

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUL 31 2013

SC Court of Appeals

Appeal from Oconee County

R: Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WALTER GOODINE,

APPELLANT

Appellate Case No. 2012-212261

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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 possession of cocaine charge emanating from a traffic stop because appellant was merely present in the vehicle and neither in actual nor constructive possession of the cocaine found therein.	5
CONCLUSION.....	8

TABLE OF AUTHORITIES

Cases

<u>Jackson v. Virginia</u> , 443 U.S. 307 (1979).....	7
<u>State v. Brown</u> , 267 SC 311, 227 S.E. 2d 674 (1976).....	6
<u>State v. Heath</u> , 370 S.C. 326, 635 S.E.2d 181 (2006).....	6
<u>State v. Hernandez</u> 382 S.C. 620, 677 S.E.2d 603 (2009).....	7
<u>State v. James</u> , 386 S.C. 689 S.E.2d 643 (2012).....	6, 7

Constitutional Provisions

S.C. Const. art. I, §3.....	7
U.S. Const. amend XIV	7

STATEMENT OF ISSUES ON APPEAL

The trial judge erred in denying appellant's motion for a directed verdict of acquittal on the possession of cocaine charge emanating from a traffic stop because appellant was merely present in the vehicle and neither in actual nor constructive possession of the cocaine found therein.

STATEMENT OF THE CASE

Appellant Walter Lee Goodine was tried by jury in his absence during the February 2012 term of the Oconee County General Sessions Court and was found guilty of two counts of possession of cocaine. Judge R. Lawton McIntosh presided and C. Nicholas Lavery represented appellant at trial.

Appellant's sealed sentence was published at the June 2012 term of the Oconee County General Sessions Court before Judge McIntosh. Appellant was present at the sentencing hearing and again represented by C. Nicholas Lavery. Appellant was sentenced to imprisonment for a period of ten years on one cocaine possession conviction and five years concurrent on the second cocaine possession conviction.

Appellant appealed his convictions and sentences. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motion for a directed verdict of acquittal on the possession of cocaine charge emanating from a traffic stop because appellant was merely present in the vehicle and neither in actual nor constructive possession of the cocaine therein.

At trial, police Officer John Crum testified that per an investigation into complaints from a certain apartment complex located in Seneca, he and Officer Hunnicutt made a traffic stop of a vehicle in that area on November 8, 2010. The driver of the vehicle, who was pulled from the vehicle, was Robert Lee Hunter. Hunter had no license. Subsequently, all of the occupants of the vehicle were removed and patted down for the presence of drugs. During the traffic stop, Officer Crum saw a plastic bag filled with cocaine on the back seat of the vehicle. Note that appellant was seated in back behind the driver's seat. Occupant Cynthia Holden, aka Cynthia Lewis, was also seated in the back behind the passenger seat and Antonio Holden was seated on the front passenger side of the vehicle. R. 8, l. 6 – p. 14, l. 14. Later on during the booking procedure, cocaine was found in petitioner's shoe. R. 48, l. 17 – p. 53, l. 11.

Officer Hunnicutt stated that he asked Hunter about the owner of the drugs and Hunter stated that the drugs belonged to him. R. 83 lines 10-19; R. 90 lines 4-9.

State witness Cynthia Holden, a.k.a. Cynthia Lewis, testified that the drugs found on the backseat did not belong to her, but rather belonged to appellant. R. 39, l. 1 – p. 43, l. 8; R. 44, lines 21-25. Holden/Lewis added that the vehicle they were in on the day in question belonged to Cynthia Robinson. R. 45, lines 1-12.

Appellant did not testify at trial and presented no defense witnesses in the case.

At the close of the state's case, appellant moved for a directed verdict on the possession charge emanating at the traffic stop because of insufficient evidence presented on the charge. R. 98, l. 22 – p. 99, l. 20. The court denied the motion. R. 99, l. 21 – p. 100, l. 18.

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, there was no evidence presented establishing that appellant had any possessory control either actually or constructively in the cocaine found on the back seat of this vehicle. Appellant did not confess to ownership of the cocaine. This vehicle did not belong to appellant and the driver of the vehicle claimed that the drugs belonged to him. The only evidence indicating that the drugs belonged to appellant was the self-serving testimony of passenger Cynthia Holden/Lewis who answered “uh huh” when asked if the cocaine seen in the vehicle belonged to appellant. Appellant, passenger Antonio Holden and driver Robert Lee Hunter did not testify at trial. Clearly, appellant was present as a mere passenger in a car that did not even belong to him. Mere presence at the crime scene does not translate into one having the right to exercise dominion and control over any drugs via constructive possession. State v. James, 386 S.C. 689 S.E.2d 643 (2012).

Compare following cases where the defendants were found not to have been in actual or constructive possession of the drugs found at the crimes scenes. In Heath, supra, the Court held that there was insufficient evidence that the defendant, who lived with his mother at the time of the arrest, was in constructive possession of crack where the crack was found in a car washing mitt in a recycling bin outside near the back of a house owned by the defendant's mother. Compare State v Jackson, supra, where the Court held that the State's evidence was insufficient to

establish that the defendant had actual or constructive possession of the marijuana found under the center console of the vehicle where the drugs were not visible and where the defendant was merely a passenger in the vehicle who had only met the driver once at his (defendant's) grandchild's party en route to Greenville, South Carolina, to promote a music gig. Compare also, State v. Brown, 267 SC 311, 227 S.E. 2d 674 (1976), where the defendant was merely a passenger in the vehicle, who had neither ownership rights to the vehicle nor a relationship with the driver of the vehicle and could not have seen or known of the opaque bag of marijuana under the rear floorboard of the vehicle, and thus had no dominion and control over the marijuana. Compare further, State v. Hernandez 382 S.C. 620, 677 S.E.2d 603 (2009), where the Court held that the involvement of the defendants who occupied a rental moving truck following a trailer was only present because the state did not establish that they had any knowledge that drugs were in the trailer they followed and that as a result, the state's evidence of trafficking was insufficient and "merely speculation."

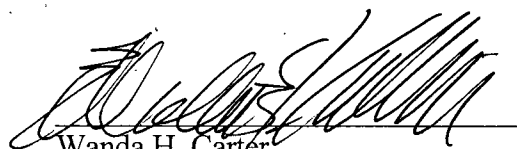
Here, the state failed to prove that appellant was in actual or constructive possession of the drugs found in the patrol car; and since possession was a material element of the crime, the conclusion is the same as reached in Heath, i.e., that the state "failed to establish an essential element of the crime charged." In reviewing a denial of a motion for a directed verdict, an appellate court must review the evidence in the light most favorable to the state, and a case can only be submitted to the jury if there is any direct or circumstantial evidence in existence that reasonably tends to prove the guilt of the accused or from which his guilty maybe fairly or logically deduced. State v. Jackson, supra. In the case at bar, the state's case was lacking in competent evidence against appellant, which meant that the trial judge erred in failing to grant appellant's motion for a directed verdict in the case. The state failed to prove every element of the offense charged as required via the Fourteenth Amendment due process clause and article 1, §3 of the South Carolina

State Constitution. See Jackson v. Virginia, 443 U.S. 307 (1979). The trial judge erred in denying appellant's motion for a direct verdict of acquittal one count of possession of cocaine against him because him.

CONCLUSION

Based on the foregoing argument, appellant requests that the Court reverse the case and remand for the issuance of a directed verdict on this charge.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

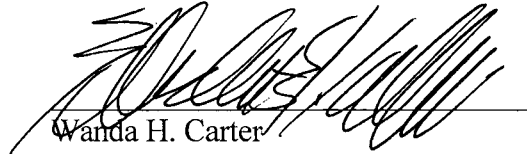
ATTORNEY FOR APPELLANT

This 31st 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."

November 22nd, 2011



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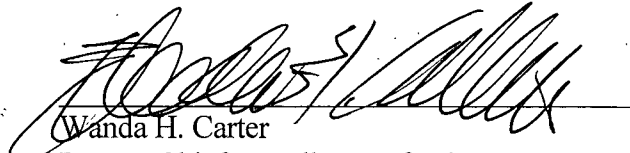
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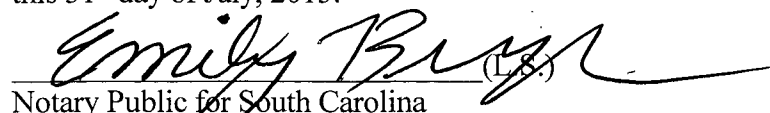
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 31st day of July, 2013.


Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 31st day of July, 2013.


(L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2022.