Prosecuting Attorneys' Council of Georgia

State Prosecution Support Division fyi

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Scott v. State

Supreme Court Rules That Under Former O.C.G.A. § 16-13-31, the State Must Prove a Defendant's Knowledge of Weight of Controlled Substance as an Element of Offense of Trafficking

In *Scott v. State*, S13G1042 (March 28, 2014), the Supreme Court granted a writ of certiorari to determine if the Court of Appeals erred in concluding that proof of the knowledge of the weight or quantity of cocaine was not an element of the offense of trafficking under former O.C.G.A. § 16-13-31(a)(1) (2003). The evidence showed that appellant was convicted of trafficking in cocaine and related charges after he was found with 37 individually wrapped packets of cocaine, a twist-tied package of cocaine, a "slab" of cocaine and crack cocaine packaged for resale. The GBI Crime Lab expert testified that among the substances seized was 72.65 grams of a cocaine mixture registering 72.6 percent of purity of cocaine.

Former O.C.G.A. § 16-13-31(a)(1) (2003) provided, in part, that "Any person who *knowingly* sells, manufactures, delivers, or brings into this state or who is *knowingly* in possession of 28 grams or more of cocaine or of any mixture with a purity of 10 percent or more….commits the felony offense of trafficking in cocaine…" (Emphasis supplied). The Court acknowledged that in *Wilson v. State*, 291 Ga. 458 (2012), it found potential merit to Wilson's argument that former O.C.G.A. § 16-13-31(c) required proof that the defendant knew the amount of the marijuana he possessed. But, the Court stated, it was unnecessary to directly address the question because the question on appeal was whether the trial court's instruction to the jury that a conviction of trafficking did not require such proof constituted "plain error." Here, however, the Court was required to face the issue squarely.

The Court held that the plain language of former O.C.G.A. § 16-13-31(a)(1) (2003) "dictates the conclusion that knowledge of the quantity of the drug was an element of the crime. It contains express scienter requirements, that is, knowledge of the nature and amount of the drug and of being in possession of it." In so holding, the Court noted that in 2013, the Legislature deleted "knowingly" throughout O.C.G.A. § 16-13-31(a) and "…such change is consistent with legislative confirmation that proof of a defendant's knowledge of each element of the trafficking statute, including weight of the drug, was required in former versions of the statute, but that the General Assembly no longer intends that it be so." Furthermore, the Court found, this intent of

March 17, 2014

the Legislature was reinforced by the enactment of O.C.G.A. § 16-13-54.1 (2013) which specifically provides that knowledge of the weight or quantity of a controlled substance is not to be an essential element of the offense. Accordingly, the Court reversed the opinion of the Court of Appeals and remanded the case back to it for a determination of whether the evidence at trial was sufficient to prove beyond a reasonable doubt that appellant knew the cocaine he possessed weighed 28 grams or more.

The decision in *Scott* means that prosecutors must now be prepared to prove in any trafficking case under former O.C.G.A. § 16-13-31 that the defendant had knowledge of the weight or quantity of the controlled substance. Moreover, because the Court found that knowledge of the weight or quantity of the controlled substance is an element of the offense, it is likely that this decision will have retroactive application, like *Garza v. State*, 284 Ga. 696 (2008). See *Hammond v. State*, 289 Ga. 142 (2011) (A substantive change in case law should be applied retroactively and the decision in *Garza*, which overruled the slight movement standard from the asportation element of the offense of kidnapping, was such a substantive change).

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