IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-130

Filed 3 October 2023

Forsyth County, Nos. 21 CRS 56217-18

STATE OF NORTH CAROLINA

v.

STEVEN DEWAYNE SIDBERRY, JR., Defendant.

Appeal by Defendant from judgment entered 15 July 2022 by Judge Nathaniel Poovey in Forsyth County Superior Court. Heard in the Court of Appeals 29 August 2023.

Attorney General Joshua H. Stein, by Assistant Attorney General Rana M. Badwan, for the State.

Anne Bleyman for Defendant.

PER CURIAM.

Defendant Steven Dewayne Sidberry, Jr., appeals from judgment entered upon a jury's verdict finding him guilty of trafficking in fentanyl by possession, trafficking in fentanyl by transportation, possession with intent to sell and distribute fentanyl, and possession of drug paraphernalia. Defendant argues the trial court erred in denying his motion to dismiss the charges of trafficking in fentanyl by possession, trafficking in fentanyl by transportation, possession with intent to sell and distribute

fentanyl; and in submitting those charges to the jury as there was insufficient evidence Defendant knew the substance at issue was fentanyl. We hold the trial court did not err in denying Defendant's motion to dismiss.

I. Factual and Procedural History

This case arises out of a police search of Defendant's car subsequent to Defendant's arrest for outstanding warrants. Evidence presented during Defendant's trial tended to show as follows:

On 9 July 2021, Corporal Yates, while driving in the Hanes Mall Boulevard area, conducted a query of the license plate displayed on the back of Defendant's vehicle. Corporal Yates discovered Defendant's license was suspended and initiated a traffic stop. Defendant was the owner, driver, and sole occupant of the vehicle.

Corporal Yates approached Defendant's vehicle, notified him of why he was stopped, and asked him to step out of the vehicle. Defendant informed Corporal Yates he had warrants out for his arrest. Corporal Yates arrested Defendant and performed a search. Corporal Yates found a large sum of unorganized cash totaling $940 in Defendant's pocket. Another officer, Officer Craig, responded to the scene shortly after, looked through Defendant's driver's-side window, and saw a yellow bag containing a white powdery substance in-between the center console and the driver's seat. Corporal Yates was also able to see the yellow bag as well as a white powder scattered along the driver's seat. Officer Craig called a police K-9 to conduct a sniff search of the vehicle.

Upon conducting a sniff search, the K-9 gave a positive alert. Corporal Yates then conducted a search of Defendant's vehicle and discovered 23.33 grams of the white powder. Defendant had the same white powder on his shirt and forehead.

On 25 October 2021, Defendant was indicted on charges of trafficking fentanyl by possession, trafficking fentanyl by transportation, possession with the intent to sell and deliver fentanyl, and possession of drug paraphernalia. On 13 July 2022, the matter came on for trial before the Honorable Nathaniel Poovey in Forsyth County Superior Court. At the close of the State's evidence, Defendant made a motion to dismiss which was denied. On 15 July 2022, the jury returned a verdict, finding Defendant guilty on all counts. That same day, the trial court entered judgment, consolidated the convictions, and sentenced Defendant to 90 to 120 months' imprisonment. Defendant timely filed a notice of appeal.

II. Standard of Review

It is well established "[a] defendant's motion to dismiss should be denied if there is substantial evidence of: (1) each essential element of the offense charged, and (2) of [the] defendant's being the perpetrator of the charged offense." *State v. Johnson*, 203 N.C. App. 718, 724, 693 S.E.2d 145, 148 (2010) (citations and quotation marks omitted). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *State v. Turnage*, 362 N.C. 491, 493–94, 666 S.E.2d 753, 755 (2008) (citations and quotation marks omitted). "[T]he trial court must consider all evidence admitted, whether competent or incompetent,

in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994) (citations omitted).

III. Analysis

Defendant argues the trial court erred in denying his motion to dismiss and in submitting the charges of trafficking in fentanyl by possession, trafficking in fentanyl by transportation, and possession with intent to sell and distribute fentanyl to the jury as there was insufficient evidence to show he had knowledge of the identity of the controlled substance.

North Carolina General Statute, section 90-95(a)(1) states: it is unlawful for any person "[t]o manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance." N.C. Gen. Stat. § 90-95(a)(1) (2021). Further, pursuant to § 90-95(h)(4),

> [a]ny person who sells, manufactures, delivers, transports, or possesses four grams or more of opium, opiate, or opioid, or any salt, compound, derivative, or preparation of opium, opiate, or opioid . . . , including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium, opiate, opioid, or heroin[.]"

N.C. Gen. Stat. § 90-95(h)(4) (2021). Each of these charges requires the defendant knowingly possess the controlled substance. *See State v. Rogers*, 32 N.C. App. 274, 278, 231 S.E.2d 919, 922 (1977) ("Felonious possession of a controlled substance has two essential elements. The substance must be possessed, and the substance must

be 'knowingly' possessed."); *see also State v. Shelman*, 159 N.C. App. 300, 306, 584 S.E.2d 88, 93 (2003) ("[T]o convict an individual of drug trafficking . . . the statute requires only that the defendant knowingly possess or transport the controlled substances[.]").

A presumption that the defendant had the requisite guilty knowledge exists where "the State makes a prima facie showing that the defendant has committed a crime, such as trafficking by possession, trafficking by transportation, or possession with the intent to sell or deliver, that lacks a specific intent element." *State v. Galaviz-Torres*, 368 N.C. 44, 48, 772 S.E.2d 434, 437 (2015) (citations omitted). Nevertheless, where a defendant denies knowing the identity of the controlled substance he possessed, clearly making knowledge a contested issue at trial, it becomes the State's burden to establish the defendant's knowledge of the specific identity of the controlled substance. *See Id.*; *see also State v. Coleman*, 227 N.C. App. 354, 357, 742 S.E.2d 346, 349 (2013) ("Knowledge that one possesses contraband is presumed by the act of possession unless the defendant denies knowledge of possession and contests knowledge as disputed fact."). We recognize this Court has previously held a defendant made knowledge a contested issue at trial where the defendant both introduced evidence as to his lack of knowledge and properly requested an amended instruction, noting he could be found guilty only if he had knowledge. *See State v. Lopez*, 176 N.C. App. 538, 546, 626 S.E.2d 736, 742 (2006).

Here, Defendant contends he did not have the requisite knowledge of the

specific identity of the controlled substance in his possession as he thought it was cocaine, not fentanyl. Further, relying on our Court's opinion in *State v. Coleman*, Defendant argues that because the evidence at trial tended to show he thought the substance was cocaine, the State was required, yet failed, to prove he knew the substance was fentanyl. Therefore, Defendant contends there was insufficient evidence to submit the charges against him to the jury.

In *State v. Coleman*, the defendant was stopped for a traffic violation which led police to search his car. 227 N.C. App. 354, 355, 742 S.E.2d 346, 347. Upon conducting the search, officers found a box containing marijuana and heroin. *Id.* The defendant did not testify at trial, yet substantive evidence was admitted showing "consistent assertions by [the] defendant . . . that he thought he was carrying marijuana and cocaine" instead of marijuana and heroin. *Id.* at 360, 742 S.E.2d 350. On appeal, the defendant asked this Court to determine whether the trial court erred, not in regard to a motion to dismiss, but in its instruction to the jury, arguing the proffered evidence "made it necessary for the trial court to recognize the evidence [ ] [amounted] to a contention that [the] defendant did not know the true identity of what he possessed." *Id.* at 360, 742 S.E.2d 350. Our Court agreed, holding the trial court was required to incorporate in its jury instruction a statement which read: "and the defendant knew that what he possessed was [heroin]." *Id.* at 358, 742 S.E.2d at 349 (*citing* N.C.P.I.—Crim. 260.17 (2012)).

Here, at trial, Defendant did not testify or directly contest the identity of the

controlled substance. Further, the only evidence suggesting some confusion as to the identity of the drugs was Corporal Yates's testimony on cross-examination reflecting that, at the time of the stop, Defendant merely carried on a discussion with him about what Corporal Yates, himself, believed was in the car:

> Q: And you read [Defendant] his Miranda rights. Correct?
>
> A: Yes, sir, I did.
>
> Q: And you questioned him on this powder that you found in the vehicle. Correct?
>
> A: Yes, sir, I did.
>
> Q: And we watched that video. We watched the interview, the interrogation with [Defendant], and the only thing you discussed was cocaine. Correct?
>
> A: Yes, sir, that's correct.
>
> Q: And the only thing that [Defendant] admitted to possessing was cocaine. Correct?
>
> A: He possessed—he admitted to possessing what was inside the car, yes, sir.
>
> Q: And you both –
>
> A: We described as cocaine, yes, sir.

Further, Corporal Yates testified he referred to the substance as cocaine in the narrative of his investigative report, but noted he was not confident as to the identity of the drugs. He testified that, upon sending the drugs off for testing:

> I listed it as cocaine is what I believed it to be with white powder beside it, and I put drug ID on the end, which is me

> requesting them to identify what the substance is.

Corporal Yates's testimony does not, in itself, indicate Defendant's lack of knowledge as to the identity of the controlled substance as Defendant did not make an assertion as to his lack of knowledge or offer evidence in support of his alleged contention.

Defendant did, however, request an amended jury instruction as to the charges of possession, trafficking, and possession with intent to sell and distribute fentanyl which would require the jury to find: "the defendant knew that what the defendant possessed was fentanyl." Moreover, in a colloquy with the court, the record reflects:

> [DEFENSE COUNSEL]: Yes, Your Honor. I think the evidence is that . . . there was a question about whether the substance was cocaine or fentanyl, and there's ample evidence of that in the record.
>
> THE COURT: What evidence is there that the defendant contends that he did not know the true identity of it? I mean, there's certainly evidence from law enforcement that they were unsure what it was and that they didn't know whether it was cocaine, and, in fact, they didn't know whether it was cocaine or fentanyl[.]
>
> [DEFENSE COUNSEL]: Correct.

Defendant did request an amended jury instruction, and although somewhat hesitant as to Defendant's raising the contention, the trial court granted his request.

Nonetheless, our Court in *Lopez* held the defendant presented knowledge as a contested issue—which the State had the burden of proving—only where he both introduced evidence of his lack of knowledge and requested the amended instruction. *See Lopez*, 176 N.C. App. at 546, 626 S.E.2d at 742. Here, Defendant did not testify

at all, and while his prerogative, he failed to otherwise introduce evidence which suggested he believed the controlled substance in his possession was cocaine rather than fentanyl. Instead, evidence at trial indicated Defendant admitted to being a cocaine user and possessing the drugs in the car—of which only Corporal Yates ever directly referred to as cocaine. Thus, Defendant's proffered evidence suggested only that Corporal Yates was unsure of the identity of the controlled substance found in Defendant's possession and that Defendant played along with the idea of the drugs being cocaine. Therefore, Defendant's knowledge of the identity of the substance cannot be regarded as a contested issue for the State to prove at trial.

Because Defendant contests only whether the State presented substantial evidence of his knowledge of the identity of the controlled substance, and because the State was not burdened with proving his knowledge as he did not make it a contested issue at trial, we, in viewing the evidence in the light most favorable to the State, hold the trial court did not err in denying Defendant's motion to dismiss as there was sufficient evidence to submit the charges to the jury.

IV. Conclusion

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

NO ERROR.

Panel consisting of: Judges WOOD, GRIFFIN, and STADING.

Report per Rule 30(e).