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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-326

Filed 5 November 2024

Beaufort County, Nos. 21 CRS 50699-700, 570

STATE OF NORTH CAROLINA

v.

URIAH CHAVES KEYES

Appeal by defendant from judgment entered 11 July 2023 by Judge William D. Wolfe in Beaufort County Superior Court. Heard in the Court of Appeals 8 October 2024.

*Attorney General Joshua H. Stein, by Assistant Attorney General Allison Colleen Hawkins, for the State.*

*Patterson Harkavy LLP, by Narendra K. Ghosh, for defendant-appellant.*

ARROWOOD, Judge.

Uriah Keyes (“defendant”) appeals from judgment entered on 11 July 2023 upon his conviction of intent to sell or deliver cocaine, possession of drug paraphernalia, possession of marijuana, and operating a motor vehicle without a license. On appeal, defendant argues: (1) defendant’s trial counsel provided ineffective assistance by failing to object to highly prejudicial hearsay testimony; (2)

the trial court erred in failing to dismiss the charge of possession of more than one-half ounce of marijuana; and (3) the trial court erred in sentencing defendant for possession of more than one-half ounce of marijuana. For the following reasons, we find no error in part, and remand in part for correction of a clerical error.

I. Background

The evidence at trial tended to show the following:

On 18 May 2021, Detectives Dickinson, Mobley, and Dawley of the Washington Police Department were on narcotics duty in the city of Washington, patrolling in an unmarked SUV on East Martin Luther King Drive when they noticed defendant driving a blue Honda Accord coming from River Road. Detective Dickinson testified that he was aware that defendant was in the area being patrolled based on information from a confidential and reliable informant, and had prior knowledge that defendant's drivers' license had either been suspended or revoked.

The detectives observed defendant turn onto Bonner Street and began following defendant onto that street. Detective Dickinson observed defendant pull over onto the curb of Bonner Street and as they prepared to approach defendant's vehicle, Detective Dickinson observed defendant's arm extended out of the driver's seat window holding what appeared to be a plastic bag. As the detectives approached the vehicle, they observed defendant in the driver's seat and two other individuals, later identified as Charlie Demon Gibbs ("Mr. Gibbs") in the passenger seat and Isaac Augustus Blount, Jr. ("Mr. Blount") outside the vehicle. Detective Dickinson testified

that he observed defendant trying to hand the plastic bag to Mr. Blount, and Mr. Blount trying to hand money to defendant. Based on his training, Detective Dickinson testified that this interaction was consistent with a drug transaction.

After approaching the vehicle, Detective Mobley found a bag in defendant's lap which contained crack cocaine. Detective Dickinson stated he "could smell the strong odor of . . . marijuana coming from the interior of the vehicle." Detectives then ordered defendant and Mr. Gibbs to exit the car and patted them down for weapons. Detective Dickinson then searched the vehicle and found six grams of marijuana in a sock located near the passenger seat and \$956.00 in cash. The detectives also found a box of plastic bags and a vape pen.

After searching the car, Detective Dickinson read defendant and Mr. Gibbs their Miranda rights. Both men stated they understood their Miranda rights and waived those rights. Detective Dickinson asked defendant to turn over any and all drugs he had on his person and defendant told him he had additional crack cocaine in his pant leg. Detective Dickinson retrieved a plastic bag containing twenty-four grams of crack cocaine which he referred to as "cookies," or larger crack rocks that are broken into smaller pieces. Defendant told Detective Dickinson that all the drugs and money found in the vehicle were his and did not belong to Mr. Gibbs.

On the second day of trial, the defendant did not appear and could not be located. Defense counsel moved for a mistrial because of defendant's absence and the

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trial court denied this motion finding that defendant's absence was voluntary. The trial court then proceeded with the trial.

Detective Mobley began to testify that the detectives' attention was drawn to defendant's vehicle because they had received information that defendant was getting crack cocaine from River Road, to which defendant's counsel objected on hearsay grounds. The trial court sustained the objection and initiated a bench conference. The following exchange occurred during the bench conference:

The State: Your Honor, his objection was for hearsay.

Defendant's Counsel: And I would object also, Your Honor, under the 6th Amendment confrontation clause in that instance as well.

The State: And I would argue that it's not for the truth of the matter asserted. It is for effect on the listener as to why he was doing what he was doing that day.

The Court: And given that he's a law enforcement officer and had to have a reason to be there, I think it is necessary to explain that. So I'll rule that it's not hearsay for this purpose.

Detective Mobley went on to testify that defendant had on a regular basis been picking up crack cocaine from River Road and delivering it to the area where he was found by detectives. Defense counsel made no further objections to this testimony.

At the close of the State's evidence, defendant's counsel moved to dismiss all charges stating that the State did not meet their burden of proof for all the elements. Specifically, defendant's counsel asked to dismiss the Class 1 misdemeanor charge of

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possession of marijuana greater than a half ounce up to one and one-half ounce because the amount of marijuana found in defendant's possession was only six grams. The State agreed that the charge for possession of marijuana should be reduced to a Class 3 misdemeanor because defendant possessed less than half an ounce of marijuana. The trial court accordingly denied the motion to dismiss but agreed to instruct the jury on the Class 3 misdemeanor possession of marijuana charge.

When providing jury instructions, the trial court gave the following instruction for possession of marijuana:

Possession of a controlled substance. The defendant has been charged with possessing marijuana, a controlled substance. For you to find the defendant guilty of this offense, the State must prove beyond a reasonable doubt that the defendant knowingly possessed marijuana. . . . A person possesses marijuana when a person is aware of its presence and has, either by himself or together with others, both the power and intent to control the disposition or use of that substance. If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant knowingly possessed a controlled substance, it would be your duty to return a verdict of guilty.

The instructions did not include any specificity about the amount of marijuana needed for different classes of misdemeanor. However, the jury was given a verdict sheet that listed the possession of marijuana charge as a Class 1 misdemeanor of possessing one-half to one and one-half ounces of marijuana. The State requested that a corrected verdict sheet be given to the jury "to reflect guilty of possession of marijuana and that due to the weight it would change the sentencing" to a Class 3

misdemeanor. The trial court approved the request, and after deliberations with the correct verdict sheet, the jury found the defendant guilty of possession with intent to manufacture, sell, and deliver cocaine, guilty of possession of drug paraphernalia, and guilty of possession of marijuana.

The trial court then charged the jury with deciding whether the defendant is a habitual felon. The State presented evidence in the form of verified records that defendant had previously been convicted of possession with intent to sell and deliver cocaine on two different occasions in Beaufort County. Furthermore, the State presented evidence that defendant had previously been convicted of possession with intent to sell and deliver marijuana and possession with intent to manufacture, sell, and deliver marijuana on two separate occasions in Beaufort County. Finally, the State presented evidence that defendant had previously been convicted of felony possession of cocaine in Beaufort County.

After the close of the State's case, defendant's counsel moved to dismiss the habitual felon indictment. The trial court denied the motion, finding that the State met its burden of proof for showing that defendant was a habitual felon. Defendant's counsel offered no evidence and rested its case for the habitual felon hearing.

The jury, after deliberation, found defendant guilty of habitual felon status. Due to defendant's absence, the State requested to continue judgment and sentencing until the defendant was located.

On 11 July 2023, defendant appeared for a sentencing hearing with Judge William D. Wolfe in Beaufort County Superior Court. During this hearing, defendant's counsel noted, and the trial court agreed, that defendant had been convicted of only a Class 3 misdemeanor of possession of marijuana rather than the Class 1 misdemeanor that was initially charged. Furthermore, Mr. Bramble, who had been defendant's counsel for the trial, requested to withdraw from defendant's case as defendant no longer wished for him to be his court-appointed counsel.

During the sentencing hearing, both parties agreed that defendant had a prior record level of five, which included his status as a habitual felon. The trial court proceeded to sentence defendant to a term of 111 to 146 months imprisonment. However, on the judgment, the trial court listed that defendant had been convicted of a Class 1 misdemeanor for possession of marijuana between one-half and one and one-half ounces.

Defendant gave oral notice of appeal on 9 October 2023.

## II. Discussion

On appeal, defendant contends: (1) he received ineffective assistance of counsel; (2) the trial court erred in failing to dismiss the charge of possession of more than one-half ounce of marijuana; and (3) erred in sentencing defendant for possession of more than one-half ounce of marijuana where the jury did not find the defendant guilty of the offense. We address each argument in turn.

### A. Ineffective Assistance of Counsel

Defendant first contends that his trial counsel provided ineffective assistance by failing to object to Officer Mobley’s testimony that defendant regularly distributed crack cocaine in the area where he was found by detectives. We find defendant has not met the test to show ineffective assistance of counsel.

“The Sixth Amendment to the Constitution guarantees criminal defendants the right to counsel, which courts have recognized necessarily includes the right to effective assistance or representation by counsel.” *State v. Lane*, 271 N.C. App. 307, 311 (2020). In *Strickland*, the United States Supreme Court set out a two-prong test for proving ineffective assistance of counsel, which was adopted by our Supreme Court in *State v. Braswell*, 312 N.C. 553, 562 (1985). This test requires the defendant to show the following:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

*Strickland v. Washington*, 466 U.S. 668, 687 (1984).

“Generally, claims for ineffective assistance of counsel should be considered through a motion for appropriate relief filed in the trial court and not on direct appeal.” *State v. Mills*, 205 N.C. App. 577, 586 (2010) (citing *State v. Stroud*, 147 N.C.



App. 549, 553 (2001)). If a defendant raises ineffective assistance of counsel on direct appeal,

[i]n order to determine whether a defendant is in a position to adequately raise an ineffective assistance of counsel claim, . . . this Court is limited to reviewing this assignment of error only on the record before us, without the benefit of “information provided by defendant to trial counsel, as well as defendant's thoughts, concerns, and demeanor[,]” that could be provided in a full evidentiary hearing on a motion for appropriate relief.

*State v. Stroud*, 147 N.C. App. 549, 554–55 (2001) (quoting *State v. Buckner*, 351 N.C. 401, 412 (2000)). “[S]hould the reviewing court determine that [ineffective assistance of counsel] claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the defendant’s right to reassert them during a subsequent [motion for appropriate relief] proceeding.” *State v. Fair*, 354 N.C. 131, 167 (2001).

However, even on direct appeal, an ineffective assistance of counsel claim may be decided based on the cold record if the cold record “establish[es] both that the professional assistance defendant received was unreasonable and that the trial court would have had a different outcome in the absence of such assistance.” *Id.* (cleaned up). Ineffective assistance of counsel “claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required, i.e., claims that may be developed and argued without such ancillary procedures as

the appointment of investigators or an evidentiary hearing.” *State v. Fair*, 354 N.C. 131, 166 (2001).

Here, defendant did not raise a motion for appropriate relief in front of the trial court. Rather, defendant argues for the first time on appeal that he received ineffective assistance by defense counsel’s failure to object to Detective Mobley’s testimony that defendant picked up cocaine and delivered it to another area on a regular basis, which defendant argues should have been excluded under Rule 403 of the North Carolina Rules of Evidence.

Rule 403 states that evidence “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.C.G.S. § 8C-1, Rule 403. In this case, defendant’s counsel did initially object to the testimony for hearsay and violating the Confrontation Clause, but the objection was overruled. Defense counsel made no arguments or further objections based on Rule 403.

The cold record does not suggest that defense counsel’s performance was deficient or that defendant was prejudiced by defense counsel’s failure to object to Detective Mobley’s testimony under Rule 403. First, defendant’s counsel did object to the testimony, but did so on hearsay grounds, which the trial court overruled. This could be attributed to legal strategy and does not rise to the level of unreasonable assistance. Second, it is unclear from the record whether the trial court would have

sustained an objection under Rule 403. There was no evidentiary hearing on whether this testimony would unfairly prejudice the defendant. The trial court specifically noted that because Detective Mobley was a law enforcement officer and needed to have a reason to be in the area tracking the defendant, the officer's testimony was necessary to explain why he was in the area in the first place. Defendant first brought this issue on direct appeal and the record is insufficient to establish that the objection would have been sustained. In fact, the court's statement in overruling the hearsay and constitutional claim suggests otherwise.

In addition, given the substantial evidence of defendant's guilty including his own statement that he owned the drugs in question we find that Defendant is unable to meet the second prong of the *Strickland* test to establish ineffective assistance of counsel. Accordingly, we find that defendant did not meet the requirements for showing ineffective assistance of counsel.

B. Motion to Dismiss Marijuana Charge

Next, defendant argues that the trial court erred by denying his motion to dismiss the charge of possession of more than one-half ounce of marijuana. We disagree.

This "Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62 (2007) (cleaned up). "Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included

therein, and (2) of defendant's being the perpetrator of such offense. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378 (2000) (cleaned up).

Substantial evidence exists if there "is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78–79 (1980) (citations omitted). "In making its determination, the 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 (1994) (citation omitted). Furthermore, "the trial court is limited [s]olely to the function of determining whether a reasonable inference of the defendant's guilt of the crime charged [m]ay be drawn from the evidence." *State v. Smith*, 40 N.C. App. 72, 78–79 (1979) (citing *State v. Thomas*, 296 N.C. 236, 250 (1978)). If the trial court determines that there is a reasonable inference of the defendant's guilt, it must deny the motion to dismiss. *See id.* at 79.

In North Carolina, it is unlawful for someone "to possess a controlled substance." N.C.G.S. § 90-95(a)(3) (2023). Any person who violates N.C.G.S. 90-95(a)(3) with respect to "[a] controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor . . . . If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana . . . , the violation shall be punishable as a Class 1 misdemeanor." N.C.G.S. § 90-95(d)(4) (2023). "Thus, in order to convict a defendant of marijuana possession, the State has the burden of proving

‘(1) that the defendant knowingly possessed a controlled substance and (2) that the substance was marijuana.’ ” *State v. Massey*, 287 N.C. App. 501, 509 (2023) (quoting *State v. Johnson*, 225 N.C. App. 440, 454–55 (2013) (cleaned up)).

Here, there was substantial evidence that defendant was in possession of marijuana. Detectives Dickinson and Mobley found marijuana in a sock near the passenger seat of defendant’s vehicle where Mr. Gibbs was sitting. After the detectives discovered the marijuana, defendant admitted that the marijuana was his and never contended that it was any other substance than marijuana. Although the marijuana was not tested by the State Crime Lab, Detective Dickinson testified that defendant identified the substance as marijuana and claimed that the substance, and everything found in the car, belonged to him. Detective Mobley testified that they found six to seven grams of marijuana in the vehicle, which he stated was below one-half of an ounce. Accordingly, there was substantial evidence to show both that defendant knowingly possessed a controlled substance, and that the substance was marijuana.

However, defendant argues that the motion to dismiss should have been granted because there was insufficient evidence to convict him of a Class 1 misdemeanor of possessing more than one-half ounce of marijuana. Although we agree that there was insufficient evidence to prove that defendant was in possession of more than one-half ounce of marijuana, “the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, *or of a*

*lesser offense included therein*, and (2) of defendant's being the perpetrator of such offense." *Fritsch*, 351 N.C. at 378 (emphasis added). The Class 3 misdemeanor possession of marijuana charge was a lesser offense included within the Class 1 misdemeanor charge, and because there was sufficient evidence for the trial court to make a reasonable inference that defendant was guilty of a Class 3 misdemeanor, the motion to dismiss was properly denied.

We note that defendant's counsel also asked the trial court to reduce the charge to Class 3 possession of marijuana under one-half ounce, which the prosecution agreed to and the court granted. In fact, the trial court agreed that a Class 1 misdemeanor had not been proven by the State.

This evidence, viewed in the light most favorable to the State, is sufficient to support a reasonable inference that defendant was guilty of possession of marijuana. Although this evidence was insufficient to convict defendant of a Class 1 misdemeanor, it is sufficient to convict defendant of a lesser-included Class 3 misdemeanor offense. Accordingly, the trial court did not err in denying defendant's motion to dismiss.

### C. Improper Judgment

Finally, defendant argues that the trial court erred in sentencing defendant on a Class 1 misdemeanor for possession of more than one-half ounce of marijuana, rather than a Class 3 misdemeanor for possession of marijuana, because the judgment sheet erroneously lists the defendant was convicted of the Class 1

misdemeanor. Defendant argues that his conviction should be vacated because the jury found defendant guilty of simple possession and there was only evidence to support a Class 3 offense. We disagree.

“When this Court is confronted with statutory errors regarding sentencing issues, such errors ‘are questions of law, and as such, are reviewed *de novo*.’” *State v. Allen*, 249 N.C. App. 376, 379 (2016) (quoting *State v. Mackey*, 209 N.C. App. 116, 120 (2011)). “When a defendant assigns error to the sentence imposed by the trial court our standard of review is whether [the] sentence is supported by evidence introduced at the trial and sentencing hearing.” *State v. Chivers*, 180 N.C. App. 275, 278 (2006) (cleaned up). However, if the error is only clerical in nature, “it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth.” *State v. Smith*, 188 N.C. App. 842, 845 (2008) (cleaned up). A clerical error is “[a]n error resulting from a minor mistake or inadvertence, esp[ecially] in writing or copying something on the record, and not from judicial reasoning or determination.” *State v. Jarman*, 140 N.C. App. 198, 202 (2000) (internal quotations omitted).

Defendant argues that the trial court improperly entered judgment and sentenced defendant based on an erroneous Class 1 misdemeanor charge. This Court has previously remanded on a similar issue where the trial court erroneously entered judgment on the crime of Class 1 misdemeanor possession of marijuana when only a Class 3 misdemeanor was proven. *See State v. Shearin*, 170 N.C. App. 222, 234–35

(2005). The *Shearin* Court was unconvinced based on the record that the sentencing was unaffected by the trial court's treatment of defendant's Class 1 misdemeanor charge as opposed to a Class 3 misdemeanor charge. *See id.* at 235.

Here, however, nothing in the record suggests that the sentencing judge was influenced by the Class 1 misdemeanor charge. First, during trial, the State was only able to produce enough evidence to show that the defendant possessed approximately six grams of marijuana, well below the one-half ounce threshold needed for a Class 1 misdemeanor conviction. The trial court agreed that not enough evidence was presented to support a Class 1 misdemeanor conviction. Accordingly, during jury instructions, the trial court only instructed the jury on the lesser-included Class 3 charge.

While the jury was erroneously handed a verdict form that listed the charge as the Class 1 misdemeanor possession of marijuana exceeding one-half ounce, the trial court immediately noticed this error and gave the jury a new verdict form with the correct Class 3 misdemeanor charge. This correction is reflected in the record with the erroneous verdict form crossed out and the correct verdict form filled out and signed. The jury ultimately found defendant guilty of possession of marijuana.

Defendant's sentencing hearing occurred with another judge during a different proceeding because defendant was not present on the final day of his trial. Defendant's counsel ensured the sentencing judge was aware that defendant had been convicted of a Class 3 misdemeanor rather than a Class 1 misdemeanor.



Because the sentencing judge understood that defendant had only been convicted of a Class 3 misdemeanor, there is no evidence that the sentencing judge used judicial reasoning to sentence defendant based on the Class 1 misdemeanor, and the error on the judgment sheet is merely clerical. The evidence throughout trial and during the sentencing hearing overwhelmingly supports the conclusion that defendant was sentenced based on the Class 3 misdemeanor conviction and not a Class 1 misdemeanor conviction. Accordingly, we remand to correct the clerical error on the judgment sheet.

III. Conclusion

For the foregoing reasons, we find no error in part and remand for correction of judgment in part.

NO ERROR IN PART & REMANDED FOR CORRECTION OF CLERICAL  
ERROR IN PART.

Judges WOOD and STADING concur.

Report per Rule 30(e).