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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-893

Filed: 5 May 2020

Mecklenburg County, Nos. 16CRS238053, 17CRS21825

STATE OF NORTH CAROLINA

v.

RODWYN ANTONIO TAYLOR, Defendant.

Appeal by Defendant from judgment entered 18 December 2018 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 31 March 2020.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Scott T. Slusser, for the State.*

*Paul F. Herzog for Defendant.*

INMAN, Judge.

Defendant appeals his conviction for possession of a controlled substance, arguing that the trial court erred by failing to instruct the jury regarding guilty knowledge. Because Defendant did not contend to the trial court that he did not know that the substance in his possession was cocaine, and no evidence at trial supports this assertion, we find no error.

## I. FACTUAL AND PROCEDURAL HISTORY

The record on appeal and testimony at trial tend to show the following:

On 8 October 2016, officers from the Charlotte-Mecklenburg Police Department went to a residence to execute an arrest warrant on Defendant. While one officer knocked on the front door, two others found Defendant in the backyard of the home. Defendant surrendered to the officers, who placed him under arrest. The encounter was captured by body cameras worn by the officers.

The officers searched Defendant and found, in the pocket of the jacket he was wearing, an orange pill bottle containing an “off-white, rock-like substance.” Later chemical testing revealed that the substance was cocaine.

Defendant was charged with possession of a controlled substance and achieving habitual felon status. Defendant was tried before a jury and found guilty of the possession charge, then stipulated to his status as an habitual felon. Defendant appeals.<sup>1</sup>

## II. ANALYSIS

### *A. Standard of Review*

Defendant challenges the instructions given by the trial court to the jury. We generally review a trial court’s decisions regarding jury instructions *de novo*. *State v. Jenkins*, 202 N.C. App. 291, 296, 688 S.E.2d 101, 105 (2010). However, Defendant

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<sup>1</sup> Defendant did not enter timely notice of appeal but petitions this court for a writ of certiorari, which the State does not oppose. In our discretion, we allow Defendant’s petition and hear his appeal.

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did not object to the instructions given by the trial court or request the additional instruction at issue in this case. Accordingly, we are limited to reviewing the trial court's decision for plain error. N.C. R. App. P. 10(a)(2) (2019); *State v. Turner*, 237 N.C. App. 388, 390-91, 765 S.E.2d 77, 80-81 (2014). Plain error is error that denies a fundamental right of the defendant, results in a "miscarriage of justice," or had a probable impact on the jury's finding that the defendant was guilty. *State v. Lawrence*, 365 N.C. 506, 516-17, 723 S.E.2d 326, 333 (2012).

*B. Jury Instructions*

Defendant argues that the trial court erred in failing to instruct the jury on the law of guilty knowledge. He asserts that the evidence at trial suggests that he did not know that the substance in the orange pill bottle found on his person was cocaine, and that the trial court should have, *sua sponte*, followed the "guilty knowledge" direction contained in Footnote 2 of North Carolina Pattern Jury Instruction 260.10.

The actual instruction given by the trial court follows Instruction 260.10. The court told the jury:

The defendant has been charged with possessing cocaine, a controlled substance. Ladies and gentleman, for you to find the defendant guilty of this offense the State must prove, beyond a reasonable doubt, that the defendant knowingly possessed cocaine.

As I said, cocaine is a controlled substance. Ladies and gentlemen, an individual possesses cocaine when the

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individual is aware of its presence, and has both the power and intent to control the disposition or use of that substance.

Footnote 2 instructs trial courts:

If the defendant contends that the defendant did not know the true identity of what the defendant possessed, add this language to the first sentence: “and the defendant knew that what the defendant possessed was (name substance).”

N.C.P.I.—CRIM 260.10 n. 2 (2019). Defendant did not argue to the trial court that he knowingly possessed the pill bottle but was unaware of its contents. Nor does any evidence suggest that this was the case.

When determining whether a defendant is entitled to a requested jury instruction, courts consider the evidence in the light most favorable to the defendant. *State v. Mash*, 323 N.C. 339, 348, 372 S.E.2d 532, 537 (1988). In this case, there is no evidence to support the contention that Defendant did not know that the substance in the prescription bottle was cocaine. The recording introduced at trial shows that, upon the officers’ discovery of the pill bottle, Defendant did deny possession by protesting “That’s not mine!” but did not make any statement indicating that he did not know the *contents* of the bottle.

A denial of possession or that possession was knowing, without more, is insufficient to require the guilty knowledge instruction at issue in this case. The basic instruction of 260.10, given by the trial court, informs the jury that it must find that the defendant knowingly possessed the controlled substance. In *State v. Galaviz-*

*Torres*, the defendant was arrested while driving a van in which officers found a gift bag containing packages of cocaine. 368 N.C. 44, 46, 777 S.E.2d 434, 435 (2015). The defendant denied knowing that the van contained the gift bag or the cocaine. *Id.* at 51, 777 S.E.2d at 438. Our Supreme Court held that, because the defendant “did not contend that he did not know the true identity of what he possessed,” the additional instruction was unnecessary. *Id.* The Court distinguished the case from *State v. Coleman*, 227 N.C. App. 354, 742 S.E.2d 346 (2013), in which the defendant admitted that he knew a box was in his vehicle’s trunk but denied knowing that it contained marijuana and heroin. *Galaviz-Torres*, 368 N.C. at 52, 777 S.E.2d at 439.

In this case, as in *Galaviz-Torres*, Defendant denied knowing that he possessed any container at all. When that is the case, the basic pattern instruction requiring the jury to find that the defendant “knowingly possessed” the drug adequately informs the jury of the determination it must make. *Id.*

Defendant argues that the evidence would have supported a finding that he was aware of the presence of the bottle but not the contents. The evidence showed that Defendant was not wearing a shirt and his jacket was unzipped, and Defendant argues that “one might reasonably conclude that Mr. Taylor was in a hurry . . . and simply grabbed the first jacket he saw hanging or resting near the back door.” This argument was not presented to the trial court and is speculative at best. Even assuming the evidence supports Defendant’s analysis, it only suggests that

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Defendant did not knowingly possess the pill bottle. As the jury was properly instructed on the elements of possession of a controlled substance, it concluded that Defendant was aware of the pill bottle in his pocket. The evidence does not suggest—and Defendant does not argue, even on appeal—that he knowingly possessed the pill bottle but was unaware that the substance inside of it was cocaine. When talking to the officers, Defendant protested “that drug charge, that *cocaine charge* will be like 7 years,” despite no officer having mentioned cocaine.

In *State v. Lopez*, a refrigerator containing heroin was delivered to two defendants, Lopez and Sanchez. 176 N.C. App. 538, 539-40, 626 S.E.2d 736, 738 (2006). On appeal, defendants argued that the trial court should have instructed the jury that it had to find that they knew what they possessed was a controlled substance. *Id.* at 543, 626 S.E.2d at 740. We reached a different result as to each defendant. *Id.*

Sanchez did not present evidence that he was unaware of the contents of the package, and he did not request the trial court give the jury instruction at issue. *Id.* at 546, 626 S.E.2d at 742. We held that, because Sanchez did not contend to the trial court that he lacked knowledge of what he possessed, the failure to give the requested instruction was not plain error. *Id.* Sanchez’s codefendant Lopez, however, testified that he was unaware that the refrigerator contained heroin, and he requested the amended jury instruction, which the trial court refused to give. *Id.* Based on this

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evidence and Lopez's request for the jury instruction, we held that the trial court erred and Lopez was entitled to a new trial. *Id.*

In this case Defendant, like Sanchez, presented no evidence that he did not know what was in the pill bottle found in his pocket, and he did not request a jury instruction regarding that knowledge. Accordingly, the trial court did not err by failing to give that instruction *sua sponte*.

**III. CONCLUSION**

For the reasons above, we hold that the trial court did not err in failing to instruct the jury as to guilty knowledge.

NO ERROR.

Judges MCGEE and BERGER concur.

Report per Rule 30(e).