In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-19-00305-CR

JEFFREY WHITFIELD, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 364th District Court
Lubbock County, Texas
Trial Court No. 2017-413,920; Honorable William R. Eichman II, Presiding

May 21, 2020

MEMORANDUM OPINION

Before PIRTLE, PARKER, and DOSS, JJ.

Appellant, Jeffrey Whitfield, appeals from his conviction by jury of the offense of unlawful possession of a firearm by a felon[1] and the resulting court-imposed sentence of six years of imprisonment.[2] Appellant challenges his conviction through two issues. He first contends the trial court erred by refusing to include in the charge to the jury defensive

[1] TEX. PENAL CODE ANN. § 46.04(a) (West Supp. 2019).

[2] Appellant was convicted of a third degree felony, enhanced for purposes of punishment to a second degree felony based on proof of a previous final felony conviction. TEX. PENAL CODE ANN. §§ 12.33; 12.34; 12.42 (West 2019).

instructions concerning mistake of law and mistake of fact. Via his second issue, he argues the trial court erred in upholding the search warrant used to search his residence. We will affirm the judgment of the trial court.

BACKGROUND

Appellant's conviction for unlawful possession of a firearm by a felon arises from the facts surrounding the execution of a search warrant, in February 2017, at a residence located at 2407 East 29th Street, Lubbock, Texas. The search warrant authorized law enforcement to search the home for the following:

> Marijuana and any other controlled substance, packaging, scales, United States currency and any other contraband and/or items consistent with or indicative of trafficking of controlled substances and the containers which may contain them, any written or electronic devices that contain records of illicit narcotics, a black male known as Jeffrey Whitfield having a date of birth of [removed] and can be described as being approximately 5'07" tall with a weight of 200 pounds....

The request for a search warrant was based on the affidavit of Russel Galyean, an investigator with the Lubbock County Sheriff's Office. In that affidavit, Galyean averred he received information from a confidential informant that marijuana was being trafficked and possessed by Appellant at the identified residence. Galyean further averred that the confidential informant told him and other members of the narcotics division that, within the preceding seventy-two hours, the informant observed a usable quantity of marijuana at the identified residence. Galyean further stated the informant had provided information to the narcotics division "on more than fifty occasions that has proven to be true and correct." Galyean also said the informant had proven credible and reliable. The affidavit also included information that officers had confirmed that both the identified residence

and the vehicle Appellant customarily drove belonged to Pamela Gasaway, a woman identified as Appellant's mother.

When officers executed the warrant, they located several firearms in the residence. Appellant admitted to owning those firearms despite the fact he was a convicted felon prohibited from legally possessing a firearm. Prior to trial, Appellant filed a motion to suppress the evidence obtained pursuant to the search, arguing there was no probable cause to support the issuance of the search warrant. Following a brief hearing, the trial court denied Appellant's motion to suppress.

The matter proceeded to trial before a jury. At trial, Appellant advanced the defensive theory of mistake, based on his belief that he was permitted to possess a firearm because he was no longer on community supervision. Before closing arguments, Appellant requested that the trial court include in its charge to the jury defensive instructions regarding mistake of fact and mistake of law. The trial court denied both requests. Appellant was convicted and sentenced as noted.

ANALYSIS

ISSUE TWO—SEARCH WARRANT

We begin with Appellant's second issue challenging the trial court's denial of his motion to suppress. Appellant contends the trial court erred in denying his motion and upholding the search warrant that led to the discovery of Appellant's firearms. On appeal, Appellant argues the "ultimate issue in this case is whether the magistrate had a justifiable basis to believe that contraband would be found in the residence when the search warrant was granted."

As an appellate court, we use an abuse of discretion standard to review the trial court's ruling on a motion to suppress evidence. *Taylor v. State*, 410 S.W.3d 520, 524 (Tex. App.—Amarillo 2013, no pet.) (citing *Balentine v. State*, 71 S.W.3d 763, 768 (Tex. Crim. App. 2002); *Hudson v. State*, 247 S.W.3d 780, 783 (Tex. App.—Amarillo 2008, no pet.)). In a suppression hearing, the trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *Taylor*, 410 S.W.3d at 524 (citing *Wiede v. State*, 214 S.W.3d 17, 24-25 (Tex. Crim. App. 2007)). In reviewing a trial court's decision on a motion to suppress, we do not engage in our own factual review, *St. George v. State*, 237 S.W.3d 720, 725 (Tex. Crim. App. 2007), but view the evidence in the light most favorable to the trial court's ruling. *Taylor*, 410 S.W.3d at 524 (citing *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999)). We do, however, review *de novo* the court's application of the law regarding search and seizure to the facts of the case. *Taylor*, 410 S.W.3d at 524 (citing *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000)). As no findings of fact or conclusions of law were filed here, we will assume the trial court made implicit findings of fact that support its ruling as long as those findings are supported by the record. *Taylor*, 410 S.W.3d at 524 (citation omitted). If the trial court's decision is correct on any theory of law applicable to the case, we must affirm that decision. *Id*. (citation omitted).

A magistrate may issue a search warrant only if the warrant is supported by an affidavit showing probable cause that a particular item will be found in a particular location. *See* U.S. CONST. amend. IV (guaranteeing individuals the right to be free from unreasonable searches and seizures); TEX. CONST. art. I, § 9 (same); *State v. Duarte*, 389 S.W.3d 349, 354 (Tex. Crim. App. 2012). Probable cause exists when, under the totality

of the circumstances, there is a "fair probability" that contraband or evidence of a crime will be found at the specified location. *Rodriguez v. State*, 232 S.W.3d 55, 60 (Tex. Crim. App. 2007) (citing *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)). Evidence obtained in violation of federal or state constitutional protections is generally inadmissible. *See Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961); *Hernandez v. State*, 60 S.W.3d 106, 108 (Tex. Crim. App. 2001); *see also* TEX. CODE CRIM. PROC. ANN. art. 38.23 (West 2018).

Appellate courts apply a highly deferential standard of review to a magistrate's probable-cause determination. *State v. McLain*, 337 S.W.3d 268, 271 (Tex. Crim. App. 2011). Our inquiry is whether the supporting affidavit presents sufficient facts, coupled with reasonable inferences from those facts, to establish a "fair probability" that evidence of a particular crime will likely be found at a given location. *Rodriguez*, 232 S.W.3d at 62. The issue is "not whether there are other facts that could have, or even should have, been included in the affidavit; we focus on the combined logical force of facts that are in the affidavit, not those that are omitted from the affidavit." *Id.* We interpret the supporting affidavit in a commonsense and realistic manner and defer to all reasonable inferences that the magistrate could have made. *Bonds v. State*, 403 S.W.3d 867, 873 (Tex. Crim. App. 2013). If the magistrate had a substantial basis for concluding that probable cause existed based on the "four corners" of the affidavit and reasonable inferences therefrom, we must uphold the magistrate's probable-cause determination. *McLain*, 337 S.W.3d at 271-72.

Here, Galyean included in his affidavit that: (1) he received information from a known confidential informant that Appellant was in possession of and trafficking marijuana

at the identified residence, (2) within the preceding seventy-two hours, the confidential informant observed a usable quantity of marijuana at the identified residence, (3) the confidential informant had provided accurate information to the sheriff's office on more than fifty occasions, proving to be a credible and reliable informant, (4) utilities at the identified residence and a vehicle Appellant was known to drive were in his mother's name, something Galyean averred was common for people who traffic narcotics because having those items in another person's name can prevent seizure on arrest, and (5) Appellant had five previous arrests for possession of marijuana and also was arrested for, among other crimes, possession of drug paraphernalia, tampering with evidence, and possession of an imitation controlled substance. Based on these facts, the affidavit here provided information concerning the confidential informant, noting the informant had provided accurate information more than fifty times and was credible and reliable. The affidavit also provided information regarding the timing of the confidential informant's observations, stating the informant had seen the contraband within the preceding seventy-two hours and that possession and trafficking of that contraband was occurring at the identified residence.

These facts distinguish the affidavit from those addressed in the cases cited to us by Appellant, e.g. *Davis v. State*, 202 S.W.3d 149, 152 (Tex. Crim. App. 2006), *Serrano v. State*, 123 S.W.3d 53, 60 (Tex. App.—Austin 2003, pet. ref'd), and *State v. Dickson*, Nos. 05-07-01542-CR, 05-07-01543-CR, 2008 Tex. App. LEXIS 6333, at *6-8 (Tex. App.—Dallas Aug. 21, 2008, no pet.) (mem. op., not designated for publication). In *Davis*, while the search warrant was ultimately upheld based on additional facts, the court did note that the affidavit did not contain information relative to time, indicating the information

was stale. *Davis*, 202 S.W.3d at 154. By way of contrast, the affidavit here does contain information relative to time as Galyean averred the confidential informant observed marijuana at the location within the preceding seventy-two hours. In *Serrano,* the court determined the magistrate did not have a substantial basis for concluding probable cause existed when the affidavit in support of the search warrant provided that the affiant relied heavily on a tip from a confidential informant who had provided reliable information in the past, but did not provide any information regarding when the tip was received, when the informant obtained the information, or when the observation took place. *Serrano*, 123 S.W.3d at 60-62. Conversely, the affidavit here relies on a heavily-used confidential informant who provided specific information about the residence, including the address, as well as information concerning what was seen and when. In *Dickson*, the court concluded the information obtained from an informant did not provide any facts concerning any amounts of marijuana observed and provided little factual basis to conclude drugs would remain on the premises days later. *Dickson*, 2008 Tex. App. LEXIS 6333, at *6-8. Here, the affidavit contains much more specific information with regard to timing and the drugs observed. While we acknowledge Appellant's argument that the informant said only that a "usable" quantity of marijuana was seen and while that amount might have many meanings, it does not take it out of the realm of a reasonable basis from which the magistrate could reach his decision. Consequently, we find the affidavit here provided to the magistrate a sufficient basis upon which to conclude there was probable cause to believe the contraband would be found at the identified residence.

As the State points out, this court has found affidavits describing an informant's track record of credibility as distinguishable from those in which a first-time informant is

utilized or those in which the track record is not set forth. In *Hoff v. State*, for example, this court concluded the affidavit indicated the confidential informant had furnished information to affiant and other officers on “numerous occasions” and that “on each and every occasion, such information has proven true, correct, and reliable.” *Hoff v. State*, No. 07-15-00011-CR, 2017 Tex. App. LEXIS 865, at *6 (Tex. App.—Amarillo, Jan. 31, 2017, no pet.) (mem. op., not designated for publication) (distinguishing *Duarte*, 389 S.W.3d at 354, in which the information was provided by a first-time informant). Further, the affidavit in *Hoff* indicated the information was based on the informant’s personal observation within the past forty-eight hours. *Id.*

While other information not included in the affidavit before us was included in the *Hoff* affidavit, our task as an appellate court is to focus on the combined logical force of the facts present in the questioned affidavit. *Rodriguez*, 232 S.W.3d at 62. The affidavit here included information regarding the timing, location, and knowledge of the informant and the track record of the informant. And, Appellant’s previous arrests assisted in the corroboration of that information. *Hoff*, 2017 Tex. App. LEXIS 865, at *7 (citing *Salas v. State*, No. 07-11-00363-CR, 2012 Tex. App. LEXIS 8300, at *8 (Tex. App.—Amarillo Oct. 3, 2012, pet. ref'd) (mem. op., not designated for publication) (noting the appellant’s previous arrest for possession of controlled substances assisted in corroborating the statements of the confidential informant). *Gonzales v. State*, No. 07-13-00268-CR, 2014 Tex. App. LEXIS 13031, at *6-7 (Tex. App.—Amarillo Dec. 4, 2014, no pet.) (mem. op., not designated for publication) (upholding magistrate’s finding of probable cause after considering facts, including the defendant’s prior criminal history of manufacture/delivery of a controlled substance, in affidavit together)).

When the facts presented in the affidavit here are considered together, we believe a reasonable magistrate could determine there was a substantial basis for concluding that probable cause existed that marijuana and/or other controlled substances would be found at the identified residence at the time of the issuance of the warrant. *See Page v. State*, Nos. 10-15-00120-CR, 10-15-00121-CR, 10-15-00122-CR, 2016 Tex. App. LEXIS 8296, at *8-9 (Tex. App.—Waco, Aug. 3, 2016, no pet.) (mem. op., not designated for publication) (similar finding). Consequently, we find the trial court did not abuse its discretion in denying Appellant's motion to suppress on the basis of an insufficient search warrant affidavit. Accordingly, we resolve Appellant's second issue against him.

ISSUE ONE—JURY INSTRUCTIONS

In his first issue, Appellant argues the trial court erred when it refused to include in its charge to the jury instructions regarding mistake of law and mistake of fact. He contends the evidence presented at trial raised the issue and accordingly, the instructions should have been included.

In support of Appellant's defensive theory of mistake, he points to a form he was shown and asked to sign at his first meeting with his community supervision officer. That form contained a provision regarding the right of a person discharged from felony supervision to possess firearms. That provision included the sentence, "In some cases people in these categories may be able to possess a firearm or go hunting." It is this sentence Appellant argues led him to the reasonable, albeit mistaken, belief that he was legally able to possess firearms since he had completed community supervision.

The State argues no mistake of fact was raised by the evidence and Appellant waived the issue for appellate review when he failed to apply the requested instruction to a specific mistake of fact raised by the evidence. The State also argues Appellant failed to properly raise a mistake of law defense because he was unable to point to any official agency statement or written interpretation of law that he relied on in forming his asserted mistake. The State also contends that even if we were to assume the exclusion of the mistake of law instruction was error, Appellant was not harmed because the document on which he relied did not actually state he was entitled to possess a firearm.

STANDARD OF REVIEW AND APPLICABLE LAW

Analysis of an asserted jury charge error is a two-step process. *Kirsch v. State*, 357 S.W.3d 645, 649 (Tex. Crim. App. 2012); *Abdnor v. State*, 871 S.W.2d 726, 731-32 (Tex. Crim. App. 1994). We first analyze a claim of jury charge error to determine whether the submitted charge was erroneous. *Kirsch*, 357 S.W.3d at 649 (citing *Middleton v. State*, 125 S.W.3d 450, 453 (Tex. Crim. App. 2003)). We then determine whether sufficient harm resulted from the error to require reversal. *Kirsch*, 357 S.W.3d at 649; *Jenkins v. State*, 468 S.W.3d 656, 671 (Tex. App.—Houston [14th Dist.] 2015, pet. dism'd) (citing *Ngo v. State*, 175 S.W.3d 738, 743 (Tex. Crim. App. 2005)). The degree of harm needed for reversal depends on whether the error was properly preserved. *Jenkins*, 468 S.W.3d at 671 (citation omitted). When the error is properly preserved, reversal is required if the error caused "some harm." *Id.* (citing *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984)). When the error is not properly preserved, reversal is required only if the record indicates the presence of egregious harm. *Villarreal v. State*, 453 S.W.3d 429, 433 (Tex. Crim. App. 2015).

When submitting a case to a jury for determination, the trial court has a duty to provide the jury with "a written charge distinctly setting forth the law applicable to the case." *Jenkins*, 468 S.W.3d at 671 (citing TEX. CODE CRIM. PROC. ANN. art. 36.14 (West 2007); *Walters v. State*, 247 S.W.3d 204, 208 (Tex. Crim. App. 2007)). In the discharge of that duty the trial court is required to instruct the jury on statutory defenses, affirmative defenses, and justifications whenever they are raised by the evidence. *Jenkins*, 468 S.W.3d at 671 (citing TEX. PENAL CODE ANN. § 2.04; *Walters*, 247 S.W.3d at 208-09). "[A]n erroneous or an incomplete jury charge jeopardizes a defendant's right to jury trial because it fails to properly guide the jury in its fact-finding function." *Jenkins*, 468 S.W.3d at 671(citing *Abdnor*, 871 S.W.2d at 731).

A defendant "has the right to an instruction on any defensive issue raised by the evidence, whether that evidence is weak or strong, unimpeached or contradicted, and regardless of what the trial court may or may not think about the credibility of the evidence." *Jenkins*, 468 S.W.3d at 671-72 (citations omitted).

MISTAKE OF LAW

While a defendant's ignorance of the law is not a defense to prosecution, section 8.03(b)(2) of the Texas Penal Code provides as follows:

> It is an affirmative defense to prosecution that the actor reasonably believed the conduct charged did not constitute a crime and that he acted in reasonable reliance upon:
>
> (1) an official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

> (2) a written interpretation of the law contained in an opinion of a court of record or made by a public official charged by law with responsibility for interpreting the law in question.

TEX. PENAL CODE ANN. § 8.03(b)(2) (West 2011).

Thus, to be entitled to the statutory defense of mistake of law, a defendant must present some evidence that he reasonably believed that his conduct did not constitute a crime and he reasonably relied on either an official statement of the law or a written interpretation of the law of the type specified in the statute. *Jenkins*, 468 S.W.3d at 673 (citations omitted).

At trial, Appellant's defensive theory was he mistakenly believed he could possess a firearm because he had completed community supervision. This belief, he argues, was based on a section in a disclosure form that his community supervision officer required him to review and sign at the time he was placed on community supervision. That particular section of the disclosure form was entitled "THE RIGHT TO POSSESS FIREARMS" and it included the following language:

> a. Regular or Shock Probation A person currently on regular or shock felony probation may not possess, ship, transport, or receive a firearm or ammunition.
>
> b. Under Felony Indictment, Deferred Adjudication, or Discharged from Felony Supervision: In some cases people in these categories may be able to possess a firearm or go hunting. **However**, the interpretations of the laws affecting persons under these categories are not always consistent. Therefore, defendants under indictment, who are on deferred adjudication, or who have been discharged from felony supervision **absolutely must consult with their attorney** regarding their rights to possess, transport, buy, or sell a firearm or ammunition, or go hunting with a firearm. Persons who violate the federal firearm laws are subject to prosecution, up to $250,000 in fines and up to 10 (ten) years in prison.

(Emphasis in original). While the form was initialed by Appellant to indicate that he had received and read the disclosure, only subparagraph (a) above was circled.

The document on which Appellant relies does not satisfy either statutory requirement. One, it is neither an official statement of the law in a written order, nor is it a grant of permission and, two, it is not a written interpretation of the law in an opinion or made by a public official charged by law with the responsibility for interpreting the law in question. Appellant attempts to make the argument that his community supervision officer is, effectively, in the position of interpreting the law for the people under such supervision. That is not, however, the responsibility with which community supervision officers are charged and, even if it were, the officers do not create the forms for that purpose. Accordingly, we find Appellant did not raise sufficient evidence to support his entitlement to a mistake of law instruction under section 8.03(b)(2). TEX. PENAL CODE ANN. § 8.03(b)(2) (West 2011).

Even taking as true Appellant's argument that the document on which he claims he relied was an official statement of the law, we cannot agree with his conclusion that he was entitled to an instruction concerning mistake of law. Nothing in this document shows Appellant was legally entitled to possess a firearm. The most favorable interpretation of the language indicates only that there may be some cases in which some people released from supervision may possess a firearm. There is nothing in the record to indicate Appellant was one of those people. Appellant simply did not raise any evidence entitling him to a mistake of law defensive instruction. *See Wright v. State*, No. 05-02-00533-CR, 2003 Tex. App. LEXIS 2086, at *7 (Tex. App.—Dallas, March 11, 2003, pet. ref'd) (mem. op., not designated for publication) (the court found the defendant was

not entitled to a mistake of law instruction because the evidence established the defendant knew he was a felon and knew he could not possess a gun and accordingly, he could not have reasonably believed his conduct did not constitute a crime)..

MISTAKE OF FACT

As previously noted, a defendant is entitled to an instruction on any defensive issue raised by the evidence, whether that evidence is weak or strong, impeached or uncontradicted, and regardless of how the trial court views the credibility of the defense. *Walker v. State*, 300 S.W.3d 836, 847 (Tex. App.—Fort Worth 2009, pet. ref'd) (citations omitted). A defendant is entitled to an instruction on the defense of mistake of fact if there was evidence that, through a mistake, he formed a reasonable belief about a matter of fact and his mistaken belief would negate his intent or knowledge. TEX. PENAL CODE ANN. § 8.02(a) (West 2011); *Celis v. State*, 416 S.W.3d 419, 430 (Tex. Crim. App. 2013). The instruction applies only with respect to elements that require proof of a culpable mental state. *Id.* A "reasonable belief" is a belief that would be held by an ordinary and prudent person in the same circumstances as the actor. TEX. PENAL CODE ANN. § 1.07(a)(42) (West Supp. 2019). When the evidence fails to raise a defensive issue, the trial court does not err in refusing a requested instruction. *Bottoms v. State*, No. 02-07-00178-CR, 2008 Tex. App. LEXIS 1339, at *11 (Tex. App.—Fort Worth Feb. 21, 2008, no pet.) (mem. op., not designated for publication) (citing *Muniz v. State*, 851 S.W.2d 238, 254 (Tex. Crim. App. 1993), *cert. denied*, 510 U.S. 837, 114 S. Ct. 116, 126 L. Ed. 2d 82 (1993)).

To determine if the evidence raised the issue of mistake of fact, we view the evidence in light of each statutory provision. A person commits the offense of unlawful possession of a firearm if that person possesses a firearm, after the person has been

previously convicted of a felony, and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever is later. TEX. PENAL CODE ANN. § 46.04(a) (West Supp. 2019).

Appellant, as he did with regard to his mistake of law contention, argues that the language in the form he signed stating, "[i]n some cases, people in these categories may be able to possess a firearm or go hunting" led him to the mistaken factual belief that he was one of those "people" and, therefore, able to possess a firearm after completing community supervision.

However, as the State points out, the culpable mental state applicable to Penal Code section 46.04(a), i.e., intentionally and knowingly,[3] does not require that Appellant knew it was illegal to possess a firearm; rather, it requires only that he intentionally and knowingly possessed the firearm. There is no question in this case that Appellant did just that. He candidly admitted to possession of the firearms. Thus, the only mistake to which he points is his mistaken belief that he was legally allowed to possess the guns found in the residence. Appellant's mistaken belief did not negate the culpability required for the offense as he clearly intentionally and knowingly possessed the firearms in question. The fact that he mistakenly believed he was permitted to do so does not alter or negate that mental state. Accordingly, the court did not err in refusing to include in its charge to the jury an instruction concerning mistake of fact. *Aleman v. State*, 497 S.W.3d 518, 527

[3] We recognize that although section 46.04(a) does not contain a culpable mental state, one is statutorily implied. *See* TEX. PENAL CODE ANN. § 6.02(a), (b) (West 2011) (proving that where a definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element).

(Tex. App.—San Antonio 2016, no pet.) (finding the defendant's contention that he did not intend to pay the undercover officer for sex was not a mistake of fact as that defense is defined by the statute).

The comparison in *Ingram v. State*, 978 S.W.2d 627, 631 (Tex. App.—Amarillo 1998, no pet.) is instructive here. There, the defendant argued he was entitled to a mistake of fact defensive instruction because he was given the wrong jacket by another person and he assumed the weight in the jacket was the bottle of liquor he had in his own jacket. *Id.* As it turned out, the weight in the jacket the defendant was mistakenly given was a pistol. *Id.* The gun fell out of the jacket and the defendant retrieved it and kept it. *Id.* Police apprehended him with the pistol. *Id.* This court pointed out that the defendant would have been entitled to the mistake of fact instruction if the defendant had been apprehended while the pistol was still in the jacket because at that time, the defendant mistook the weight of the pistol in the jacket for the bottle of liquor he thought it was. *Id.* But, because the defendant voluntarily retrieved the pistol after it fell out of the jacket and had the gun in his hand, he was not so entitled. *Id.* Here, Appellant points to nothing like the potential mistake of fact noted in *Ingram.* Moreover, this court concluded in *Ingram* that the mistake as to the ownership of the jacket did not negate the culpable mental state of the offense because the defendant's voluntary act of retrieving and keeping the pistol "was tantamount to his knowingly and intentionally possessing the firearm, the gravamen of the offense." *Id.* Likewise, Appellant's alleged mistake as to the meaning of the provision in the community supervision disclosure form did not negate the culpable mental state for the charged offense. Rather, Appellant admitted to the gravamen of the offense, i.e., his knowing and intentional possession of the firearms in question. As such, we find

the trial court did not err in declining to include the requested defensive instruction. As such, we overrule Appellant's first issue.

CONCLUSION

Having overruled each of Appellant's issues, we affirm the judgment of the trial court.

Patrick A. Pirtle
Justice

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