



July 2, 2012

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Wilson v. State

Supreme Court Rules that the State may Have to Prove a Defendant's Knowledge of Weight of Controlled Substance as an Element of Offense of Trafficking

In *Wilson v. State*, S12G0370 (July 2, 2012), appellant was arrested after accepting delivery of 12.46 pounds of marijuana from an undercover officer who made a controlled delivery. Appellant was indicted for trafficking in marijuana, possession of marijuana with intent to distribute, and felony possession of marijuana. At trial, the court charged the jury that OCGA § 16-13-31(c), the marijuana trafficking statute, does not require the State to prove that appellant had knowledge of the quantity of marijuana he possessed in order to be convicted of the offense. Appellant made no contemporaneous objection to this charge.

However on appeal, he asserted that it was plain error for the trial court to instruct the jury that a conviction for trafficking did not require proof that the defendant knew that the weight of the marijuana he possessed exceeded 10 pounds. Appellant relied upon the relevant portion of the statute which states “[a]ny person who knowingly...has possession of a quantity of marijuana exceeding 10 pounds commits the offense of trafficking in marijuana...” The Court of Appeals rejected appellant’s argument. In so holding, the Court relied on *Cleveland v. State*, 218 Ga. App. 661, 663 (1) (1995), and *Barr v. State*, 302 Ga. App. 60, 61 (1) (2010), both holding that a defendant’s knowledge of the weight of cocaine was not an element of the offense of cocaine trafficking under OCGA § 16-13-31(a).

The Supreme Court granted certiorari. The Court found that “[a]ffording the statute its plain meaning and considering that we must apply the rule of lenity when interpreting penal statutes, we believe that [a]ppellant’s argument that OCGA §16-13-31 (c) requires proof that he knew the amount of the marijuana he possessed **may be meritorious.**” *Wilson*, Slip Op. at 3-4 (emphasis supplied). However, the Court noted that since appellant did not object to the jury instruction at trial, any alleged error in that charge is subject to plain error review. Since the trial court relied on the binding precedent of *Cleveland* and *Barr*, and subsequently applied that reasoning to the marijuana trafficking statute, the jury charge could not be construed as “clear or obvious error.” Nonetheless, while the Court did affirm the conviction because it did not amount to plain error, it noted that the issue was subject to reasonable dispute and suggested that the General Assembly clarify the essential elements of trafficking in illegal substances.

Legislation regarding this issue should be made a priority when the General Assembly meets in January. Until then, it is suggested that prosecutors be prepared to prove a defendant’s knowledge of the weight of the drug in trafficking cases. Prosecutors should also expect to see defense requests to charge on knowledge of weight similar to the one at issue here.