STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
The Honorable George C. James, Jr., Circuit Court Judge
Appellate Case No. 2012-212428

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JEFFREY DODD THOMAS,

APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL..... 1

STATEMENT OF THE CASE 2

ARGUMENT 3

CONCLUSION 6

AUTHORITIES CITED

Cases

McMillian v. State, 383 S.C. 480, 680 S.E.2d 905 (2009) 5

State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004) 3

State v. Cooper, 279 S.C. 301, 306 S.E.2d 598 (1983) 5

State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004) 6

State v. Frazier, 375 S.C. 575, 654 S.E.2d 280 (2007) 3

State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002) 3

State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) 3

Rules and Statutes

S.C. Code § 44-53-375 4

STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's directed verdict motion on the charge of manufacturing methamphetamine where Appellant's truck contained materials and equipment used to manufacture methamphetamine, an empty starter fluid container with a hole punched in the bottom which indicated it had been used in the production of methamphetamine, and also contained the finished product, methamphetamine.

STATEMENT OF THE CASE

Appellant was indicted in Lexington County in September 2011 for possession of methamphetamine, possession of Xanax, and manufacturing methamphetamine. On May 22, 2012, Appellant proceeded to trial before the Honorable George C. James, Jr., and a jury. The jury found Appellant guilty as indicted, and Judge James sentenced Appellant to concurrent sentences of three years for possession of methamphetamine, six months for possession of Xanax, and seven years, suspended to three years of active time and three years of probation, for manufacturing methamphetamine. A timely notice of appeal was served and filed.

ARGUMENT

The trial judge properly denied Appellant's directed verdict motion on the charge of manufacturing methamphetamine where Appellant's truck contained materials and equipment used to manufacture methamphetamine, an empty starter fluid container with a hole punched in the bottom which indicated it had been used in the production of methamphetamine, and also contained the finished product, methamphetamine.

In ruling on a motion for directed verdict, the trial judge must view the evidence, and all of its reasonable inferences, in the light most favorable to the State. See State v. Frazier, 375 S.C. 575, 581, 654 S.E.2d 280, 283 (2007). If the State presents direct or substantial circumstantial evidence reasonably tending to prove the guilt of the defendant, including evidence from which his guilt can be logically deduced, the defendant's directed verdict motion is properly denied. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001). The South Carolina Supreme Court has stated that the appropriate test to be applied when reviewing a directed verdict motion in a case relying solely on circumstantial evidence is as follows:

> When the state relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the circuit court is concerned with the existence or nonexistence of evidence, not with its weight. The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. However, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.

State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004) (citations omitted) (emphasis in original). On appeal from the denial of a motion for a directed verdict, the appellate court may only reverse the trial court only if there is no evidence to support the trial court's ruling. See, e.g., State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

At issue in this case is the charge of manufacturing methamphetamine. Under S.C. Code § 44-53-375(B), "[a] person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony . . . ." In Appellant's case, the solicitor agreed at trial that he was proceeding only under a theory of actual "manufacturing" under S.C. Code § 44-53-375(B), rather than distributing, dispensing, delivering, purchasing, or attempting or conspiring to manufacture, and the jury was subsequently charged with only manufacturing. (See R. p. 238, lines 1-18; p. 286-87). S.C. Code § 44-53-110 defines "manufacturing," in pertinent part, as "the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. . . ." "Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture." S.C. Code § 44-53-375(D).

In this case, Appellant's truck contained many of the materials necessary to make methamphetamine using the more abbreviated "shake and bake" method. (R. p. 72-73; p. 122-23; p. 130-35; p. 187-210). Appellant's truck also contained an empty starter fluid can with a hole punched in the bottom. (R. p. 123, lines 10-12). The methamphetamine expert testified there was no reason to punch out the bottom of a can of starter fluid other than to drain the liquid out for use in the production of methamphetamine. (R. p. 200,

lines 3-5; p. 202, lines 3-5; p. 210, lines 1-3). The expert further testified that in his opinion, "especially because of the punched out ether can," the items found in Appellant's truck were used for the production of methamphetamine. (R. p. 202, lines 1-5; p. 209, lines 16-25). Critically, Appellant's truck also contained the most telling evidence of all that Appellant had manufactured methamphetamine – the finished product, methamphetamine itself. (R. p. 163, lines 1-14).

As the solicitor pointed out below, methamphetamine does not exist unless a person makes it, and the fact that Appellant possessed the finished product - combined with the fact that he possessed many of the materials and equipment needed to make it and possessed the drained-out starter fluid can - created a reasonable inference that Appellant manufactured methamphetamine. (See R. p. 219, lines 16-20; p. 256, lines 3-15). Cf. State v. Cooper, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983) (a jury can infer that a person found in unexplained possession of recently stolen property was the thief) & McMillian v. State, 383 S.C. 480, 487-88, 680 S.E.2d 905, 908 (2009) (the unexplained breaking and entering of a dwelling at nighttime is itself evidence of intent to commit larceny). The fact that Appellant did not possess all of the materials needed to make methamphetamine *in the future* was irrelevant because the finished product - combined with the drained-out can of starter fluid and the other items found in the truck supporting that Appellant was a manufacturer of methamphetamine - indicated Appellant had *already* manufactured methamphetamine and had disposed of the leftover trash, such as the bottle used to shake the chemicals for the initial chemical conversions. (See R. p. 193-94). Accordingly, since there was sufficient evidence presented to surpass the directed verdict stage on the charge of manufacturing methamphetamine, this Court

should affirm the trial judge's denial of Appellant's directed verdict motion.[1] (See R. p. 241-42). See State v. Curtis, 356 S.C. 622, 633-34, 591 S.E.2d 600, 605 (2004) ("If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.").

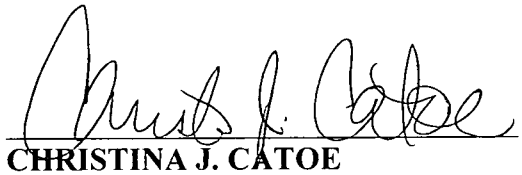
CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General



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August 12, 2013

[1] The "manufacturing liquor" cases Appellant cites are factually distinguishable and, in any event, the "overt act" requirement from those cases was met in Appellant's case since Appellant had *already completed* the manufacturing of methamphetamine as evidenced by the finished product. (See Brief of Appellant, p. 14-19).

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DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

The Respondent submits that the following should be included in the Record on Appeal:

(1) True-billed indictments;
(2) Trial Transcript p. 67-224; p. 232-315;

ALL DOCUMENTS DESIGNATED SHOULD BE REDACTED IN ACCORDANCE WITH THE SOUTH CAROLINA SUPREME COURT ORDER ON PERSONAL DATA IDENTIFIERS.

The undersigned hereby certifies this Designation contains no matter that is irrelevant to this appeal.

CHRISTINA J. CATOE

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AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Initial Brief of Respondent** and **Designation of Matter** in the above-referenced case has been served upon **Susan B. Hackett**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **12th** day of **August, 2013.**

CHRISTINA J. CATOE
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SWORN to before me this 12th day of August, 2013.

Notary Public for South Carolina.
My Commission Expires: 7/18/2017