any event, Defendant explained, the boxes were already sealed before he received them, Defendant never asked what they contained, and he did not have an opportunity to learn their contents before the RPD pulled him over. Defendant testified that he was unaware that he was being followed when he backed into 7202 Shellburne Drive, and that the reason he left so quickly was that he received a cellphone call from his wife——who was upset because she needed her son's car seat from the back of the Acadia to

give to a babysitter so the couple could enjoy a date together — —and that even though he was already at his destination and did not want to make another trip, he decided to drive back across town and then return again to 7202 Shellburne Drive to deliver the boxes because it was Valentine's Day.

On 6 December 2013, the jury returned a verdict finding Defendant guilty of both charges against him. The trial court consolidated the counts into a single judgment and sentenced Defendant to a term of 25 to 39 months in prison. Defendant gave oral notice of appeal in open court.

II. Defendant's motion to suppress

Defendant argues that the trial court erred in denying his motion to suppress the marijuana found in the boxes he received from Stokes because the RPD officers who stopped and searched his vehicle lacked reasonable suspicion to do so and thus violated his Fourth Amendment rights. We disagree.

Typically, this Court's review of a denial of a motion to suppress "is strictly limited to determining whether the trial [court's] underlying findings of fact are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the [court's] ultimate conclusions of law," which are then subject

to *de novo* review. *State v. Mello*, 200 N.C. App. 437, 439, 684 S.E.2d 483, 486 (2009) (citation and internal quotation marks omitted), *affirmed per curiam*, 364 N.C. 421, 700 S.E.2d 224 (2010). However, Defendant acknowledges that because he failed to preserve this issue for appellate review by timely objecting when the evidence was admitted at trial, the standard of review is plain error. Under a plain error analysis, Defendant is entitled to a new trial only if he can demonstrate that the trial 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. Brunson*, 187 N.C. App. 472, 477, 653 S.E.2d 552, 555 (2007) (citation omitted).

The Fourth Amendment protects the "right of the people . . . against unreasonable searches and seizures," U.S. Const. amend. IV, and is applicable to the states through the Due Process Clause of the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 655, 6 L. Ed. 2d 1081, 1090 (1961). It applies to seizures of the person, including brief investigatory detentions such as those involved in stopping a vehicle. *Reid v. Georgia*, 448 U.S. 438, 440, 65 L. Ed. 2d 890, 893 (1980). It is well established that in order to conduct an investigatory stop,

police must have a reasonable suspicion that criminal activity may be afoot. *See Terry v. Ohio*, 392 U.S. 1, 30, 20 L. Ed. 2d 889, 911 (1968).

As our Supreme Court has explained, "[a]n investigatory stop must be justified by a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity." *State v. Watkins*, 337 N.C. 437, 441, 446 S.E.2d 67, 70 (1994) (citation and internal quotation marks omitted). In reviewing whether a reasonable suspicion to make an investigatory stop exists, this Court "must consider the totality of the circumstances——the whole picture" to determine if the stop was "based on specific and articulable facts, as well as the rational inferences from those facts, as viewed through the eyes of a reasonable, cautions officer, guided by his experience and training." *Id.* (citations and internal quotation marks omitted).

In the present case, Defendant argues that the trial court plainly erred in its finding of fact and conclusion of law that his act of turning around in the driveway at 7202 Shellburne Drive constituted evasive action sufficient to support a reasonable suspicion for an investigatory stop of his vehicle. Specifically, Defendant argues that the trial court's findings

and conclusions were unsupported by competent evidence, given that neither of the two RPD officers who followed him in unmarked vehicles testified that his conduct provided any indication that he was aware they were following him, let alone that he was driving evasively. In support of his argument, Defendant cites this Court's holding in *State v. White*, 214 N.C. App. 471, 712 S.E.2d 921 (2011), that to support a finding of evasive action, the State must "establish a nexus between [a d]efendant's flight and the police officers' presence." *Id.* at 480, 712 S.E.2d at 928. Since the State failed to establish such a nexus here, Defendant argues that the trial court plainly erred by improperly admitting the only physical evidence that he possessed and transported marijuana.

It is well established under state and federal law that although mere presence in a high crime area is not sufficient to support a reasonable suspicion that an individual is involved in criminal activity, an individual's presence in a suspected drug area coupled with evasive action may provide an adequate basis for the reasonable suspicion necessary for an investigatory stop. *See Illinois v. Wardlow*, 528 U.S. 119, 145 L. Ed. 2d 570 (2000); *State v. Butler*, 331 N.C. 227, 233-34, 415 S.E.2d 719, 722–23 (1992). However, as we explained in *White*, in order for

an action to be considered evasive, the State must "establish a nexus between [a d]efendant's flight and the police officers' presence." 214 N.C. App. at 480, 712 S.E.2d at 928. Prior decisions by this Court and our Supreme Court make clear that a defendant cannot be found to have acted evasively unless there is some evidence that he was aware he was being followed by, or in the presence of, a police officer. *See, e.g.*, *Butler*, 331 N.C. at 233, 415 S.E.2d at 722 (finding evasive action where "upon making eye contact with the uniformed officers, [the] defendant immediately moved away, behavior that is evidence of flight"); *State v. Willis*, 125 N.C. App. 537, 539, 481 S.E.2d 407, 409 (1997) (finding evasive action where a defendant behaved nervously and cut across a parking lot on foot after it became "apparent to [him]" that he was being followed).

Here, Defendant's argument about evasive action has some merit. Neither of the two RPD officers who followed him in unmarked cars testified that he acted evasively or that his conduct indicated his awareness of the fact he was being followed. Indeed, as Defendant notes, during the suppression hearing the only testimony indicating evasive driving came from Officer Pickens, who was following the two unmarked police cars at a distance and did not directly observe Defendant until after

Defendant had already pulled out of the driveway. When asked about Defendant's driving, Officer Pickens testified:

> Q: Do you remember anything significant about your approach to the vehicle?
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> A: No. I mean, some of the radio traffic that was being relayed to me, that the [D]efendant was being evasive in the way that he was operating his vehicle. Again, I believe he had maybe realiz[ed] that he was being followed.
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> [Defendant's counsel]: Objection to that, [Y]our Honor; move to strike.
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> THE COURT: Sustained.
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> A: The information that I was hearing was that the operation of his vehicle was such that he would not be followed any longer by one of the detectives [who] was in one of the unmarked vehicles.

Officer Pickens further testified that he did not personally observe anything unusual about how Defendant operated his vehicle before pulling him over. Thus, we conclude that there is no competent evidence in the record that indicates Defendant was aware that his Acadia was being followed by police. Therefore, because Defendant's act of turning around in the driveway at 7202 Shellburne Drive cannot properly be considered evasive, we hold that the trial court erred in its finding of fact and conclusion of law that Defendant acted evasively.

However, that does not end our inquiry, as our Supreme Court had made clear that "[a] correct decision of a lower court [on a motion to suppress] will not be disturbed on review simply because an insufficient or superfluous reason is assigned." *State v. Austin*, 320 N.C. 276, 290, 357 S.E.2d 641, 650, *cert. denied*, 484 U.S. 916, 98 L. Ed. 2d 224 (1987). Even where the trial court's reasoning for denying a defendant's motion to suppress is incorrect, "we are not required on this basis alone to determine that the ruling was erroneous," because "[t]he crucial inquiry for [this Court] is admissibility and whether the ultimate ruling was supported by the evidence." *Id.* (citations and internal quotation marks omitted).

Here, Defendant contends that absent the finding of evasive action, the RPD officers' personal observations of him at Stokes' residence provided no other basis for reasonable suspicion to stop his vehicle. Specifically, Defendant contends that the trial court erred in concluding that the search warrant for Stokes' residence was a factor supporting reasonable suspicion against him because "[a]n individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." *Wardlow*, 528 U.S. at 124, 145

L. Ed. 2d at 586. Moreover, Defendant contends that the transfer of boxes from Stokes' truck to Defendant's Acadia was also insufficient to support a reasonable suspicion that a drug transaction had occurred, given that the officers never observed any money changing hands that morning and never in their months-long surveillance of Stokes witnessed him sell any marijuana from his home, utilize large boxes to transport it, or interact with Defendant in any way.

We find Defendant's argument unpersuasive. While it is true that an individual's mere presence in an area of expected criminal activity does not by itself give rise to reasonable suspicion, the record before us indicates that Defendant was more than merely present at Stokes' home, insofar as he accepted two large boxes from Stokes, carried them to his Acadia, put them inside, and drove away. Further, Defendant's argument that there was nothing inherently suspicious about those two large boxes ignores the fact that RPD officers had already obtained a warrant to search Stokes and his residence for evidence of marijuana trafficking, which implicitly authorized them to search any container capable of carrying marijuana, including the boxes. *See, e.g.*, *State v. Bryant*, 196 N.C. App. 154, 674 S.E.2d 753, *disc. review denied*, 363 N.C. 375, 679 S.E.2d 135

(2009) (holding that officers executing a search warrant may legally seize any object encompassed within its description of items to be searched).

In his brief, Defendant suggests that the scope of the search warrant did not include Stokes' car; however, the warrant was not included in the record on appeal and Defendant does not specifically challenge its validity, nor would he have standing to do so, given the absence of evidence that he either owned or held a possessory interest in Stokes' residence or maintained a reasonable expectation of privacy there. *See, e.g.*, *State v. Rodelo*, __ N.C. App. __, 752 S.E.2d 766, *disc. review denied*, __ N.C. __, 762 S.E.2d 204 (2014) (holding that a defendant who cannot show evidence of either his ownership or possessory interest or a reasonable expectation of privacy lacks standing to challenge an alleged Fourth Amendment violation). But even assuming *arguendo* Defendant was correct in this assertion, the scope of the warrant still included Stokes himself, which means the officers would have had probable cause to search the boxes once they saw Stokes and Defendant take them out of the pickup truck. While the officers chose not to search at that time, due to the unavailability of a S.W.A.T. team and concerns about safety, the mere fact that the boxes were then placed inside

Defendant's Acadia did not automatically immunize them from future searches once the vehicle left the property simply because the vehicle was not listed in the warrant. If anything, in light of the totality of the circumstances, given the fact that Stokes was under investigation for marijuana trafficking—which is an offense that by definition involves moving narcotics from one location to another, *see* N.C. Gen. Stat. § 90-95(h)(1) (2013)—Defendant's act of putting two boxes large enough to contain marijuana into his vehicle and then driving away immediately thereafter was more than sufficient to support a reasonable suspicion that he was involved in criminal activity.[1]

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[1] In support of his argument to the contrary, Defendant cites this Court's unpublished decision in *State v. Majett*, __ N.C. App. __, 675 S.E.2d 719 (2009) (unpublished), *available at* 2009 WL 1192726. We note first that Rule 30(e)(3) of our Rules of Appellate Procedure provides that this Court's unpublished decisions do not constitute controlling legal authority. Moreover, despite superficial similarities, the present facts are easily distinguishable from those in *Majett*, where police received a tip from an anonymous informant that the defendant was distributing cocaine from his residence, then found crack cocaine on three men whom they saw entering and leaving the defendant's residence. Although the police in *Majett* may well have been able to obtain a warrant to search the defendant's residence, they instead chose to stop the defendant's vehicle immediately, arrest him, and search for drugs, which they subsequently found. In reversing his conviction, this Court held that the stop amounted to an unreasonable seizure because the police lacked probable cause to effectuate a warrantless arrest given the absence of any evidence connecting the defendant's suspected illegal conduct to his vehicle, which had not broken

That being the case, the officers did not need to wait until Defendant committed a traffic violation or acted evasively to conduct an investigatory stop. Thus, although the trial court's conclusion that Defendant acted evasively was erroneous, we conclude it was also unnecessary to support a finding of reasonable suspicion to conduct an investigatory stop in this case. Accordingly, we hold that the trial court did not err in denying Defendant's motion to suppress or plainly err in admitting this evidence at trial.

III. Defendant's motion in limine

Defendant also argues that the trial court committed plain error by admitting into evidence the marijuana and other contraband found at 7202 Shellburne Drive for the purpose of showing his knowledge that the boxes he received from Stokes contained marijuana. Specifically, Defendant contends that this evidence was irrelevant, inadmissible, and prejudicial under Rules 401, 402, and 404(b) of our Rules of Evidence because there was no evidence that he had ever been inside 7202

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any traffic laws prior to the stop. In the present case, by contrast, the RPD officers properly obtained a search warrant for Stokes' residence, where they directly observed the transfer of boxes to Defendant's Acadia, which provided a sufficient basis for reasonable suspicion for an investigatory stop of his vehicle.

Shellburne Drive, knew its owner, or possessed or was even aware of the drugs hidden therein. While Defendant's argument has some merit with regards to relevance and admissibility, we do not agree that admission of this evidence was so prejudicial as to constitute 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." *Brunson*, 187 N.C. App. at 477, 653 S.E.2d at 555.

Rule 401 of our Rules of Evidence defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C. Gen. Stat. § 8C-1, Rule 401 (2013). By contrast, irrelevant evidence has no tendency to prove a fact at issue and must be excluded. *See* N.C. Gen. Stat. § 8C-1, Rule 402. However, irrelevant evidence is typically considered harmless "unless [the] defendant shows that he was so prejudiced by the erroneous admission that a different result would have ensued if the evidence had been excluded." *State v. Moctezuma*, 141 N.C. App. 90, 93-94, 539 S.E.2d 52, 55 (2000).

The issue here, then, is whether the evidence found at 7202 Shellburne Drive increased the probability that Defendant knew

that the boxes he received from Stokes contained marijuana. The State argues that this evidence was properly admitted to show Defendant's knowledge under Rule 404(b), which provides that

> [e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.

N.C. Gen. Stat. § 8C-1, Rule 404(b). Defendant counters that because there was no evidence that he actually or constructively possessed the drugs and other contraband found at 7202 Shellburne Drive, it was improper to admit the evidence as evidence of his knowledge under Rule 404(b). In support of his argument, he cites this Court's holding in *State v. Moctezuma*, *supra*.

In *Moctezuma*, we held that the trial court erred in admitting evidence under Rule 404(b) for the purpose of showing a defendant's knowledge where there was no evidence connecting the evidence to any crime, wrong, or act by the defendant. 141 N.C. App. at 95, 539 S.E.2d at 56. There, a confidential informant told police that three men in a white van with Tennessee license plates would drive to a residence where a large quantity of cocaine was located and then conduct a cocaine

deal in a grocery store parking lot. *Id.* at 91, 539 S.E.2d at 54. Pursuant to that tip, police conducted surveillance and followed the van to a trailer where the defendant and another man lived; watched the defendant and two other men exit the van, enter the trailer, and reemerge shortly thereafter; and followed the van to the grocery store before surrounding it and arresting its occupants. *Id.* During the arrest, an officer noticed the defendant, who had been driving the van, place something wrapped in white tissue to the right of his seat. *Id.* Upon inspection, police found over 136 grams of cocaine in a plastic bag wrapped in white tissue to the right of the drivers' seat. *Id.* When police returned to the trailer, they found two kilos of cocaine and other paraphernalia in a bathroom. *Id.* At trial, the defendant claimed he was not aware there was cocaine in the van or in the trailer. *Id.* at 92, 539 S.E.2d at 54. Over his objections, the State introduced evidence of the cocaine found in the trailer to show the defendant's awareness that there had been cocaine inside the van. *Id.*

On appeal to this Court, we held that the trial court erred in admitting the cocaine from the trailer under Rule 404(b), reasoning that because there was no evidence that the defendant was aware of the cocaine in the trailer that he shared with

another man, that evidence could not constitute proof of his awareness of cocaine in the van, thus rendering it irrelevant and inadmissible. As we explained,

> Rule 404(b) speaks of "[e]vidence of other crimes, wrongs, or acts." Here, there are no crimes, wrongs, or acts with which [the] defendant is connected. There was no evidence introduced at trial to directly link [the] defendant to the drugs seized at the trailer in which he occupied a bedroom. [The d]efendant was not charged with any offense in connection with the drugs seized at the trailer, and [the] defendant consistently denied any knowledge of such drugs.
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> Further, the circumstantial evidence presented at trial——the fact that drugs belonging to other people were discovered at the trailer [the] defendant shared with others——was too weak to support an inference of knowledge on his part. . . . Under these circumstances, we find that there was insufficient evidence to show that [the] defendant knew about the drugs seized at the trailer.

Id. at 94-95, 539 S.E.2d at 56.

In the present case, with regards to the issues of relevance and admissibility, we find strong parallels between the marijuana and other contraband found at 7202 Shellburne Drive and the cocaine found in the trailer in *Moctezuma*. Although the State contends that the contraband found at 7202 Shellburne Drive should be admissible to prove Defendant's

knowledge because of its similarity to the marijuana found in the boxes Defendant received from Stokes, as we explained in *Moctezuma*, "Rule 404(b) speaks of evidence of other crimes, wrongs, or acts," but here, "there are no crimes, wrongs, or acts" to connect that contraband with Defendant. *See id.* (internal quotation marks omitted). Here, as in *Moctezuma*, Defendant was not charged with any offense in connection with the contraband found at 7202 Shellburne Drive, nor is there any evidence that Defendant actually or constructively possessed that contraband or even knew of its existence. Indeed, there is no evidence Defendant had ever previously visited 7202 Shellburne Drive, and when police searched the residence, they found no evidence that connected Defendant to it. Moreover, as Defendant repeatedly emphasized at trial, the contraband found at 7202 Shellburne Drive was notably dissimilar from the contraband found in his vehicle insofar as the marijuana was of a different grade and the buckets were a different color. Under these circumstances, we find insufficient evidence to show that Defendant knew about the drugs found at 7202 Shellburne Drive. Consequently, we do not believe that evidence was either relevant or admissible to show Defendant's knowledge of the contents of the boxes he received from Stokes, and we therefore

hold that the trial court erred in denying Defendant's motion *in limine* to exclude it.

Defendant further contends that the erroneous admission of this evidence was so prejudicial to him as to constitute plain error, thus warranting a new trial. Defendant again relies on *Moctezuma* to support his argument. There, in reversing the defendant's conviction, we held the erroneous admission of irrelevant evidence to be prejudicial because "the jury could have easily concluded, given the value and quantity of the seized drugs, as well as the time spent at trial examining such, that [the] defendant was a high level drug trafficker." *Id.* at 95, 539 S.E.2d at 56. Defendant argues that the same logic should apply here, and further supports his argument by citing prior cases in which this Court has found that irrelevant evidence that leads to the spurious conclusion that the accused is linked to a huge drug trafficking operation can be prejudicial. *See, e.g.*, *State v. Cuevas*, 121 N.C. App. 553, 557-58, 468 S.E.2d 425, 428, *disc. review denied*, 343 N.C. 309, 471 S.E.2d 77 (1996) (holding that the trial court erred by admitting irrelevant evidence that the defendant who was charged with cocaine trafficking had a stamp on his passport indicating that he had visited Colombia approximately two months before his

arrest, as it tended to mislead the jury as to the level of his involvement in drug trafficking, but nevertheless affirming his conviction because the properly admitted evidence against him was sufficiently overwhelming to make it "unlikely that a different result would have occurred at trial but for the introduction of the passport."). However, given the record before us, we do not agree that the trial court's error was "so fundamental as to amount to a miscarriage of justice" or that it "probably resulted in the jury reaching a different verdict than it otherwise would have reached." *Brunson*, 187 N.C. App. at 477, 653 S.E.2d at 555.

Defendant's argument ignores a critical distinction between the facts here and what made the erroneous admission of irrelevant evidence so prejudicial in *Moctezuma*——specifically, the radical disparity between the quantity of narcotics found when Moctezuma was arrested and the quantity found elsewhere that was erroneously admitted into evidence under Rule 404(b). In *Moctezuma*, the defendant was arrested driving a vehicle that contained roughly 136 grams——or, about four ounces——of cocaine, but the trial court subsequently admitted evidence that police had recovered over four *pounds* of cocaine from his trailer. 141 N.C. App. at 95, 539 S.E.2d at 56. The erroneously admitted

contraband taken from the defendant's shared home was prejudicial because it magnified the amount of cocaine purportedly associated with him by a factor of roughly 16, thus leaving the jury to draw the inference that he was some kind of drug kingpin. *Id.* By contrast, there is no such prejudicial disparity in the present case, given that Defendant was arrested with over ten pounds of marijuana in his vehicle, while the police found far less marijuana in their search of 7202 Shellburne Drive. In other words, even without the erroneously admitted evidence, the jury could still have concluded that Defendant was a high level drug trafficker or otherwise involved in a large drug trafficking operation based on the relevant and properly admitted evidence before it.

Defendant nevertheless insists that he was prejudiced by the trial court's error, emphasizing that the only contested issue at his trial was his knowledge that the boxes he received from Stokes contained marijuana and that, apart from the contraband found at 7202 Shellburne Drive, the State's evidence on this point was weak at best. However, this Court has previously recognized that in narcotics prosecutions, "[i]n the absence of a confession by [the] defendant that [he knew the boxes contained marijuana], the State's proof of [the knowledge]

element must of necessity be circumstantial." *State v. Nunez*, 204 N.C. App. 164, 168, 693 S.E.2d 223, 226 (2010). Moreover, "[i]n borderline or close cases, our courts have consistently expressed a preference for submitting issues to the jury." *State v. Jenkins*, 167 N.C. App. 696, 701, 606 S.E.2d 430, 433 (2005) (citation and internal quotation marks omitted).

In the present case, when Defendant took the stand to deny any knowledge of what was in those boxes, he testified that he knew Stokes was on federal probation for drug trafficking but agreed to do him a favor by transporting two large boxes without inquiring about their contents to an address he had never previously visited. He also admitted to having pled guilty to possession of marijuana with intent to sell and deliver in 2009. Whether or not Defendant knew that the boxes contained marijuana was a credibility determination for the jury, and although these facts do not by themselves prove his guilt, they certainly provided sufficient grounds for the jury to infer that Defendant *should* have known what he was getting himself into.

We therefore conclude that the trial court's erroneous decision to admit irrelevant evidence was not "so fundamental as to amount to a miscarriage of justice" and did not "probably result[] in the jury reaching a different verdict than it

otherwise would have reached." *Brunson*, 187 N.C. App. at 477, 653 S.E.2d at 555. Accordingly, we hold that the trial court did not commit plain error in denying Defendant's motion to exclude the evidence found at 7202 Shellburne Drive.

NO ERROR.

Judges STEELMAN and GEER concur.