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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-502

Filed 19 February 2025

Surry County, Nos. 20CRS000297; 21CRS052538

STATE OF NORTH CAROLINA

v.

BRENT HERBERT PICA

Appeal by Defendant from judgment entered 2 November 2023 by Judge Angela B. Puckett in Surry County Superior Court. Heard in the Court of Appeals 15 January 2025.

Attorney General Jeff Jackson, by Assistant Attorney General Kindelle McCullen, for the State-Appellee.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Emily Holmes Davis, for Defendant-Appellant.

COLLINS, Judge.

Defendant Brent Herbert Pica appeals from judgment entered upon a guilty verdict for possession of methamphetamine on jail premises. Defendant argues that the trial court committed plain error by allowing a law enforcement officer to give opinion testimony of Defendant's credibility and guilt. We find no error.

I. Background

Surry County Sheriff's Deputy Shores stopped Defendant's car at approximately 1:00 a.m. on 21 November 2021 for an expired license plate. Deputy Shores spoke with Defendant; returned to his car to issue a citation; and requested backup from Deputy Daniels, a canine deputy, and Deputy Jessup. Deputy Daniels performed an open-air canine sniff of Defendant's car, and the canine alerted to narcotics. Deputy Shores and Deputy Jessup removed Defendant and the female passenger from the car to conduct a search. When the female passenger exited the car from the passenger side, Deputy Shores saw a small baggie of what appeared to be methamphetamine on the passenger seat. After Deputy Jessup removed Defendant, Defendant stated that he had syringes on him. Deputy Shores understood syringes to be a common method for consuming methamphetamine.

The officers detained Defendant and the passenger and searched the car. Deputy Shores administered a color change field test on the substance in the baggie; the result indicated the substance was methamphetamine. Defendant told Deputy Shores that he would take the charge for possession of the baggie so his girlfriend would not get in trouble. Deputy Shores arrested Defendant for possession of methamphetamine and transported him to the Surry County Magistrate's Office.

The Magistrate found probable cause to charge Defendant. Deputy Shores drove Defendant to the Surry County Jail and escorted him into the booking area. Defendant was wearing coveralls with clothing underneath. Defendant took off the

coveralls, and Deputy Shores searched them. Deputy Shores then searched Defendant's pants that were under the coveralls. When Deputy Shores pulled out the right leg pants pocket, a clear baggie and a clear rocklike substance fell from the pocket to the floor. The substance appeared to Deputy Shores to be methamphetamine. Deputy Shores asked Defendant, "is this what I think it's going to be?" Defendant responded, "probably." The North Carolina State Crime Lab's test results confirmed the substance was methamphetamine.

Defendant was indicted for possession of a controlled substance on prison/jail premises and attaining habitual felon status. Defendant's first trial resulted in a mistrial. The case came on for retrial on 1 November 2023. Defendant was found guilty of possession of methamphetamine on jail premises and pled guilty to attaining habitual felon status. Defendant was sentenced to 120-to-156 months of imprisonment. Defendant filed timely written notice of appeal.

II. Discussion

Defendant's sole contention is that the trial court plainly erred by allowing Deputy Shores to give opinion testimony on Defendant's credibility and guilt. We disagree.

A. Standard of Review

"When trial counsel fails to object to the admission of evidence, the trial court's admission of that evidence is reviewed for plain error." *State v. Clark*, 380 N.C. 204, 209 (2022) (citation omitted). "For error to constitute plain error, a defendant must

demonstrate that a fundamental error occurred at trial.” *State v. Lawrence*, 365 N.C. 506, 518 (2012). “To show that an error was fundamental, a defendant must establish prejudice-that, after examination of the entire record, the error had a probable impact on the jury’s finding that the defendant was guilty.” *Id.* (quotation marks and citations omitted).

B. Analysis

Defendant argues the following testimony from Deputy Shores was an inadmissible opinion testimony on Defendant’s credibility and guilt:

[THE STATE:] Do you often find folks who have drugs on them that all of a sudden have no idea how they got there?

[DEPUTY SHORES:] That’s the majority of the - - what we get told.

[THE STATE:] Is it very common for someone who’s in the throes of an addiction issue that I didn’t know it was there? I forgot it was there?

[DEPUTY SHORES:] Yes.

[THE STATE:] Have you even heard the - - well, these aren’t my pants arguments?

[DEPUTY SHORES:] I have.

Even assuming without deciding that the admission of the challenged testimony was erroneous, Defendant has not established the requisite prejudice. It is a felony for a person “[t]o possess a controlled substance . . . on the premises of a penal institution or local confinement facility.” N.C. Gen. Stat. § 90-95 (a)(3), (e)(9) (2024). “Felony possession of a controlled substance has two essential elements.

The substance must be possessed, and the substance must be knowingly possessed.” *State v. Weldon*, 314 N.C. 401, 403 (1985) (citation omitted). “Guilty knowledge, being a state of mind, is almost never provable by direct evidence. Its existence almost always must be proved, if at all, by circumstantial evidence.” *Id.* at 406.

The evidence at trial tends to show the following: Deputy Shores stopped Defendant’s vehicle; Defendant had syringes on his person and methamphetamine in his car. Deputy Shores arrested Defendant and transported him to the Surry County Jail. Defendant had on coveralls with pants underneath. When Deputy Shores searched Defendant’s pants in the booking area of the jail, a clear baggie and a clear rocklike substance fell from Defendant’s pocket. Deputy Shores asked Defendant “is this what I think it’s going to be?” Defendant responded “probably.” Test results confirmed the substance was methamphetamine.

This evidence unequivocally places Defendant on jail premises in knowing possession of methamphetamine. Accordingly, Defendant has failed to establish that any error in the admission of the challenged evidence “had a probable impact on the jury’s finding that the defendant was guilty.” *Lawrence*, 365 N.C. at 518.

III. Conclusion

For the reasons stated, the trial court did not plainly err in admitting the challenged evidence.

NO PLAIN ERROR.

Judges ARROWOOD and STADING concur.

STATE V. PICA

Opinion of the Court

Report per Rule 30(e).