

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NANCY HAWORTH,

APPELLANT

Appellate Case No. 2012-210208

FINAL BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

RECEIVED
JUL 11 2013
SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	
The trial judge erred in denying appellant's motion for a directed verdict of acquittal on the distribution of methamphetamines via accomplice liability charge where appellant had no knowledge of or any intent to engage in a drug sale because it was appellant's roommate who communicated with and delivered the drugs to the confidential informant.	5
CONCLUSION	9

TABLE OF AUTHORITIES

Cases

<u>Jackson v. Virginia</u> , 443 U.S. 307 (1979).....	9
<u>State v. Fennell</u> 340 SC 266, 531 S.E. 2d 512 (2000).....	7
<u>State v. Gibson</u> , 390 S.C. 347, 701 S.E. 2d 766 (2012.)	7
<u>State v. Heath</u> , 370 S.C. 326, 635 S.E.2d 181 (2006).....	8
<u>State v. Leonard</u> , 292 SC 133 355 S.E. 2d 270 (1987).....	7
<u>State v. Leonard</u> , 292 SC 133, 355 S.E. 2d 270 (1987).....	7
<u>State v. Mattison</u> , 388 SC 469, 697 S.E. 2d 578 (2010).....	7
<u>State v. Mattison</u> , 388 SC 469, 697 S.E. 2d 578 (2010).....	7
<u>State v. Moore</u> , 374 S.C. 468, 649 S.E.2d 84 (2008)	9
<u>State v. Thompson</u> , 374 S.C. 257, 647 S.E.2d 702 (Ct. App 2007).....	7, 8
<u>State v. Tuckness</u> , 257 SC 295, 185 S.E. 2d 607 (1971).....	7
<u>State v. Zeigler</u> , 364 SC 94, 610 S.E. 2d 859 (Ct. App. 2005).....	7

Constitutional Provisions

S.C. Const. art. I, §3	9
U. S. Const. amend. XIV	9

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion for a directed verdict of acquittal on the distribution of methamphetamines via accomplice liability charge where appellant had no knowledge of or any intent to engage in a drug sale because it was appellant's roommate who communicated with and delivered the drugs to the confidential informant.

STATEMENT OF THE CASE

Appellant Nancy Haworth was convicted of distribution of methamphetamines per jury trial held during the March 2012 term of the Pickens County General Sessions Court before Judge Brooks P. Goldsmith. Appellant was sentenced to imprisonment for a period of ten years. Robert Newton represented appellant at trial.

Appellant appealed her conviction and sentence. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motion for a directed verdict of acquittal on the distribution of methamphetamines via accomplice liability charge where appellant had no knowledge of or any intent to engage in a drug sale because it was appellant's roommate who communicated with and delivered the drugs to the confidential informant.

In the case at bar, the state's case consisted of the testimony of four witnesses, three of whom were police officers (Chad Ayers, Brett Barwick and Brunson Asbill), and one confidential informant (Tonya Smith). Appellant and her former roommate Ashley Timms testified on behalf of the defense in the case.

Sled Agent Brunson Asbill testified that he set up the undercover controlled methamphetamines buy that occurred on the night of March 30, 2010. R. 8, l. 8-p. 21, l. 8. Greenville County Police Officer Chad Ayers testified that he assisted in and observed the undercover controlled drug buy, and that he drove the confidential informant to the designated location to make the transaction. R. 26, l. 1-p. 38, l. 1.

Confidential informant Tonya Smith testified that she contacted appellant on the night in question and requested an "eight ball," for \$170.00. Later on that night, Smith stated that appellant's roommate Ashley Timms, who had methamphetamines in her possession, met her at the Hot Spot in Greenville, and handed over the drugs to her in exchange for the money. Smith explained that appellant and Timms were in a relationship and that they both lived together. R. 66, l. 11-p. 84, l. 25.

Pickens County Police Officer Brett Barwick stated that he assisted also in the undercover drug buy in the case by setting up the transmitter wire and recording device before the transaction took place, and that afterwards, he sat across the street from the Hot Spot. Officer Barwick recorded

the tag number on the vehicle Timms drove to meet informant Smith and found that the vehicle was registered to appellant. R. 120, l. 12-p. 127, l. 18.

Ashley Timms testified that she was not in a lesbian relationship with appellant, but that she was living with appellant during 2010 and that they shared a cell phone together. Timms explained that she was in possession of the phone 97% of the time and that she was at Becky Moore's house when she answered the phone she and Timms shared and talked to Smith's on that night in question. Timms stated that she was inside Moore's house when she talked to Smith, and that appellant was outside and did not even know that Smith called their phone. Timms stated in effect that Moore supplied her with the methamphetamines and that she met Smith with the drugs and made the exchange for the money. R. 147, l. 22-p. 158, l. 8. Timms added that she turned the drug money over to Moore, and that appellant had no knowledge of the drug buy. R. 158, l. 9-p. 161, l. 11.

Appellant testified in her defense at trial and stated that she did not participate in the March 30, 2010, drug transaction between Ashley Timms and appellant. Appellant added that after she pled guilty to possession of methamphetamines in 2009, she was on probation thereafter and had been staying drug free. Appellant stated she was not in a lesbian relationship with Ashley Timms. R. 182, l. 8-p. 188, l. 18.

At the close of the state's case and at the close of the case for the defense, appellant's counsel made motions for directed verdicts on the offense of distribution of methamphetamines charged in the case in effect based on insufficient evidence because there was no proof that appellant was guilty as charged via accomplice liability. R. 144, l. 18 - p. 145, l. 5; R. 196, lines 14-17; The court denied the motions. R. 145, lines 6-8; R. 196, lines 20-22.

In the case at bar, the trial judge charged the jury on the law of accomplice liability in connection with the distribution charge as follows:

The defendant is charged with distribution of methamphetamines. The state must prove beyond a reasonable doubt that the defendant distributed methamphetamine. Distribute means to deliver or to actually or constructively or to attempt to transfer a drug other than a administering or dispensing it. Deliver means to actively – or excuse me, to actually, constructively or to attempt to transfer a drug.

To be liable as an accomplice the defendant must have knowledge of the criminal conduct...Intentionally means willfully intending the result which actually occurs. A person may be constructively present at the commission of a crime even though that person is some distance away from the actual seen...if it is shown beyond a reasonable doubt that the person played a role in the commission of the crime as a result of some prior arrangement.

R. 209, l. 11-p. 210, l. 11.

The state's theory was that although appellant's roommate Timms actually talked to the informant personally and took it upon herself to agree personally to make the drug sale; nonetheless, the state argued that appellant was guilty as an aider and abettor via accomplice liability in the case. In order to be guilty as an aider or abettor, the participant must be in chargeable with knowledge of the principle's criminal conduct. State v. Mattison, 388 SC 469, 697 S.E. 2d 578 (2010); State v. Leonard, 292 SC 133, 355 S.E. 2d 270 (1987). Furthermore, in accomplice liability cases, prior knowledge that a crime is going to be committed, without more, is insufficient to prove guilt. State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct. App 2007); State v. Gibson, 390 SC 347 701 S.E. 2d 766 (2012).

Appellant was not guilty of distribution via accomplice liability in the instant case. Appellant knew not of Timms' independent actions to consummate a drug sale. Furthermore, it was Moore (not appellant) who supplied the drugs in order for Timms to make the sale. Appellant testified that she had no knowledge that Timms was engaged in the commission of a drug sale on the night in question, and Timms verified appellant's testimony by concurring that appellant had no knowledge of the controlled buy sale between her and confidential informant Smith. Also,

appellant was not constructively present when the drug/money exchange was accomplished as appellant had no constructive possession over drugs that she did not know were being sold and where the drugs sold were supplied for sale by another person, i.e. Becky Moore. Due to appellant's lack of knowledge regarding this matter, there was no dominion and control or the right to exercise dominion and control by appellant over the drugs sold by Timms. Actual possession occurs when the drugs are found in the actual physical custody of a defendant and constructive possession arises a defendant has dominion and control or the right to exercise dominion and control over the drugs. State v. Heath, 370 S.C. 326, 635 S.E.2d 181 (2006). Here, appellant had neither.

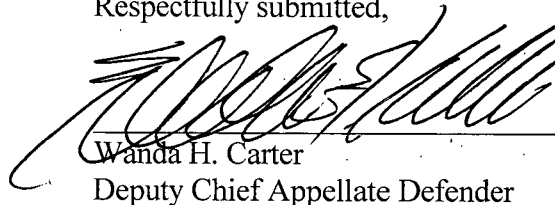
All in all, there was no evidence that appellant and Timms acted together to sell methamphetamines. In order to establish that parties agreed to achieve an illegal purpose, the state need not prove a formal expressed agreement, but rather can prove by circumstantial evidence and conduct of parties that there was an arrangement. State v. Gibson, supra. Here, we don't have proof of any formal or informal agreement involving appellant to make this drug buy in question because appellant was unaware of such a drug deal. Timms acted independently along with Betsy Moore, who supplied the drugs to Timms, so that she (Timms) alone could make the drug sale. Thus, sans appellant's knowledge of Timms' and Moore's agreement, their actions cannot imputed to appellant and guilt could not be assigned to appellant via accomplice liability. See State v. Thompson, 374 SC 257, 647 S.E. 2d 702 (2007). The same no knowledge argument also nullifies any intent on appellant's behalf to engage in the drug buy in question. A defendant may not be convicted of a criminal offense unless the State proves beyond a reasonable doubt that he acted with criminal intent. State v. Fennell 340 SC 266, 531 S.E. 2d 512 (2000). Intent is inferred from the circumstances. State v. Tuckness, 257 SC 295, 185 S.E. 2d 607 (1971).

A case should only be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2008). Also, a judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt that is based on facts and circumstances that do not amount to proof. State v. Moore, *supra*. Here, there was insufficient evidence presented on the charge of distribution of methamphetamines levied against appellant. Thus, the state failed to prove every element of the offense of distribution of methamphetamines beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307 (1979). The lower court erred in denying appellant's motion for a directed verdict of acquittal on the offense of distribution of methamphetamines charged against her since there was insufficient evidence of proof of the charge because this violated due process via the Fourteenth Amendment to the United States Constitution and article 1, §3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and her case remanded to the lower court for the issuance of a directed verdict of acquittal on the offense of distribution of methamphetamines charged against her.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

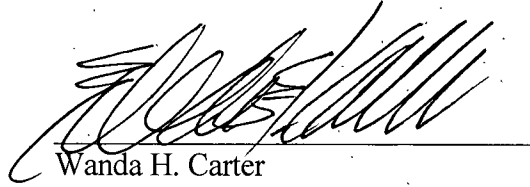
ATTORNEY FOR APPELLANT

This 11th day of July, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 11th, 2013



Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED
JUL 11 2013
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

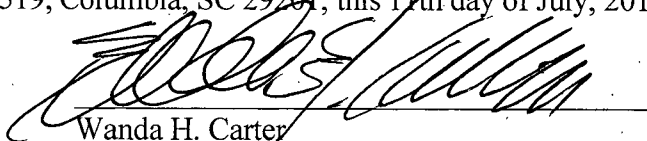
NANCY HAWORTH,

APPELLANT

Appellate Case No. 2012-210208

CERTIFICATE OF SERVICE

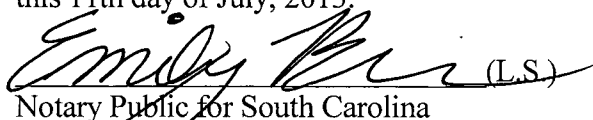
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of July, 2013.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of July, 2013.



(L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.