

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Union County
John C. Hayes, III, Circuit Court Judge

RECEIVED
AUG 26 2013
SC COURT OF APPEALS

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

RANDY JARROD CROSBY,

APPELLANT,

Appellate Case No. 2011-205207

APPELLANT'S RETURN TO
MOTION TO DISMISS

The State has filed a motion to dismiss the entire appeal of Appellant Randy Jarrod Crosby on the ground that Appellant did not file a notice of appeal following the Trial Court's denial of his post-trial motion. Appellant opposes this motion and responds as follows:

On December 8, 2011, the jury returned a guilty verdict against Appellant for possession with intent to distribute crack cocaine. See Exhibit A – Excerpts of Trial Transcript, p. 346. The Trial Court sentenced Appellant to fifteen years. See Exhibit A – p. 354.

Immediately following the sentence, Appellant's trial attorney made a one sentence motion for the Trial Court to reconsider the sentence imposed upon Appellant. The Trial Court stated that he would take it under advisement. See Exhibit A – p. 361.

Appellant's trial attorney then timely filed a Notice of Appeal of the jury's verdict on December 15, 2011 pursuant to Rule 203(b)(2), SCACR which provides that "a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed." Surely when Appellant's trial counsel filed his Notice of Appeal, he realized that he was divesting the jurisdiction of the Trial Court to rule on the motion to reconsider the sentence. See Rule 205, SCACR.

On January 12, 2012, after Appellant filed his Notice of Appeal, the Trial Court then issued its order denying Appellant's motion to reconsider the sentence. Appellant did not file a Notice of Appeal of this order.

Appellant's decision not to file an appeal of the Trial Court's order denying the motion to reconsider the sentence does not require dismissal of Appellant's entire appeal. As an initial matter, Appellant notes that his trial attorney did not specify any grounds for the motion to reconsider; therefore, it is questionable whether this motion to reconsider which contained no argument or basis for it would have stayed the time to appeal.

At the most, Appellant abandoned any appeal of the order denying his motion to reconsider the sentence. In his Initial Appellant's Brief filed with this Court on April 5, 2013, Appellant raised three issues:

- I. Did the trial court err in refusing to suppress the evidence seized during the search of the vehicle in which Appellant was a passenger, when law enforcement did not have reasonable suspicion to justify the traffic stop?

- II. Did the trial court err in refusing to suppress the evidence seized during the search of the vehicle in which Appellant was a passenger, when law enforcement did not have probable cause to believe the vehicle contained evidence of criminal activity and no exigent circumstances existed to justify the warrantless search?
- III. Did the trial court err in finding a sufficient chain of custody existed to admit the evidence seized during the search of the vehicle and the drug evidence found in the police car?

None of these issues relate to the denial of the motion to reconsider the sentence. Appellant is not challenging the Trial Court's denial of the motion to reconsider the sentence. Instead, Appellant is only challenging issues relating to the admission of evidence.

Appellant appealed the jury's verdict, and the appeal is properly before this Court. To dismiss the entire appeal because Appellant did not appeal an order which he is not challenging would result in a manifest injustice. The appellate court rules do not require Appellant to appeal the denial of his post-trial motion where he is not challenging such denial.

The issues Appellant raises before this Court in the appeal have been properly and timely appealed, and Appellant therefore requests this Court to deny the State's Motion to Dismiss.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

August 26th, 2013

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF UNION)

IN THE COURT OF GENERAL SESSIONS
SIXTEENTH JUDICIAL CIRCUIT
2010-GS-44-1053, 1039, 1036

State of South Carolina)
)
)
vs.)
)
Lashad Brewton, Randy)
Crosby and Roderick Pope)

Transcript of Record
Volume III - Page 186 - 364

December 8, 2011
Union, South Carolina

B E F O R E:

The Honorable John C. Hayes, III

A P P E A R A N C E S:

John Anthony, Deputy Solicitor
Union, South Carolina

Attorney for the State

Joe St. Pierre, Esquire
Laurens, South Carolina

Attorney for the Defendant, Lashad Brewton

Dan Hill, Assistant Public Defender
York, South Carolina

Mark McKinnon, Assistant Public Defender
York, South Carolina

Attorneys for the Defendant, Randy Crosby

Doug Brannon, Esquire
Spartanburg, South Carolina

Attorney for the Defendant, Roderick Pope

SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

1 everybody for their courtesies, all counsel during the
2 course of the trial.

3 (Jury returns to the courtroom with verdict at
4 5:19. p.m.)

5 The Court - Madam forelady, I understand you've
6 reached a verdict. Hand it to the bailiff and the bailiff
7 will hand it up to me.

8 (Whereupon, verdict is handed up to the Court
9 and the Court hands the verdict to the Clerk.)

10 Clerk - In the case of Lashad Brewton, we find
11 the defendant guilty of the lesser included offense of
12 possession with intent to distribute crack cocaine. In
13 the case of Roderick Pope, we find the defendant guilty of
14 the lesser included offense of possession with intent to
15 distribute crack cocaine. In the case of Randy Crosby, we
16 find the defendant guilty of the lesser included offense
17 of possession with intent to distribute crack cocaine.

18 The Court - If this be your verdict, so say you
19 all by raising your right hand.

20 (Whereupon, all jurors affirm)

21 The Court - The record will reflect that all
22 twelve jurors raised their right hand. Anything from the
23 State before the jury's dismissed?

24 Mr. Anthony - No, sir.

25 The Court - Mr. St. Pierre?

1 Crosby realizes that. And we would just ask something
2 commensurate with his not atrocious record and his family
3 situation and as Mr. St. Pierre said, the shared
4 responsibility of this crime.

5 The Court - Anybody want to speak on his behalf?

6 Mr. McKinnon - No, Your Honor. His girlfriend
7 had to get back and get their kids from school.

8 The Court - All right. Mr. Crosby, anything you
9 want to -- Well, wait just one second. Anything you want
10 to say?

11 Mr. Crosby - I'm sorry I put y'all through all
12 this. It won't happen again.

13 The Court - All right. Sentence on Mr. Crosby
14 is fifteen years. That's suspended upon service of ten
15 years and you'll be on probation for five years with
16 substance abuse counseling and random drug and alcohol
17 testing and in addition to other fees, you owe five
18 hundred dollars for having appointed attorney. You
19 understand that?

20 Mr. Crosby - Can you say that again?

21 The Court - Fifteen years suspended upon ten
22 years and that's to be followed by five years probation
23 with substance abuse counseling and drug testing. You
24 understand that?

25 Mr. Crosby - (Indicating yes)

1 The Clerk stays for a few minutes. You stay for a minute,
2 Ms. Ballou and then after we kind of get everybody and get
3 this -- I want to look at it.

4 Mr. McKinnon - Yes, sir. I appreciate it.

5 The Court - I want to make sure I'm going on the
6 right information. All right, we'll take a break while we
7 get this together. Thank you.

8 (Recess taken)

9 The Court - I have been informed by counsel for
10 Mr. Crosby that they want to make a motion for me to
11 reconsider the sentence I imposed today on Mr. Crosby for
12 possession of crack cocaine with intent to distribute.
13 Counsel?

14 Mr. Hall - That's correct.

15 The Court - So you are moving for me to
16 reconsider the sentence imposed on ---

17 Mr. McKinnon - Yes, sir, Your Honor, we are
18 making a motion for the Court to reconsider the sentence
19 imposed upon Mr. Crosby on possession with intent to
20 distribute second offense which was fifteen year suspended
21 upon the service of ten followed by five years probation
22 and substance abuse counseling.

23 The Court - I'm going to take it under
24 advisement.

25 Mr. McKinnon - Thank you.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Union County

John C. Hayes, III, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RANDY JARROD CROSBY,

APPELLANT

CERTIFICATE OF SERVICE


I certify that a true copy of the return to the motion to dismiss in this case have been served on Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Randy Jarrod Crosby #348909, at Ridgeland Correctional Institution, PO Box 2039, Ridgeland, SC 29936, , this 26th day of August, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR RESPONDENT

SWORN TO BEFORE ME this 26th day
of August, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.