2016 IL App (2d) 140902-U
No. 2-14-0902
Order filed November 7, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Kendall County.
Plaintiff-Appellee,	)	Nos. 13-CF-305 13-CM-819
v.	)	
BRYCE BENTLEY,	)	Honorable Timothy J. McCann,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Birkett and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion by refusing to define "knowing" for the jury, as, although knowledge was an element of the offense at issue, the jury did not request a definition or otherwise show confusion; in any event, in light of the evidence and the wording of the tendered instruction, any error was harmless.

¶ 2 After a jury trial, defendant, Bryce Bentley, was convicted of unlawful possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2012)) and obstructing identification (720 ILCS 5/31-4.5(a) (West 2012)). He was sentenced as a Class X offender (see 730 ILCS 5/5-4.5-95(b) (West 2012)) to eight years in prison for unlawful possession, and to time served for obstructing identification. On appeal, defendant contends that he is entitled to a new trial on the

former charge, because the trial court abused its discretion in refusing to give the jury the pattern instruction on guilty knowledge (Illinois Pattern Jury Instructions, Criminal, No. 5.01B (4th ed. 2000)) (IPI 5.01B). We affirm.

¶ 3 The State charged defendant separately, under the same statute, with unlawful possession of a converted motor vehicle and unlawful possession of a stolen motor vehicle. At trial, the State called two witnesses. The first, Juan Lopez, testified as follows. On September 23, 2013, he owned a blue GMC van, which he used in his job delivering bread. That day, he parked the van outside 228 Galena Boulevard to make a delivery. He left the keys inside the van. When he returned, the van was missing. Lopez did not see anyone drive the van off. He had not given defendant or anyone else permission to drive it. Lopez identified several photographs that showed the inside of the van, including bread racks and some other items that belonged to him, along with numerous items that did not.

¶ 4 The State's second witness, Yorkville police officer Nelson (first name not given at trial), testified as follows. On September 30, 2013, at about 11:45 p.m., he was on patrol near a shopping complex. All of the stores were closed. On the north side of a Home Depot, a blue GMC van was parked. Nelson learned that it was stolen. As he started to pull away, he noticed someone moving inside the van, and he returned. Driving around to the van's passenger side, Nelson saw two bare feet coming out. He called for backup and searched the area. After a minute or less, about 75 feet from the van, he saw a barefoot man, whom he identified in court as defendant, lying in some bushes and trying to hide from him.

¶ 5 Nelson testified that he announced his office and told defendant to get up, which he did. Nelson asked defendant for his name and date of birth. Defendant said that he was "Curt V. Bentley" and gave his date of birth as March 20, 1958. Nelson checked with the dispatch center;

no person came back with that name or date of birth. Nelson asked defendant again; defendant said to "try the year 1957." In the meantime, other officers had arrived. Inside the van, they found mail and some court papers addressed to Bryce Bentley. Other items were contained in several garbage bags, including more mail addressed to Bryce Bentley and some men's clothing that appeared to fit defendant. At trial, Nelson identified the van's vehicle registration certificate from the Department of Transportation.

¶ 6 Defendant put on no evidence. At the instructions conference, defendant noted that, as applicable here, it is a violation of the unlawful-possession statute for "[a] person not entitled to the possession of a vehicle *** to receive, possess, conceal, sell, dispose, or transfer it, knowing it to have been stolen or converted." 625 ILCS 5/4-103(a)(1) (West 2012). He contended that, because knowledge was an element of the charged offenses, the jury should be instructed, based on IPI 5.01B, "A person knows the nature or attendant circumstances of his conduct when he is consciously aware that his conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists." The State argued that, because "knowing" is commonly understood, the court ought not define it unless and until the jury so requested. The judge agreed, stating that he would not give the instruction but would consider doing so if the jury requested a definition of "knowing."

¶ 7 The jury, which did not request a definition or any guidance on the element of knowledge, convicted defendant of unlawful possession of a stolen motor vehicle and obstructing identification. The court denied defendant's posttrial motion, which argued in part that the court had erred in refusing to give the requested instruction. After the court sentenced defendant as noted, he timely appealed.

¶ 8 On appeal, defendant contends that, because knowledge was an element of unlawful possession of a stolen motor vehicle, the trial court should have given the jury IPI 5.01B. The State counters that the case law supported the court's decision to provide the instruction only if the jury requested it or expressed confusion on the element of knowledge.

¶ 9 The trial court has discretion in deciding how to instruct the jury, and we will not disturb its ruling absent an abuse of that discretion. *People v. Perry*, 2011 IL App (1st) 081228, ¶ 40. Generally, the trial court need not instruct the jury on the definition of "knowing," because the term has a plain meaning that is within the jury's common knowledge. *People v. Sanders*, 368 Ill. App. 3d 533, 537 (2006); *People v. Sandy*, 188 Ill. App. 3d 833, 842 (1989); *People v. Powell*, 159 Ill. App. 3d 1005, 1013 (1987). Although the court has a duty to instruct the jury when it requests clarification or is manifestly confused (*Sanders*, 368 Ill. App. 3d at 537), the jury here did not request any clarification or exhibit any sign of confusion.

¶ 10 Defendant cannot cite authority holding that a trial court abused its discretion by refusing to provide the jury with IPI 5.01B when the jury had not requested a definition of "knowing" or otherwise shown that it required clarification of this everyday term. Instead, he argues that, because knowledge was an element of the charged offense, the court should have defined it by instruction. This argument is simply a *non sequitur*. Commonly understood terms do not require definition by instruction merely because they relate to an element of a charged offense. We would have almost no end of definitional instructions to juries were there such a rule.

¶ 11 We also note that giving the requested instruction would not have affected the outcome of the trial; we agree with the State that the alleged error was harmless. The evidence that defendant knew that the van was stolen was strong; the owner testified that he did not know defendant, much less give him permission to use the van. Defendant's attempt to hide from the

police officer, and to mislead him by providing a false identification, also strongly implied his guilty knowledge. Finally, the tendered instruction itself appeared, if anything, to favor the State: it would have told the jury that "knowing" required proof not that defendant was certain that the van had been stolen but only proof that he was aware of the substantial probability that it was stolen. Thus, even had the trial court erred in refusing to provide the requested instruction, the error would not have prejudiced defendant.

¶ 12 For the foregoing reasons, the judgment of the circuit court of Kendall County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 13 Affirmed.