

## *State v. Francis*

**Citation:** State v. Francis, No. CR-17-0062-PR, 410 P.3d 416 (Ariz. Feb. 5, 2018).

**Date Filed:** February 5, 2018

**Opinion's Author:** Justice Bolick

**Joined By:** Chief Justice Bales, Vice Chief Justice Pelander, Justices Brutinel, Timmer, Gould, and Moran

*Practitioners: For quick reference, please see the "Issue" and "Holding" sections.*

**Facts:** Francis was arrested and booked on charges unrelated to this case. Francis' personal items were taken from him upon arrival at the Navajo County Jail Annex, including his cell phone. The next day, he asked to call his lawyer and told the officer that the number was in his cell phone. The officer retrieved the cell phone. Later, Francis was transferred to the main jail. Here, an officer confiscated his cell phone from him. Francis was charged under sections 13-2505(A)(1) and (A)(3) with two counts of promoting prison contraband: one for obtaining or possessing the cell phone in the jail annex or during transport, and another for taking it inside the jail grounds.

**Procedural History:** The case is currently before the Arizona Supreme Court. At the trial level, the superior court ruled that the State need not prove that Francis knew the cell phone was contraband. The jury found Francis guilty and the court sentenced him to two concurrent five-year prison terms.

Francis appealed his conviction to the Arizona Court of Appeals who reversed his convictions and sentences.<sup>1</sup> The court of appeals applied section 13-202(A) which provides that "[i]f a statute defining an offense prescribes a culpable mental state that is sufficient for commission of the offense without distinguishing among the elements of such offense, the prescribed mental state shall apply to each such element unless a contrary legislative purpose plainly appears."<sup>2</sup> The court concluded that the State had to prove that Francis knew the cell phone was contraband.

The Arizona Supreme Court granted review to clarify what the State must prove to convict a defendant under section 13-2505(A).

**Issue:** To convict a defendant under section 13-2505(A), the defendant must "knowingly" obtain or possess contraband while being confined in a correctional facility or being transported to it.<sup>3</sup> Must the State prove that a defendant not only knowingly obtained or possessed the proscribed object, but also that the defendant knew the item he possessed was "contraband" to convict under section 13-2505(A)?

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<sup>1</sup> State v. Francis, 388 P.3d 843, 848 (Ariz. Ct. App. 2017).

<sup>2</sup> ARIZ. REV. STAT. ANN. § 13-202(A) (2018).

<sup>3</sup> ARIZ. REV. STAT. ANN. § 13-2505(A) (2018).

**Holding:** No, when such a defendant possesses an item that is statutorily defined as contraband, the State need only prove that the defendant knowingly possessed the item, not that the defendant knew it was contraband.

**Disposition:** The court of appeals' opinion is vacated, and the case is remanded to that court to consider the second issue not previously decided.

**Rule:** Because "contraband" is a statutorily defined term, section 13-2505(A) does not require the State to prove that the defendant knew that the object was contraband, only that the defendant knowingly possessed the object in the relevant locations.

**Reasoning:**

- **Sections 13-2505(A)(1) and (A)(3).** The court begins with discussing the language of the statute under which Francis was charged and convicted. Francis was convicted of "knowingly taking contraband into a correctional facility or the grounds of a correctional facility" and "knowingly . . . obtaining or possessing contraband while being confined in a correctional facility or while being lawfully transported or moved incident to correctional facility confinement."<sup>4</sup> "Contraband" is defined as "any dangerous drug, narcotic drug . . . wireless communication device, multimedia storage device or other article whose use or possession would endanger the safety, security or preservation of order in a correctional facility."<sup>5</sup> The court acknowledges that there is no dispute as to the fact that Francis knew he possessed a cell phone at the times in question.
- **Provisions relied upon by Francis and the court of appeals.** The court of appeals relied on statutory language that states "[i]f a statute defining an offense prescribes a culpable mental state that is sufficient for commission of the offense without distinguishing among the elements of such offense, the prescribed mental state shall apply to each such element unless a contrary legislative purpose plainly appears."<sup>6</sup> The court construed sections 13-2505(A) and 13-202(A) to require proof that the defendant not only knowingly possessed the object, but also knew the object was "contraband."
- **The statutory scheme as a whole does not require proof the defendant knew the cell phone was statutorily defined as "contraband."** "Knowingly" is defined in section 13-105(10)(b) to mean "that a person is aware or believes that the person's conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission."<sup>7</sup> Furthermore, "[i]gnorance or mistake as to a matter of law does not relieve a person of criminal responsibility."<sup>8</sup>

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<sup>4</sup> *Id.* § 13-2505(A)(1), (A)(3).

<sup>5</sup> ARIZ. REV. STAT. ANN. § 13-2501(1) (2018).

<sup>6</sup> § 13-202(A).

<sup>7</sup> ARIZ. REV. STAT. ANN. § 13-105(10)(b) (2018).

<sup>8</sup> ARIZ. REV. STAT. ANN. § 13-204(B) (2018).

Reading these statutes together, the court of appeals' conclusion is refuted. The Arizona Supreme Court argues that if a "wireless communication device" had been the specified possession in section 13-2505(A), then the State would unquestionably only need to prove that Francis knowingly possessed the object, because knowingly would then relate directly to the cell phone.<sup>9</sup> The court notes that the outcome should not be different just because "wireless communication device" is listed in a separate statutory provision defining what objects are "contraband."<sup>10</sup> Furthermore, the court states that Francis' unawareness that the cell phone was contraband is not a defense<sup>11</sup> and the legal status of the cell phone is not an element of the crime that the State must prove.<sup>12</sup>

- **This construction gives effect to all five statutes at issue.** The State must still prove that Francis knowingly committed every element of the crime, including that he knowingly obtained or possessed, and took into a correctional facility, contraband, which includes cell phones; however, knowledge of the cell phone's unlawfulness is not an element of the crime and a mistake of law is not a defense.<sup>13</sup>
- **This holding comports with the United States Supreme Court jurisprudence.** That Court has repeatedly held that knowledge of an act, even without understanding its legal significance, can establish the culpable mental state necessary for a crime that must be "knowingly" committed.<sup>14</sup> In *McFadden*, the Court found that the culpable mental state could be found in two ways. Either the government could show that the defendant knew that the substance was controlled, even if he did not know its identity, or he could be convicted if he "knew the specific features of the substance that make it a 'controlled substance analogue.'"<sup>15</sup> The court notes another Supreme Court opinion, which finds that if the prosecution must prove knowledge of the legal status of materials, this would allow the defendant off the hook for simply not "brush[ing] up on the law."<sup>16</sup>
- **Bloomer Case.** Lastly, the court addresses the case on which Francis relies. The court is not persuaded by the *Bloomer* court's reliance on section 13-204(A)(1) which provides a defense for mistakes of fact if that mistake "negates the culpable mental state required for the commission of the offense."<sup>17</sup> In *Bloomer*, the defendant claimed he thought the substance in his body was marijuana when it was actually gunpowder.<sup>18</sup> Both marijuana and gunpowder were statutorily defined as

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<sup>9</sup> State v. Francis, 410 P.3d 416, 418 (Ariz. 2018).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* (citing §§ 13-202(A); 13-2505(A)(1), (A)(3); 13-2501(1); 13-105(10)(b); 13-204(B)).

<sup>14</sup> *Id.* (citing *McFadden v. United States*, 135 S. Ct. 2298, 2302 (2015)).

<sup>15</sup> *Id.* (quoting *McFadden*, 135 S. Ct. at 2302).

<sup>16</sup> *Id.* at 419 (citing *Hamling v. United States*, 418 U.S. 87, 123 (1974)).

<sup>17</sup> *Id.* (quoting ARIZ. REV. STAT. ANN. § 13-204(A)(1)).

<sup>18</sup> *Id.* (citing *State v. Bloomer*, 751 P.2d 592, 594 (Ariz. Ct. App. 1987)).

contraband, so the court concluded the defendant knowingly possessed contraband.<sup>19</sup> Here, the court finds that the court in *Bloomer* came to the right result, but the opinion was incorrect to the extent it held that in order to convict a defendant, he must know a particular item is contraband.<sup>20</sup>

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<sup>19</sup> *Id.* (citing *Bloomer*, 751 P.2d at 594-95).

<sup>20</sup> *Id.*