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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-194

No. COA20-890

Filed 15 March 2022

Mecklenburg County, No. 18CRS003020

STATE OF NORTH CAROLINA

v.

QUANTARIUS JAQUAN STINSON, Defendant.

Appeal by Defendant from judgment entered 26 November 2019 by Judge Louis A. Trosch, Jr., in Mecklenburg County Superior Court. Heard in the Court of Appeals 1 December 2021.

Attorney General Joshua H. Stein, by Assistant Attorney General J. Aldean ("Dean") Webster III, for the State.

Anne Bleyman for the Defendant.

DILLON, Judge.

¶ 1 Defendant appeals his criminal conviction, contending that the trial court erred by not giving a certain jury instruction. We find no reversible error.

I. Background

¶ 2 Defendant was arrested for trafficking in heroin. On multiple occasions, Defendant transferred heroin to undercover agents in exchange for money. A forensic

chemist tested the substances acquired, and the tests showed them to be heroin or a combination of heroin and Fentanyl.

¶ 3 The undercover agents accompanied Defendant on heroin pickups and communicated with Defendant via text messaging about heroin purchases. After Defendant was arrested, he told the police that he received the heroin from his father. His father's house was searched and over forty (40) grams of heroin was seized.

¶ 4 Following a jury trial, Defendant was found guilty of six offenses relating to possession, transportation, and delivery of heroin. Defendant was sentenced to a term of 225-282 month's imprisonment. Defendant timely appealed.

II. Analysis

¶ 5 The only issue on appeal is whether the trial court erred in failing to instruct the jury on Defendant's knowledge that the substances he sold contained heroin. Defendant did not ask for this instruction at trial, so this issue is subject to plain error review. *See* N.C. R. App. P. 10(a)(4).

¶ 6 In this matter, the trial court charged the jury with North Carolina Pattern Jury Instruction, Criminal 260.17. Under that instruction, the jury was told that to find Defendant guilty of trafficking heroin, the State must prove:

> The defendant knowingly possessed [heroin]. A person possesses [heroin] if he is aware of its presence and has . . . both the power and intent to control the disposition or use of that substance[;] and that the amount of (heroin) which the defendant possessed was [28 or more grams].

N.C.P.I.—Crim. 260.17 (2018).

¶ 7 An attached footnote to the Jury Instruction 260.17 (the "Knowledge Footnote") states that "[i]f 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).' " *Id.* n.6 (citing *State v. Boone*, 310 N.C. 284, 291, 311 S.E.2d 552, 557 (1984)). Regarding this footnote, our Court has provided the following guidance: "Knowledge that one possesses contraband is presumed by the act of possession unless the defendant denied knowledge of possession and contests knowledge as disputed fact." *State v. Coleman*, 227 N.C. App. 354, 358-59, 742 S.E.2d 346, 349 (2013).

¶ 8 Here, Defendant argues that the trial court should have given the instruction contained in the Knowledge Footnote because, at trial, he contested knowing that the substance he sold to the undercover agents was heroin. We disagree.

¶ 9 The evidence shows that Defendant knew he possessed heroin, though he believed the substance was "cut" (meaning mixed) with the drug Fentanyl. The relevant evidence arose during the testimony of Brian Pelletier, an undercover agent who engaged extensively with Defendant. On direct examination, the following discussion occurred:

> Q. Did you engage with a discussion with the Defendant about whether or not the drugs sold were actually heroin?
>
> A. Yes. So at one point we were talking about it, he kind of stopped and said that this wasn't really heroin, it was Fentanyl. And then he kind of goes into -- kind of starts explaining to me how Fentanyl is cut with the heroin and that most of the stuff that he sold to us was Fentanyl.

¶ 10 On re-direct examination this exchange took place between the State and Pelletier:

> Q. And something he asked you about was whether or not he mentioned that it was Fentanyl or cut. Do you recall in the interview when the Defendant was talking about that?
>
> A. Yes, ma'am.
>
> Q. Did he acknowledge that some of it was heroin?
>
> A. I mean, he acknowledged -- when I asked him where did the heroin come from, he said from his father. But then he talked about it being cut. And mostly it's cut -- is heroin cut with Fentanyl.
>
> Q. And based on your training and experience, what does it mean to cut a drug?
>
> A. To mix them together to make a smaller amount bigger.

¶ 11 Again, the Defense revisited this issue in its closing argument stating, "[Pelletier] also stated heroin and Fentanyl is not the same substance. He also stated

that -- when asked, that suspect was not aware if it was heroin. He stated that the suspect stated that it was either Fentanyl or it was 95 percent cut not heroin."

¶ 12 After reviewing these facts in the record, the evidence shows that Defendant did not deny knowledge of possession of heroin. The recurring disagreement, instead, was over Defendant's knowledge of the heroin *concentration* in the mixture. The discussion revolved around what amount the drugs were "cut" with Fentanyl, not whether heroin was present.

¶ 13 Defendant compares his case to *State v. Coleman*, where the defendant was charged with possession of heroin when he consistently stated that he thought there was only cocaine and marijuana inside a box he possessed. 227 N.C. App. at 355-56, 742 S.E.2d at 348. Based on the record, our Court found that "[t]he record reflects consistent assertion by defendant . . . that he thought he was carrying marijuana and cocaine. This evidence made it necessary for the trial court to recognize the evidence as amounting to a contention that defendant did not know the true identity of what he possessed." *Id.* at 360, 742 S.E.2d at 350.

¶ 14 The case before us is factually different from *Coleman*. Here, Defendant held himself out as a heroin dealer, made statements to that effect, and sold heroin. He never said that he thought the substance contained no heroin but that he believed the drugs were comprised of a lower heroin concentration. Unlike the defendant in *Coleman*, Defendant was not unaware that heroin was in his possession.

¶ 15 As stated earlier, knowledge of possession of a substance is presumed by the act of possession unless Defendant denies such knowledge. *Id.* at 358-59, 742 S.E.2d at 349. Defendant simply never denied knowledge of heroin possession. Consequently, he was not entitled to the Knowledge Footnote.

¶ 16 It is true that the trial court must correctly charge the jury on the law arising from the evidence, even if a defendant fails to ask for a necessary instruction. *State v. Harris*, 306 N.C. 724, 727, 295 S.E.2d 391, 393 (1982). But again, we conclude that the trial court was not required to give the instruction contained in the Knowledge Footnote.

¶ 17 Even if the trial court had erred by withholding the Knowledge Footnote, we conclude that such error did not rise to level of plain error. At best, Defendant was equivocal about his knowledge of the presence of heroin. And there was overwhelming evidence tending to show that Defendant was fully aware that he was in possession of heroin. Thus, we cannot say that a different result probably would have occurred had the trial court given the instruction contained in the Knowledge Footnote.

III. Conclusion

¶ 18 We conclude that the trial court did not err in its instructions to the jury. Defendant received a fair trial, free from reversible error.

NO ERROR.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).