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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
Court Of General Sessions
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2023-000892

THE STATE,

Respondent,

v.

RODNEY DAVID RIGGINS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for directed verdict when the State produced evidence reasonably tending to prove Appellant's constructive possession by showing he was in control of the vehicle, the vehicle smelled like meth, and the vehicle also contained a syringe and torch lighter.

STATEMENT OF THE CASE

Rodney Riggins was indicted by a Pickens County Grand Jury in March 2023, for trafficking methamphetamine. In May of 2023, Riggins was also indicted for possession with intent to distribute heroin. He and his co-defendant, Jodi Tippins, proceeded to a jury trial on May 30-31, 2023, before the Honorable Perry H. Gravely. Riggins was convicted as charged and sentenced to five years' imprisonment for each count, to be served concurrently. The Court entered a directed verdict on the part of Riggins' co-defendant. This appeal follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). “An appellate court will not reverse the trial court’s decision regarding jury instructions unless the trial court abused its discretion.” Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). In ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence rather than with its weight. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998). On appeal from the denial of a directed verdict, courts view the evidence in the light most favorable to the State. Id. If any direct evidence or substantial circumstantial evidence tending to prove the accused’s guilt exists, courts must conclude the trial court properly submitted the case to the jury. State v. Dixon, 337 S.C. 455, 458, 523 S.E.2d 784, 786 (Ct. App. 1999).

STATEMENT OF FACTS

On June 7, 2020, Officer Millspaugh observed Appellant driving a white van. (Tr. May 31 p. 26-8). Appellant committed a traffic violation by failing to maintain his lane. (Tr. May 31 p. 27-8). Dispatch informed Millspaugh that the license plate was registered to a passenger truck out of Texas under the name Leslie Beauchamp. (Tr. May 31 p. 28). It was later discovered that the plate did in fact belong to the van. (Tr. May 31 p. 52-3). Subsequently, Millspaugh conducted a traffic stop. (Tr. May 31 p. 27). As is customary, Millspaugh called for a secondary unit and Officer Owens arrived at the scene shortly thereafter. (Tr. May 31 p. 86). At this time Tippins (co-defendant) was in the passenger seat. (Tr. May 31 p. 32).

At around 11:00 in the evening, Millspaugh approached the van and requested proof of registration, insurance, and Appellant's driver's license. (Tr. May 31 p. 31; 54). Appellant quickly informed Millspaugh that he was borrowing the vehicle and that it was not his. (Tr. May 31 p. 30). Appellant was unable to provide the name of the vehicle's owner; he was only able to tell the officers he knew the owner as "Pink." (Tr. May 31 p. 33). Millspaugh testified that when he first approached the vehicle Appellant was "overtly nervous." (Tr. May 31 p. 30). Appellant then informed Officer Millspaugh that his driver's license was suspended. (Tr. May 31 p. 31).

Millspaugh asked whether Appellant was intoxicated and if there was anything illegal in the vehicle. (State's Exhibit 1 at 01:00). Appellant told Millspaugh that he was not inebriated and stated that he knew of nothing illegal in the van. (State's Exhibit 1 at 01:00). Appellant did convey that he had several knives in the vehicle. (Tr. May 31 p. 32).

Appellant gave Millspaugh consent to search the vehicle. (Tr. May 31 p. 34). Officer Millspaugh noted the car was in "disarray." (Tr. May 31 p. 38). He noted that there were bags, trash, food, personal effects, and items that would usually be inside a home. (Tr. May 31 p. 38-

9). When searching the vehicle officers initially found the large knives Appellant had referenced, which were throughout the vehicle. (Tr. May 31 p. 35-6). Next, the officers found a syringe. (Tr. May 31 p. 37). While searching the vehicle Owens noted it smelled like meth. (Tr. May 31 p. 37-8). Officers then found a torch lighter. (Tr. May 31 p. 39). Lastly, officers found the bag of illegal substances. (Tr. May 31 p. 40). The bag contained over thirteen grams of methamphetamine and over two grams of heroin. (Tr. May 31 p. 46; State's Exhibit 2). The bags were found in a hidden compartment behind the radio. (Tr. May 31 p. 70-71). At this point, Appellant was arrested. (Tr. May 31 p. 41).

Officer Millspaugh's body cam footage was admitted as State's Exhibit 1. (Tr. May 31 p. 30). The dash camera footage from Millspaugh's vehicle was also admitted. (Tr. May 31 p. 79). Owens testified that he was wearing a body camera during the search. (Tr. May 31 p. 102). He testified that the police department's policy was to activate the body camera when performing an "enforcement action". (Tr. May 31 p. 102). Nonetheless, Owens' camera did not record the incident. (Tr. May 31 p. 103-4). Owens stated the cameras used at this time were "very cheap" and often did not record correctly. (Tr. May 31 p. 94-5).

At the close of the State's case, Appellant made a motion for a directed verdict. (Tr. May 31 p. 130). Appellant argued that the State did not present evidence that Appellant had constructive possession of the drugs. (Tr. May 31 p. 130). The State argued that it had presented a factual basis sufficient to survive a directed verdict motion. (Tr. May 31 p. 134-5). The court denied the motion citing State v. Stewart¹. (Tr. May 31 p. 135-6).

¹ State v. Stewart, 433 S.C. 382, 858 S.E.2d 808 (2021) (If the State presents evidence the defendant had control over the property on which drugs were located, then the trial court should deny a directed verdict motion, in prosecution for the offense of trafficking that is based on possession, or for the offense of simple possession).

ARGUMENT

The trial court did not err in denying Appellant's motion for directed verdict because the State produced evidence reasonably tending to prove Appellant's constructive possession by showing he was in control of the vehicle, the vehicle smelled like meth, and the vehicle also contained a syringe and torch lighter.

The trial court did not err in denying Appellant's motion for directed verdict because the State showed Appellant had constructive possession of the narcotics. First, the State showed Appellant told Millspaugh that he was borrowing the vehicle containing the narcotics. (Tr. May 31 p. 30). Officers also found a syringe and torch lighter in the vehicle. (Tr. May 31 p. 37-9). Millspaugh testified Appellant was "overtly nervous[,]" indicating he may have been aware of the narcotics. (Tr. May 31 p. 30). While searching the vehicle, Owens noted it smelled like meth, which strongly supported a conclusion Appellant may have likewise been aware of the smell and, thus, the presence of the illegal drugs that produced it. (Tr. May 31 p. 37-8). Considered holistically and in the light most favorable to the State, there was some substantial evidence tending to prove Appellant's guilt.

"When ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not its weight. A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. 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. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury." State v. Weston, 367 S.C. 279, 292-293, 625 S.E.2d 641, 648 (2006) (citing State v. Cherry, 361 S.C. 588, 591-592, 606 S.E.2d 475, 477-478 (2004)).

On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling.

State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

The United States Supreme Court noted the following:

[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, **and to draw reasonable inferences from basic facts to ultimate facts.**

Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis added). "When evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury." State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968).

Section 44-53-375 of the South Carolina code makes it unlawful for a person to "knowingly [be] in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine[.]" To establish constructive possession, the State must show a defendant "had dominion and control, or the right to exercise dominion and control, over the [drugs]. Constructive possession can be established by circumstantial as well as direct evidence, and possession may be shared." State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 774-75 (1981). A showing of possession requires more than simply showing presence. State v. Stanley, 365 S.C. 24, 43, 615 S.E.2d 455, 465 (Ct. App. 2005).

"In drug cases, the element of knowledge is seldom established through direct evidence but may be proven circumstantially." State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). "Knowledge can be proven by the evidence of acts, declarations, or conduct of the

accused from which the inference may be drawn that the accused knew of the existence of the prohibited substances.” Id.

In Hudson, our Supreme Court found there was sufficient evidence from which a reasonable trier of fact could conclude defendant possessed heroin. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981). Officers went to search defendant’s house pursuant to a search warrant and found the defendant’s wife by the bathroom door with bags of heroin in the toilet. Hudson, 277 S.C. 202, 284 S.E.2d 774 (1981). Officers also found syringes, rolling paper, and pipes. Id. Even though defendant was not home at the time of the search, the Hudson Court found “there was sufficient evidence from which a reasonable trier of fact could conclude beyond a reasonable doubt defendant constructively possessed heroin[.]” Hudson, 277 S.C. 203, 284 S.E.2d 775 (1981).

Also, in Davis, this Court found the trial court’s denial of defendant’s motion for directed verdict was proper. State v. Davis, 422 S.C. 472, 480, 812 S.E.2d 423, 428 (Ct. App. 2018). Defendant moved for a directed verdict on a possession with intent to distribute charge arguing that the state failed to show she had control over the drugs in her car because they found her on the roof of a home, rather than inside the vehicle. Id. The trial court denied the motion for directed verdict because the state also presented circumstantial evidence that showed the drugs were in defendant’s control because they were in a bag next to her purse in a car she conceded to driving. Id. This Court affirmed because the narcotics were in a bag in the driver’s seat of the vehicle she drove, a pipe rolled down from the roof where she was hiding, and she claimed the drugs after being arrested. Davis, 422 S.C. 484, 812 S.E.2d 430.

Other courts have reached similar conclusions. The Arkansas Court of Appeals found sufficient evidence from which a jury could convict where the defendant was in control of and

drove the vehicle containing narcotics, was suspiciously “spooked” by police presence, indicated to his partner he knew where the narcotics were hidden, and was in close proximity to the narcotics. Baker v. State, 588 S.W.3d 844, 848 (Ark. Ct. App. 2019).

Similarly, the Court of Appeals of Kentucky found no error in the trial court denying a motion for directed verdict where no cocaine was found on defendant’s person, but rather found in the kitchen and bathroom. Clay v. Commonwealth, 867 S.W.2d 200, 202 (Ky. Ct. App. 1993). The court noted that it was uncontested that defendant lived in the home and used the bathroom and kitchen where the cocaine was stored. Id.

Conversely, in Jackson, this Court found the denial of defendant’s motion for directed verdict an error. State v. Jackson, 395 S.C. 250, 717 S.E.2d 609 (Ct. App. 2011). In Jackson, the defendant was a passenger of an automobile where marijuana was found in the center console. The Jackson Court found the State failed to establish constructive possession because he was a passenger, he did not own or rent the vehicle, he had only met the driver once, and no evidence was presented showing he was nervous or made suspicious movements. Id.

Here, the court properly denied Appellant’s motion for directed verdict because the State produced evidence and testimony which reasonably tends to prove Appellant’s guilt. On the other hand, the court granted Jodi Tippins’ motion for directed verdict. (Tr. May 31 p. 141-2). The court relied on Jackson noting it was “directly on point.” (Tr. May 31 p. 142). The court distinguished Appellant from his co-defendant by noting Appellant had items in the vehicle, was driving it, and was the one who borrowed it. (Tr. May 31 p. 141-2).

The courts distinguishment was proper. First, Appellant was driving the vehicle where the narcotics were found. (Tr. May 31 p. 40). Millspaugh testified that when he first approached Appellant he was “overtly nervous.” (Tr. May 31 p. 30). Appellant borrowed the vehicle, which

he had been in control of for some time. (Tr. May 31 p. 38-9). In fact, as noted by the court, Appellant's knives were located in the car. (State's Exhibit 1 at 9:50; 10:40). Like the defendant in Hudson, Appellant had control of the area surrounding the narcotics.

The element of knowledge may be proven with circumstantial evidence, as it was here. State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). Officers also found a syringe and a torch lighter. (Tr. May 31 p. 37-9). Additionally, while searching the vehicle Owens noted it smelled like meth, indicating Appellant knew of the narcotics presence. (Tr. May 31 p. 37-8). Cf. Miller v. State, 6 S.W.3d 812, 814 (Ark. Ct. App. 1999) ("we believe that the fact that the police officer smelled marijuana upon approaching the vehicle tends to establish that appellant had knowledge of the presence of the marijuana"). See also Burwell v. United States, 901 A.2d 763, 766 (D.C. 2006) ("[t]he smell of PCP emanating from the car indicated [that] it was likely that appellants knew [that] the car contained drugs").

The State produced some evidence that Appellant had dominion and control over the narcotics by showing Appellant's dominion and control of the vehicle, the presence of an odor of methamphetamine, and the presence of drug paraphernalia. See State v. Bennett, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) ("[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury 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.'"); see also State v. Stewart, 433 S.C. 382, 389, 858 S.E.2d 808, 811 (2021) ("Under the four cases, if the State presents evidence the defendant had control over the property on which the drugs were located, then the trial court should deny a directed verdict motion"). Accordingly, the State met its burden and the motion was properly denied. Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

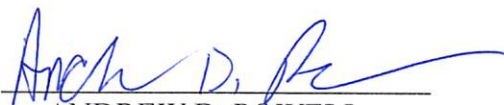
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