IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

STATE OF MISSOURI,

Respondent,

v.

MIGUEL A. TORRES,

Appellant.

DOCKET NUMBER WD83487

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: June 15, 2021

APPEAL FROM

The Circuit Court of Livingston County, Missouri
The Honorable Ryan W. Horsman, Judge

JUDGES

Division Two: Pfeiffer, P.J., and Ahuja and Mitchell, JJ. CONCURRING.

ATTORNEYS

Eric S. Schmitt, Attorney General, and Richard A. Starnes, Assistant Attorney General, Jefferson City, MO, Attorneys for Respondent.

Samuel Buffaloe, Assistant Public Defender, Columbia, MO, Attorney for Appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
MIGUEL A. TORRES, Appellant.

WD83487 **Livingston County**

Before Division Two Judges: Mark D. Pfeiffer, Presiding Judge, and Alok Ahuja and Karen King Mitchell, Judges

Miguel Torres appeals, following a jury trial, his convictions of three counts of possession of an unlawful item in a county jail and one count of damage to jail property, for which he was sentenced as a persistent offender to concurrent terms of twenty years' imprisonment for each possession count and five years' imprisonment for the damage to jail property. Torres raises three claims on appeal. First, he argues that the court erred in admitting evidence of his prior convictions because the State violated Rule 25.03 by failing to timely disclose the evidence. Second, he argues that his right to be free from double jeopardy was violated by his convictions on Counts II and III because § 221.111, RSMo, is ambiguous as to the allowable unit of prosecution. And, third, he argues that the court erred in refusing his proposed instruction on an entrapment defense. Finding no error, we affirm.

AFFIRMED.

Division Two holds:

1. Where the State does not intend to introduce something at a hearing or trial, that item is not subject to disclosure under Rule 25.03(b)(7). Nor is the State required to disclose evidence of which the defense is already aware and which the defense can acquire. Here, the State's obligation to disclose Torres's prior convictions did not arise until it intended to introduce the exhibits into evidence at a hearing or trial, and that time arose when the State filed the amended information containing the persistent offender allegations. Additionally, Torres was aware of both his own prior convictions and the fact that the State intended to use them to establish his persistent offender status. Therefore, Torres failed to prove a discovery violation.

2. We need not determine the allowable unit of prosecution under § 221.111.1 because Torres, in both law and fact, committed separate crimes. Though both Counts II and III charged Torres with possession of an unlawful item in a county jail, the charges involved separate types of items possessed, and the evidence reflected that Torres was in possession of each item multiple times throughout the charged period, plainly

evidencing a newly formed *mens rea* each time. Thus, he failed to prove a double jeopardy violation.

3. Entrapment is not an available defense to a charge of possession of an unlawful item in a county jail under § 221.111.1. Thus, the court did not err in refusing Torres's proffered instruction on the entrapment defense.

Opinion by: Karen King Mitchell, Judge June 15, 2021

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