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**Jul 12 2024**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

REKEEM L. WARE,

APPELLANT

APPELLATE CASE NO. 2023-001309

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ANDERS BRIEF OF APPELLANT

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JESSICA M. SAXON  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in denying Appellant's directed verdict motion where the State failed to prove that Appellant had knowledge and constructive possession of the drugs in the floorboard of the borrowed car that he was driving?

## STATEMENT OF THE CASE

Appellant was indicted in October 2022 by the Greenwood County grand jury for driving under suspension, giving false information to law enforcement, possession with intent to distribute cocaine, and trafficking methamphetamine. R. 267-274. The State, represented by Yates Brown and Andrew Hodges, called the case to trial on July 31-August 2, 2023, before the Honorable Frank R. Addy and a jury. R. 1. Appellant was represented by Jamison Tinsley, Jr. R. 1.

Appellant was convicted as indicted for DUS, false information, and trafficking methamphetamine. He was also found guilty of the lesser included offense of simple possession of cocaine. R. 255-256. The trial judge sentenced Appellant to fifteen years incarceration on the trafficking charge and three years concurrent incarceration on the possession of cocaine. Appellant received three days of time served for DUS and false information convictions. R. 264, ll. 14-21; R. 275-282.

### **STANDARD OF REVIEW**

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Passio, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021) *quoting* State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). “A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged.” Id. “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.” State v. Passio, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021) *quoting* State v. Frazier, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010). “When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State.” Id.

## ARGUMENT

The trial court erred in denying Appellant's directed verdict motion where the State failed to prove that Appellant had knowledge and constructive possession of the drugs in the floorboard of the borrowed car that he was driving.

### **Relevant Facts**

On November 25, 2020, officer Michael Mejia was performing proactive patrol in a high crime area in Greenwood when he encountered a silver green colored Mercury sedan with a Georgia license plate. Mejia ran the license plate number and was alerted that the tag was suspended out of Georgia. Mejia requested dispatch run the license plate number. Dispatch confirmed the tag was suspended and Mejia initiated a traffic stop on the vehicle. R. 86, 1. 23-R. 89, 1. 2

The driver of the vehicle stated that he did not have a license with him and identified himself as John Martin of McCormick, South Carolina, with a date of birth of May 13, 1964. The driver was unable to provide the necessary vehicle documentation. Mejia ran the information that he was provided through the DMV database. The picture attached to the DMV record did not match the driver. Mejia, believing he had been provided with a false name, called for backup from his supervising officer, Ricky Madden. Once Madden arrived on scene the driver was removed from the car and placed in investigative detention. R. 90, 1. 22-R. 94, 1. 7.

Mejia performed a safety frisk of the driver and noted what he believed to be a wallet in the man's back right pocket. He retrieved the wallet and inside of it located a South Carolina ID card identifying the driver as Rakeem Ware, Appellant. At that point, Appellant was arrested for providing a false name to law enforcement and a search incident to arrest was performed on his person. In the watch pocket of Appellant's jeans Mejia located a small bag containing

multicolored round pills with no markings and a small bag containing a white powdered substance. A set of digital scales was removed from Appellant's front left pocket. R. 94, l. 10-R. 95, l. 17.

The officers performed a search of the vehicle that Appellant had been driving. Partially under the passenger seat, in the back floorboard underneath some items, a bag containing 176 green triangular shaped pills was located. At trial Madden confirmed that the bag of pills was not in plain sight and that they had to move the passenger seat to fully visualize the bag. R. 97, ll. 11-25; R. 141, ll. 13-17; R. 154, ll. 10-19. Forensic testing determined that the white powdered substance was cocaine weighing 8.24 grams. The triangular green pills were determined to be methamphetamine weighing 30.49 grams. R. 141, l. 3-R. 142, l. 6. Presumptive testing of the pills found in Appellant's pocket suggested they were methamphetamine however no confirmatory testing was completed on the pills. R. 142, ll. 7-25.

The vehicle Appellant had been driving that evening belonged to Ashley Miller of Washington, Georgia. R. 121, ll. 10-14. Appellant testified that Miller was the mother of his children and he had asked to borrow her car to give a friend a ride home from work. R. 198, l.10-R. 199, l. 17. Appellant stated that the cocaine and pills in his pocket were for his personal use and that he had no knowledge of the bag of pills found in the back seat floorboard. He admitted he gave his father's name and date of birth because his license was suspended, and he was high. Appellant stated he kept the scale on his person to weight out how much cocaine he was using to avoid overdosing again. He maintained that the car was not his, that he did not drive the car regularly, and that he had not looked through the car prior to borrowing it. He stated he had no idea where the insurance and registration were in the vehicle. R. 200, l. 8-R. 203, l. 13.

After the State rested, the trial judge asked, “Mr. Tinsley, I presume you move for a directed verdict motion, and of course, you renew all prior motions?” Counsel Tinsley replied in the affirmative and the trial court denied the directed verdict motion. R. 169, ll. 8-15. A short time later Counsel Tinsley placed on the record the grounds for the directed verdict motion arguing,

As far as the, number one, I would move for the directed verdict on all counts based off of the stop which I still would argue is an unconstitutional protectoral stop. And then on the trafficking, they only tested one out of a hundred and seventy-six pills and a hundred and eighty-two were initially apprehended. I don’t, you know, I don’t see how they can get to the trafficking of meth based off of one pill to get over this 28 grams. And then I would further, you know, the SLED agent specifically testified, she doesn’t know what those other hundred and seventy-five were, not to mention the 11 that were in my client’s pocket that were inconsistent with those in the back. And then I would also say that the State hasn’t met its burden of proving that he actually possessed those pills in the bag. So I just want to make sure that my record’s clear for my directed verdict all the way around and particularly on the trafficking of meth charge.

R. 171, l. 14-R. 172, l. 4. After hearing from the solicitor, the trial court again denied the directed verdict motion. R. 173, ll. 9-11. Counsel Tinsley renewed his directed verdict motion at the close of the defense case and was again denied. R. 219, ll. 18-23.

## **Discussion**

“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 circumstance which do not amount to proof.” State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). “A case should be submitted to the jury when the evidence is circumstantial ‘if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.’” State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). “Evidence must constitute positive proof of facts and

circumstances which reasonably tends to prove guilt.” Id. “Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error.” Id. at 139, 708 S.E.2d at 776-777. If the State failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court’s denial of the directed verdict motion. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013).

“The trafficking statute specifically requires a person act ‘knowingly.’ ” State v. Sanchez, 435 S.C. 468, 473, 867 S.E.2d 595, 597 (Ct. App. 2021) *citing* State v. Taylor, 323 S.C. 162, 165, 473 S.E.2d 817, 818 (Ct. App. 1996) (addressing a previous version of the trafficking statute). A “defendant’s knowledge and possession [of illegal substances] may be inferred.” Id. *citing* State v. Heath, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006). “In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially.” Id. *citing* State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009).

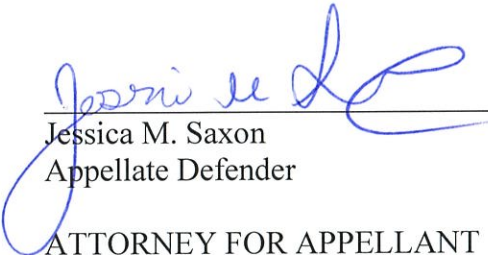
The State’s argument at trial was that because Appellant was the driver of the vehicle, he had the requisite constructive possession and knowledge of the bag of pills in the backseat floorboard. However, simply being the driver of a vehicle that he did not own or rent and did not regularly use did not establish the elements of constructive possession and knowledge in the case. The testimony revealed that Appellant had borrowed the vehicle approximately an hour before the stop. There was no evidence that Appellant regularly drove the vehicle, had personal items in the vehicle, or had any familiarity with the items in the vehicle as he was not even able to produce the insurance and registration documents. The bag of pills was not in plain sight, but underneath items and partially underneath the passenger seat. The State attempted to connect Appellant to the bag of pills in the vehicle through the pills found in his pocket because both

were methamphetamine. However, the pills in the car were uniform in color and triangular shape with distinctive markings while the pills in Appellant's pocket were multi-colored, unmarked, and round.

Being the driver of a borrowed vehicle and being a drug user is not substantial circumstantial evidence to support an inference of constructive possession and knowledge. The State was required to offer more circumstantial evidence or direct evidence that Appellant knew the bag of pills was in the car and that he had dominion and control over the disposition of the items in the car, not just access to the car.

**CONCLUSION**

Based on the foregoing argument, Appellant respectfully requests that this Court reversed his conviction and sentence for trafficking and remand the matter back to the Court of General Session of Greenwood County.

  
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Jessica M. Saxon  
Appellate Defender  
ATTORNEY FOR APPELLANT

This 12<sup>th</sup> day of July, 2024.

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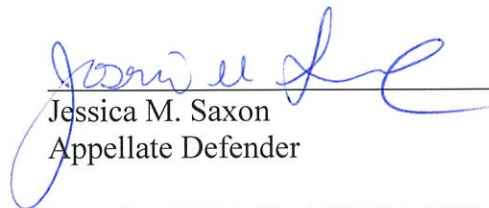
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rekeem L. Ware states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Frank R. Addy, which was held on July 31 - August 2, 2023, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

Wherefore, she asks the Court to relieve her as counsel for Rekeem L. Ware.

Respectfully Submitted,



\_\_\_\_\_  
Jessica M. Saxon  
Appellate Defender

ATTORNEY FOR APPELLANT

This 12<sup>th</sup> day of July, 2024.

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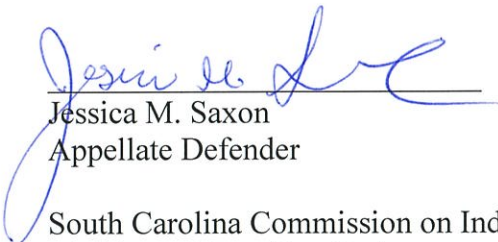
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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s): 2022-GS-24-1476, 1477, 1478, & 1479
- (2) Trial Transcript dated July 31-August 2, 2023

I certify that this designation contains no matter which is irrelevant to this appeal.



Jessica M. Saxon  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

This 12<sup>th</sup> day of July, 2024.

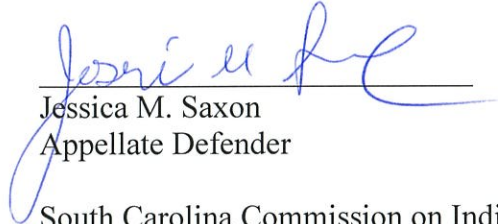
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Jessica M. Saxon  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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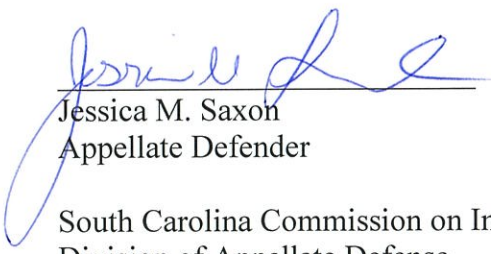
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Rekeem L. Ware, #307800, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 12<sup>th</sup> day of July, 2024.

  
Jessica M. Saxon  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

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