

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Detrik D. Poole,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 28, 2023

Court of Appeals Case No.
22A-CR-1699

Appeal from the LaPorte Superior
Court

The Honorable Jaime M. Oss,
Judge

Trial Court Cause No.
46D01-2108-F4-988

Memorandum Decision by Judge Riley
Chief Judge Altice and Judge Pyle concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Detrik D. Poole (Poole), appeals his conviction for possession of a firearm by a serious violent felon, a Level 4 felony, Ind. Code § 35-47-4-5(c).

[2] We affirm.

ISSUE

[3] Poole presents this court with one issue on appeal, which we restate as: Whether the trial court abused its discretion by denying his proposed jury instruction because it was unsupported by the evidence.

FACTS AND PROCEDURAL HISTORY

[4] On July 31, 2021, Poole was driving from Gary, Indiana, back to Pennsylvania with his fiancée and child, when he “abruptly swerved over” the fog line twice on the I-80/90 toll road in LaPorte County, Indiana. (Transcript Vol. II, p. 91). Believing that Poole had committed a traffic violation, Deputy Johnaton Samuelson (Deputy Samuelson), a K-9 handler with the LaPorte County Sheriff’s Department, initiated a traffic stop. When Deputy Samuelson approached the passenger side of the vehicle, Poole’s fiancée, who was the passenger, appeared to be “overly nervous” and was “physically shaking.” (Tr. Vol. II, p. 95). Deputy Samuelson asked Poole to exit the vehicle. In response to the deputy’s questions, Poole admitted that there was marijuana in the vehicle and a Glock handgun in the center console. When Deputy Samuelson’s K-9 conducted a free-air sniff around the vehicle, the K-9 alerted to the presence

of narcotics. After another officer arrived, the vehicle was searched. During their search, the officers used the ignition key to unlock the center console and found a Glock handgun. They also located “marijuana shake”¹ on the floorboards. (Tr. Vol. II, p. 104). Poole informed the officers that he had a prior felony conviction for possession of marijuana with intent to deliver.

[5] On August 2, 2021, the State filed an Information, charging Poole with Level 4 felony possession of a firearm by a serious violent felon. A jury trial was held on May 9, 2022. During the proceeding, Poole’s fiancée testified that ten to fifteen minutes before the traffic stop Poole received a phone call from his brother, Jamal Kelly (Jamal). Jamal informed Poole that when he borrowed the vehicle, he forgot his firearm in the center console. Poole’s fiancée explained that Poole secured the handgun in the center console and made arrangements to stop at the next rest stop to return the firearm. Jamal confirmed Poole’s fiancée’s testimony and stated that he takes the gun, which is not registered to him, with him “everywhere,” yet forgot the weapon in the vehicle. (Tr. Vol. II, p. 141). Jamal also informed the jury that he borrowed the vehicle to go to the store to buy cigars to use with marijuana, but he did not fill the cigars with the marijuana while he was in the vehicle. In rebuttal, Deputy Samuelson explained that the traffic stop occurred at mile marker 61. He informed the jury that there were rest stops at mile markers 56 and 37, as

¹ A marijuana shake consists of “small fragments of marijuana crumbs, but generally it’s caused by someone rolling a joint or putting marijuana in a cigar or things of that nature.” (Tr. Vol. II, p. 104).

well as an exit at mile marker 49. He observed that if the phone call was received ten to fifteen minutes before the traffic stop and Poole had been travelling at a normal rate of speed, Poole would have passed a rest stop after the phone call and prior to the traffic stop.

[6] At the close of the evidence, Poole requested the trial court to instruct the jury based on Indiana Code section 35-41-2-1(b), as follows:

It is a defense to the charge of [u]nlawful [p]ossession of a [f]irearm by a [s]erious [v]iolent [f]elon that the person who possessed the property was not aware of his possession for a time sufficient for him to have terminated his possession.

(Appellant's App. Vol. II, p. 24). The trial court observed that the statute cited "provides a defense for those unwittingly duped into possession of illegal contraband because such contraband has been planted on their person or hidden on their property without their knowledge. For this statute to afford the [d]efendant relief, he must not have been aware of the handgun's presence." (Tr. Vol. II, p. 160). Concluding that Poole was aware of the handgun in the center console, the trial court refused to tender the proposed jury instruction. The jury found Poole guilty as charged.

[7] On June 17, 2022, the trial court conducted a sentencing hearing, at which the trial court sentenced Poole to three years executed in the Department of Correction and three years suspended to probation, for a total sentence of six years.

[8] Poole now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[9] Poole contends that the trial court abused its discretion by refusing to give his proposed jury instruction. The manner of instructing a jury is left to the sound discretion of the trial court. *Albores v. State*, 987 N.E.2d 98, 99 (Ind. Ct. App. 2013), *trans. denied*. We review the trial court's decision only for an abuse of that discretion. *Id.* On review of a trial court's decision to refuse a proposed jury instruction, we consider whether the instruction (1) correctly states the law, (2) is supported by the evidence, and (3) is covered in substance by other instructions that are given. *Id.* "We consider jury instructions as a whole and in reference to each other and do not reverse the trial court . . . unless the instructions as a whole mislead the jury as to the law in the case." *Lyles v. State*, 834 N.E.2d 1035, 1048 (Ind. Ct. App. 2005) (internal quotes and citations omitted), *trans. denied*.

[10] After finding that Poole's proposed jury instruction correctly stated the law, the trial court refused to tender the instruction because it was unsupported by the evidence presented. In reaching its decision, the trial court referenced *Randolph v. State*, 695 N.E.2d 615, 615 (Ind. Ct. App. 1998), where the defendant sought to use the defense where he was en route in a vehicle to return a firearm and waved the firearm out the car window in a threat at the occupants of another vehicle. Poole contends that *Randolph* is inapplicable because, unlike *Randolph*, he did not use the weapon in a threatening manner but rather was

merely returning the weapon to his brother. Contrary to Poole's contention, the *Randolph* court did not rely on the manner Randolph was using the handgun to reach its decision, but instead concluded that "Indiana Code § 35-41-2-1(b) was designed to create a defense in the situation where the person is not aware of his or her possession of illegal property at the time it is found." *Id.* at 616. Because Randolph knew he possessed the handgun, the court held that he could not avail himself of the statutory defense. *Id.*

[11] We reach a similar result here. Prior to the traffic stop and discovery of the weapon by the officers, Poole was aware that the Glock was in the vehicle for at least ten to fifteen minutes. During this time, he secured the firearm in the locked console and started looking for a solution to return the weapon to his brother. After being pulled over, he admitted to the officers that the weapon was in the vehicle. Accordingly, as Poole was aware of the presence of the handgun in the vehicle at the time it was discovered by the officers, the statutory defense was unavailable to him, and the trial court did not abuse its discretion by denying his proposed jury instruction.²

² Poole also appears to argue that his substantial right to present a defense was violated because the trial court repeatedly presented to the jury the details of Poole's prior dealing conviction, mentioned that he was on parole, and alluded to his status as a serious violent felon. He now argues that by relying solely on the proposed jury instruction to present a defense without requesting a bifurcated trial, his substantial rights were violated. However, because Poole never requested a bifurcated trial before the trial court or objected to the numerous references to his serious violent felon status and he now raises the argument for the first time on appeal, we conclude that the issue is waived for our review. *Meriwether v. State*, 984 N.E.2d 1259, 1262 (Ind. Ct. App. 2013) (finding that an argument is waived on appeal if not raised in the trial court), *trans. denied*.

CONCLUSION

[12] Based on the foregoing, we hold that the trial court did not abuse its discretion in denying Poole's proposed jury instruction.

[13] Affirmed.

[14] Altice, C. J. and Pyle, J. concur