

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA19-188

Filed: 5 May 2020

Richmond County, Nos. 16 CRS 1374, 52466, 52468–69

STATE OF NORTH CAROLINA

v.

RICHARD LEE WILLIAMS

Appeal by defendant from judgments entered 9 August 2018 by Judge James S. Carmical in Richmond County Superior Court. Heard in the Court of Appeals 31 October 2019.

*Attorney General Joshua H. Stein, by Assistant Attorney General Bethany A. Burgon, for the State.*

*Richard J. Costanza for defendant.*

DIETZ, Judge.

Defendant Richard Williams appeals his convictions for multiple drug offenses. Williams argues that the trial court erred by allowing the State to amend one of the indictments in this case to correct a spelling error that identified the controlled substance as “Oxcodone” instead of “Oxycodone.”

We reject this argument. The trial court properly allowed the State's motion because the spelling error in the indictment was an obvious typographical mistake and not a fatal defect, the correction did not substantially alter the nature of the charges, and Williams was not misled or prejudiced by the error. Accordingly, we hold that the trial court did not err in allowing the State to correct this spelling error in the indictment.

### **Facts and Procedural History**

On 10 October 2016, Defendant Richard Williams was arrested and charged with multiple drug offenses. The charges stemmed from several transactions between June and August 2016 where Williams sold drugs, including oxycodone pills and cocaine, to a paid informant who was working at the direction of the Richmond County Sheriff's Office.

A grand jury indicted Williams on multiple counts of selling and delivering a Schedule II controlled substance and possession with intent to sell or deliver a Schedule II controlled substance. Two of the indictments correctly identified the Schedule II controlled substance as "Oxycodone," but an indictment for one count of selling and one count of delivering misidentified the substance as "Oxcodone" without the letter "y."

Shortly before trial, the State moved to amend this indictment because "[i]n that indictment it alleges, in the body of each . . . it says oxcodone. It left off the y.

We'd ask to amend that and add the y to make it 'oxycodone.'" Williams's counsel objected, arguing that "the indictment was taken out November 7, 2016. That's 21 months ago. They take 21 months to correct that mistake. And the oxcodone is not a controlled substance." The trial court allowed the State's motion, crossed through "Oxcodone" on the indictment, and wrote in "Oxycodone."

The jury convicted Williams on multiple charges, including those in the challenged indictment. The court sentenced Williams to concurrent sentences of 25 to 39 and 70 to 93 months in prison. Williams appealed.

### **Analysis**

Williams argues that the trial court erred by allowing the State's motion to amend the indictment to correct the spelling of Oxycodone. He argues that the indictment was fatally defective because "Oxcodone" is not a Scheduled II controlled substance and thus, from the outset, the indictment failed to allege an essential element of the offense.

We review this issue *de novo*. *State v. Pierce*, 238 N.C. App. 141, 145, 766 S.E.2d 854, 857 (2014). "A valid bill of indictment is essential to the jurisdiction of the Superior Court to try an accused for a felony and have the jury determine his guilt or innocence, and to give authority to the court to render a valid judgment." *State v. Moses*, 154 N.C. App. 332, 334, 572 S.E.2d 223, 226 (2002). As a result, to confer jurisdiction on the trial court, the indictment "must allege every element of an

STATE V. WILLIAMS

*Opinion of the Court*

offense.” *State v. Kelso*, 187 N.C. App. 718, 722, 654 S.E.2d 28, 31 (2007). The identity of a controlled substance allegedly possessed or sold is an essential element of drug possession and drug trafficking charges. *State v. Ledwell*, 171 N.C. App. 328, 331, 614 S.E.2d 412, 414 (2005).

By law, an indictment “may not be amended.” N.C. Gen. Stat. § 15A-923(e). But our Supreme Court “has interpreted the term ‘amendment’ under N.C.G.S. § 15A-923(e) to mean any change in the indictment which would substantially alter the charge set forth in the indictment.” *State v. Simmons*, 256 N.C. App. 347, 351, 808 S.E.2d 306, 310 (2017). Thus, the law permits the State to fix typographical errors in an indictment when the “mere typographical error . . . does not alter the charge in any way” and does not cause the defendant to be “misled as to the nature of the charges against him.” *State v. Rotenberry*, 54 N.C. App. 504, 510, 284 S.E.2d 197, 201 (1981).

For example, in *State v. Grigsby*, this Court held that “[a] change in the spelling of defendant’s last name is a mere clerical correction” because “defendant cannot seriously argue that he was unaware of the charges against him because one letter was missing.” 134 N.C. App. 315, 317, 517 S.E.2d 195, 197 (1999), *rev’d and remanded on other grounds*, 351 N.C. 454, 526 S.E.2d 460 (2000).

Similarly, in *State v. Bailey*, the indictment mistakenly alleged “the victim’s name as Pettress Cebren.” 97 N.C. App. 472, 475, 389 S.E.2d 131, 133 (1990). “The

trial court allowed the State's motion to change the indictments to correctly reflect the victim's name as Cebon Pettress." *Id.* We affirmed, holding that the "error in the indictments was inadvertent. We discern no manner in which defendant could have been misled or surprised as to the nature of the charges against him." *Id.*

Finally, in *State v. Marshall*, an indictment that was part of a series of related indictments "inadvertently omitted the last name" of the alleged victim of a rape charge. 92 N.C. App. 398, 400, 374 S.E.2d 874, 876 (1988). Other indictments involving related charges included the victim's last name. *Id.* We again held that the defendant was not "misled or surprised as to the nature of the charges against him" and correcting the clerical error would not "substantially alter the charge set forth in the indictment." *Id.* at 401–02, 374 S.E.2d at 876.

Here, the challenged indictment alleged that Williams "unlawfully, willfully and feloniously did sell to Lucas Barbour a controlled substance, Oxcodone, which is included in Schedule II of the North Carolina Controlled Substances Act." The word "Oxcodone" in this indictment is a typographical error. The other indictments charging Williams with related offenses, all of which were brought against Williams at the same time, correctly spelled the word "Oxycodone," which is a Schedule II controlled substance. N.C. Gen. Stat. § 90-90(1)(a)(14).

As in *Grigsby*, *Bailey*, and *Marshall*, the correction of the typographical error in this case did not substantially alter the charge and could not have caused the

defendant to be misled or surprised by the nature of the charge. Accordingly, under our precedent, the trial court properly permitted the State to correct this typographical error.

Williams responds by pointing to a series of cases from this Court which found indictments fatally defective due to the misidentification of the controlled substance. *See Ledwell*, 171 N.C. App. at 332–33, 614 S.E.2d at 415; *State v. LePage*, 204 N.C. App. 37, 51–54, 693 S.E.2d 157, 166–68 (2010); *State v. Turshizi*, 175 N.C. App. 783, 786, 625 S.E.2d 604, 605–06 (2006); *Simmons*, 256 N.C. App. at 353, 808 S.E.2d at 311. But those cases are readily distinguishable. All involve indictments that used a word for a category of drugs, such as “opiates,” “benzodiazepines” or “MDA,” rather than a specific controlled substance listed in the statutes. In those cases, we reasoned that, because the indictments used a word that could include multiple different drugs—some of which may not even be controlled substances—“we cannot regard this defect as a mere technicality.” *LePage*, 204 N.C. App. at 54, 693 S.E.2d at 168.

Here, by contrast, “Oxycodone” is not a word for a category of drugs. It is not a word at all. Moreover, the State also charged Williams with related offenses in other indictments and, in those indictments, correctly spelled the word “Oxycodone.” In this context, the misspelling of Oxycodone in one of these related indictments is a “mere typographical error” that the State properly could correct through a motion to amend the indictment.

STATE V. WILLIAMS

*Opinion of the Court*

**Conclusion**

For the reasons discussed above, we find no error in the trial court's judgments.

NO ERROR.

Judges DILLON and YOUNG concur.

Report per Rule 30(e).