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**Jun 14 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY

Court of General Sessions  
The Honorable Edward W. Miller, Circuit Court Judge

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Appellate Case No. 2023-000483

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THE STATE,

Respondent,

v.

LILLIAN MAE BATES,

Appellant.

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**INITIAL BRIEF OF RESPONDENT**

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ATTORNEYS FOR RESPONDENT

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## STATEMENT OF THE ISSUE ON APPEAL

Subject matter jurisdiction is the power of the court to hear and determine a class of cases. Bates pleaded guilty to Trafficking in Illegal Drugs under S.C. Code §44-53-370(e)(3). She moved to vacate the conviction on the ground that the court did not have subject matter jurisdiction because fentanyl is not an “opium” within the meaning of the statute. Did the circuit court abuse its discretion by refusing to vacate the conviction?

## STATEMENT OF THE CASE

A Greenville County grand jury indicted Appellant Lillian Bates for Trafficking in Illegal Drugs. S.C. Code Ann. §44-53-370(e). The State alleged Bates violated the statute by distributing 995 grams of fentanyl to an undercover police officer in exchange for \$250,000. (November 9, 2022 Tr.p.9–10). On November 9, 2022, Bates pleaded guilty before the Honorable Letitia H. Verdin, Circuit Court Judge. Though eligible for sentencing under §370(e)(3)(c), which carries 25–40 years’ incarceration, Bates was sentenced under §370(e)(3)(a) as a lesser-included offense and sentenced to 10 years’ incarceration. (Sentencing sheet). Bates filed a motion to vacate her sentence or, in the alternative, to withdraw her plea. In support of her motion to vacate, Bates claimed the plea court was without jurisdiction to accept her plea because fentanyl is not an “opium” within the meaning of §370(e). On March 17, 2023, Circuit Court Judge Edward W. Miller convened a hearing and denied Bates’s motions. In this direct appeal, Bates alleges the court erred by refusing to vacate her conviction but does not appeal the court’s denial of her motion to withdraw her plea. Bates relies on the argument that the circuit court was without jurisdiction to accept her plea.

## STANDARD OF REVIEW

A sentence will not be overturned absent an abuse of discretion. An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support. State v. Pogue, 430 S.C. 384, 386, 844 S.E.2d 397, 398 (Ct. App. 2020).

## ARGUMENT

**The trial court had subject matter jurisdiction to accept Bates's plea to Trafficking in Illegal Drugs, and Bates waived her right to contest the scope of the statute or raise any fact-based defenses by pleading guilty.**

Bates cites pre-Gentry cases to support her argument that the trial court did not have subject matter jurisdiction to accept her guilty plea. However, Gentry makes clear that “subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong . . . .” State v. Gentry, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005) (emphasis added). “Circuit courts obviously have subject matter jurisdiction to try criminal matters.” Id. at 101, 610 S.E.2d at 499.

Bates was charged with Trafficking in Illegal Drugs, a valid criminal offense. (Indictment and Sentencing sheet). Even though the indictment alleged she was guilty by virtue of trafficking fentanyl, indictments do not vest the court with subject matter jurisdiction. Id. The trial court had the power to adjudicate the charge of Trafficking in Illegal Drugs, and thus had subject matter jurisdiction to accept Bates's plea. See United States v. Scruggs, 714 F.3d 258, 262 (5th Cir. 2013) (“Subject matter jurisdiction, or the ‘court’s power to hear a case,’ is straightforward in the criminal context. . . . To invoke that grant of subject matter jurisdiction, an ‘indictment need only charge a defendant with an offense against the United States in language similar to that used by the relevant statute.’”); United States v. De Vaughn, 694 F.3d 1141, 1149 (10th Cir. 2012) (claim that indictment “does not charge a crime” based on factual allegations was not jurisdictional in nature);

Downer v. State, 543 A.2d 309, 312 (Del. 1988) (explaining “where the defendant’s conduct has brought him within the jurisdiction of the court to answer the State’s allegation of criminal activity and these allegations result in plea bargaining, the error is curable and the fundamental authority of the court to accept the result of the defendant’s bargain with the State remains intact. Thus, the court’s jurisdiction is not lost simply because the result of the bargaining is a plea to a nonexistent offense.”).

By pleading guilty, Bates waived her right to contest the State’s evidence and argue that fentanyl is not included within the definition of trafficking under §44-53-370(e)(3).<sup>1</sup> This was a factual issue that Bates could have raised before she pleaded guilty. Indeed, defense counsel admitted she had discussed with the solicitor whether fentanyl was covered by the statute. (March 17, 2023 Tr.p.3–4). She explained “[t]he issue in her case has always been about the statute of trafficking in heroin and whether or not fentanyl falls into that.” (March 17, 2023 Tr.p.3). Nonetheless, Bates decided to waive that argument and plead guilty.

“A defendant may, as part of a plea bargain, agree to plead guilty to a crime for which he has been indicted (or to which he has waived grand jury presentment), but of which he is not guilty.” Rollison v. State, 346 S.C. 506, 510, 552 S.E.2d 290, 292 (2001). “All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the

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<sup>1</sup> The legislature has since amended §44-53-370(e) to include an offense called “trafficking in fentanyl.” S.C. Code Ann. §44-53-370(e)(9).

plea, and the constitutional rights he is waiving, and that the record reflect a factual basis for the plea.” Id. at 511, 552 S.E.2d at 292.

Bates was alleged to have trafficked 995 grams of illegal drugs. Trafficking in more than 28 grams carries a mandatory minimum of 25 years up to 40 years in prison. S.C. Code §44-53-370(e)(3)(c). Bates pleaded guilty under §370(e)(3)(a), which carries 7–25 years and applies to trafficking between 4 and 14 grams. Thus she greatly reduced her exposure by pleading guilty to a lesser-included offense and waiving the opportunity to contest whether fentanyl was covered by the statute. Neither this Court nor the supreme court has decided whether fentanyl is included in the definition of 370(e)(3). The fact that counsel subsequently became aware of a non-binding order from another circuit court (in the context of a motion to quash) finding fentanyl is not covered by §370(e)(3) does not change the voluntary nature of Bates’s plea. See McPherson v. State, 38 Kan. App. 2d 276, 282, 163 P.3d 1257, 1262 (2007) (collecting cases holding a defendant may validly plead guilty to a nonexistent crime pursuant to plea bargain); North Carolina v. Alford, 400 U.S. 25 (1970) (explaining defendant may plead guilty without conceding guilt to secure benefit of plea bargain).

“Few principles of South Carolina criminal law are as ingrained as the notion that a knowing, voluntary, and intelligent guilty plea ‘constitutes a waiver of nonjurisdictional defects and claims of violations of constitutional rights.’” State v. Sims, 423 S.C. 397, 400, 814 S.E.2d 632, 633 (Ct. App. 2018). See also State v. Thomason, 341 S.C. 524, 534 S.E.2d 708 (Ct. App. 2000) (holding defendant waived

double jeopardy claim by pleading guilty); State v. Tucker, 376 S.C. 412, 418, 656 S.E.2d 403, 406 (Ct. App. 2008) (“We hold that by proceeding with his guilty plea, Tucker waived any and all defects regarding his return to state custody under the IAD.”); State v. McKinney, 278 S.C. 107, 108, 292 S.E.2d 598, 599 (1982) (“Absent timely objection at a plea proceeding, the unknowing and involuntary nature of a guilty plea can only be attacked through the more appropriate channel of Post-Conviction Relief.”).

Bates’s plea was voluntary. She fully admitted she sold 995 grams of fentanyl to an undercover police officer. It was incumbent on Bates to contest any factual or legal defects in the trafficking charge before pleading guilty and relinquishing that right. As the McPherson court explained, “if a defendant enters into a beneficial plea agreement voluntarily and intelligently, he or she forfeits the right to attack the underlying infirmity in the charge to which he or she pled.” McPherson, 38 Kan. App. 2d at 285, 163 P.3d at 1264. Her plea was “a lid on the box, whatever is in it, not a platform from which to explore further possibilities.” Sims, 423 S.C. at 402, 814 S.E.2d at 634 (quoting United States v. Bluso, 519 F.2d 473, 474 (4th Cir. 1975)). This Court should affirm.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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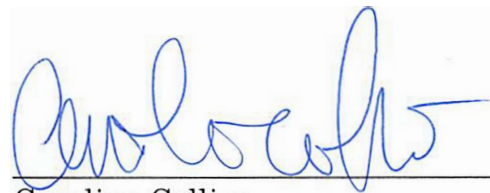
**PROOF OF SERVICE**

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I, Caroline Collins, certify that I have served the within Initial Brief of Respondent on Jessica Saxon, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 14<sup>th</sup> day of June, 2024.



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Good Afternoon Ms. Saxon,

Attached please find the Initial Brief of Respondent and Designation of Matter in The State v. Lillian Mae Bates (2023-000483). These will be submitted today to the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt.

Thank you,

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