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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RODNEY DAVID RIGGINS,

APPELLANT

APPELLATE CASE NO. 2023-000892

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the circuit court erred in denying Appellant's motion for a directed verdict in this constructive possession case where the State failed to offer proof that Appellant had dominion and control over the borrowed van, that Appellant knew the drugs were in the van, and where the evidence only raised a suspicion of guilt?

STATEMENT OF THE CASE

Appellant was indicted by a Pickens County grand jury for one count of trafficking methamphetamine in March 2023. He was later indicted for one count of possession with intent to distribute heroin in May 2023. R. 306, 309-310. On May 30-31, 2023, the State, represented by Jacob Hofferth, called the case to trial before the Honorable Perry H. Gravely and a jury. R. 1. Appellant was tried jointly with his co-defendant, Jodi Tippins. Appellant was represented by Jeremy Crane. R. 1. The trial court entered a directed verdict on the part of Tippins. R. 250, l. 20-R. 251, l. 10. After a two-day trial Appellant was found guilty as indicted. R. 290-291. Appellant was sentenced to five years' incarceration on each charge, to be served concurrently. R. 302, ll. 16-20; R. 307-308, 311-312.

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 circuit court erred in denying Appellant's motion for a directed verdict in this constructive possession case where the State failed to offer proof that Appellant had dominion and control over the borrowed van, that Appellant knew the drugs were in the van, and where the evidence only raised a suspicion of guilt.

Relevant Facts

On June 7, 2020, Officer Noah Millspaugh of the Clemson Police Department was conducting routine traffic patrol when he encountered a white Nissan Quest van that was allegedly failing to maintain its lane after making a wide right turn. Dispatch informed Millspaugh that the license plate[1] returned to a passenger truck registered to Leslie Beauchamp[2] out of Texas. Millspaugh initiated a traffic stop of the van which was being driven by Appellant. Tippins was in the passenger seat. R. 135, ll. 3-17; R. 136, l. 23-R. 138, l. 17; R. 141, ll. 7-8.

Millspaugh approached the van and requested proof of registration, insurance, and Appellant's driver's license. While Appellant was looking through some documents, Millspaugh asked if Appellant had been drinking or using drugs that evening. He also questioned whether there was anything illegal in the van, stating he would take them to jail if he found anything in the vehicle. Appellant informed Millspaugh that he did not drink and had not been using drugs. He stated that, to his knowledge, there was nothing illegal in the van. Tippins also stated that, to her knowledge, there was nothing illegal in the van. During the initial encounter, Tippins

1 It was later discovered that the license plate was registered to the van and correctly displayed. R. 161, l. 19-R. 162, l. 7.

2 Millspaugh admitted that he did not perform any investigation into Beauchamp, the actual van owner. R. 166, l. 8-R. 167, l. 20. During sentencing, it was revealed that the owner of the vehicle had a criminal record comprised of drug offenses and was currently in federal custody on a U.S. Marshall hold. R. 299, l. 19-R. 300, l. 7.

requested to crack the passenger side window due to how hot it was that evening. State's Ex. 1 at 00:34-01:50.[3]

As the traffic stop progressed, Appellant informed Millspaugh that he did not have a valid driver's license because it was suspended, that he had been camping for about a week or two, and that he had borrowed the van from a person he knew only as "Pink". Appellant did not know the legal name of the person who owned the van. Whenever questioned, both Appellant and Tippins repeatedly stated they had no knowledge of anything illegal in the van. Appellant initially stated that if Millspaugh wanted to search the van, he had to contact the owner. However, after further conversation, Appellant gave verbal consent "on his part" for officers to search the vehicle. Officer Owens arrived on scene to assist Millspaugh in the search of the van. R. 139, l. 15-R. 143, l. 6; R. 164, l. 19-R. 165, l. 6; R. 170, ll. 15-24; R. 190, ll. 17-20.

While searching the van, Detective Owens remarked that it "smelled like burnt meth" in the vehicle. State's Ex. 1 at 11:50. During the search of the vehicle, officers located a syringe and a torch lighter in closed compartments, items they believed to be indicative of illegal drug activity. However, these items were not taken into evidence, thus no forensic testing was completed on the supposed paraphernalia. R. 147, ll. 1-9; R. 149, ll. 5-16; R. 172, l. 11-R. 174, l. 17; R. 201, l. 23-R. 202, l. 5. As the search continued, Millspaugh commented on how humid it was getting that evening. State's Ex. at 17:06.

Eventually Owens, searching an area that Millspaugh had already searched, discovered that the control panel for the air conditioning and radio lifted off. Upon lifting the panel, Owens found a small black baggie containing narcotics. Millspaugh can be heard saying to Owens that he "didn't even see it" regarding the area where Owens ultimately located the drugs. State's Ex.

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[3] State's Exhibit 1 is a redacted copy of Officer Millspaugh's body worn camera. A copy of this exhibit is on file with this Court.

1 at 19:10. No narcotics were located on Appellant's person, on Tippins, or anywhere else in the vehicle. R. 166, ll. 1-7; Re. 65, ll. 20-22; R. 185, l. 14-R. 186, l. 3. Forensic analysis determined that the bag contained a total of 13.93 grams of methamphetamine, .62 grams of heroin, and .29 grams of fentanyl. R. 236, l. 17-R. 237, l. 6.

During trial, Millspaugh stated Appellant was "overtly nervous...shaking profusely and sweating" during the traffic stop. He also testified that Tippins smoking a cigarette was a sign of anxiety or nervousness. R. 139, ll. 19-21; R. 143, ll. 12-15. On cross-examination, Millspaugh admitted that Appellant never expressly stated he had been using the van for one to two weeks. He conceded that he was assuming Appellant had the van for an extended period of time. He admitted that it was a possibility that Appellant could have borrowed the van that morning, as camping for one to two weeks did not automatically equate to Appellant being in possession of the van for one to two weeks. Millspaugh further stated that there was nothing in the van that could be used to cook methamphetamine down to inject it, and no smoking devices were located during the search. He also agreed that the drugs had been found in a hidden compartment. R. 174, ll. 12-22; R. 177, l. 3-R. 178, l. 10; R. 179, ll. 4-18.

Owens testified that he was wearing a body camera during the search. He admitted that policies of the Clemson Police Department were to activate the body camera when performing an "enforcement action" and then to download the footage after the shift. Owens stated after the search that he did not have his body camera on when he found the drugs. State's Ex. 1 at 24:21. At trial he testified that he assumed that he would have cut it on but conceded that there was not a body camera video from him performing the search. R. 211, ll. 12-24; R. 213, l. 4-R. 214, l. 1. Owens testified that he was not aware of anything that would indicate Appellant regularly drove

the van and there was nothing, outside of the fact that Appellant was driving, that evidenced Appellant's ownership of the drugs. R. 202, l. 20-R. 203, l. 9; R. 208, l. 25-R. 209, l. 11.

At the close of the State's case, Counsel Crane made a motion for a direct verdict. Counsel Crane argued that the State had not presented competent evidence that Appellant had knowledge that the drugs were in the van or that he had the right to exercise control or dominion over the drugs. He pointed out that the van was borrowed and there was no evidence that Appellant had been in the van for an extended period of time. While he conceded that Appellant's control and custody of the drugs could be established because he was driving the van, he adamantly maintained there was no competent evidence to prove that Appellant knew the drugs were in the van or that he had the intent to control the disposition of the drugs. The circuit court denied the motion based on a single sentence in State v. Stewart, 433 S.C. 382, 389, 858 S.E.2d 808, 811 (2021), which states, "if the State presents evidence the defendant had control over the property on which the drug were located, then the trial court should deny a direct verdict motion." R. 239-245.

Discussion

There are two essential elements the State must prove to convict an individual of possession with intent to distribute and trafficking. The State must prove possession – either actual or constructive – and knowledge of the narcotics. At Appellant's trial, the State failed to present competent evidence of constructive possession and knowledge. The trial court erred in denying Appellant's direct verdict.

"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).

Our Supreme Court "has repeatedly affirmed the principle that when the State fails to produce **substantial** circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011) (emphasis added). In Odems, this Court cited State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), and State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001), as "jurisprudence . . . instructive in explaining the proof required in cases built wholly on circumstantial evidence." Id. Specifically, the trial court "should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." Odems, 395 S.C. at 586, 720 S.E.2d at 50 (citation omitted). "Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." See State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (internal quotation omitted).

The State's main argument was that Appellant's control and knowledge of the drugs found in a hidden compartment in the van should be inferred merely because Appellant was the driver. However, that fact alone is not substantial circumstantial evidence amounting to proof of constructive possession. What is more telling is what the State did not prove in Appellant's case. Appellant did not own or rent the van, and the State did not produce any evidence that Appellant had a special relationship with the owner of the van whose name he did not know. The State did not produce any evidence establishing how long Appellant had been in possession of the van. Millspaugh admitted he merely assumed Appellant had been in the van for up to two weeks, and it was entirely possible that Appellant could have only had the van for a few hours. The State did not produce any evidence suggesting that Appellant was a seller or user of drugs, as there was no large sum of cash recovered, and the only "paraphernalia" located was an uncollected syringe and torch lighter. No used methamphetamine or other drug residue was found in or about the vehicle, despite Owens's claim that the van smelled like burnt methamphetamine. No narcotics were located in Appellant's belongings, on his person, or in an area that would be easily seen and accessed by him.

In State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976), Brown was tried and convicted of simple possession of marijuana and possession with intent to distribute marijuana. The car that Brown was riding in was pulled over by a police officer at approximately one in the morning. The driver exited the car and was patted down by the officer who discovered a large wad in the driver's pocket. The large wad turned out to be a roll of cash. The officer approached Brown who was still in the vehicle and detected the odor of burnt marijuana. The officer noted a large, brown, opaque garbage bag in the back seat which the driver stated was laundry. After feeling the bag, the officer questioned if it was actually laundry. The driver then admitted the

bag contained eight pounds of marijuana. Brown did not make any incriminating statements. On appeal, our Supreme Court held that the State had failed to produce evidence as to the ownership of the car or any special relationship that Brown had with the driver or the owner of the car from which his control of the car could be inferred. There was also no evidence that Brown was a seller or user of drugs or that he was even aware of the bag in the backseat of the vehicle. Additionally, although the officer had testified that he smelled burnt marijuana, no residue was found in or about the car to suggest marijuana had been used. Based on these facts the Court held that the trial court erred in failing to grant Brown's directed verdict motion because "the evidence when reviewed in the light most favorable to the State fails to make a jury issue of [Brown's] dominion and control of the marijuana, as essential element of both crimes."

In State v. Heath, the State did not dispute that the crack cocaine was found at Heath's residence but not in his actual possession. The police had obtained a warrant to search for crack in and around the house owned by Heath's mother. When the police arrived at the house to execute the warrant, Heath and his brother were outside in front of the house. Heath appeared to have just finished washing his car in front of the house. As the officers approached, Heath remained by the car in the front of the house; however, his brother immediately ran into the house and locked himself in the bathroom. After Heath's brother was restrained, the police discovered crack cocaine and approximately two thousand, five hundred dollars in cash. In addition, the officers discovered scales and a small crack rock in the house. Further, officers discovered numerous plastic baggies; allegedly the type used by crack dealers.

A police dog discovered a car-washing mitt in a recycling bin near the back door of the house containing crack cocaine. Accordingly, the issue was whether the State proved that Heath was knowingly in constructive possession of crack cocaine. The State presented no direct or

circumstantial evidence linking Heath to the crack found. As a result, the question was whether Heath had dominion and control over the property where the crack was found. It was undisputed that Heath lived in the house where the crack cocaine was found. However, the Supreme Court concluded, as a result of the fact that the home was owned by Heath's mother and not by Heath himself, that the State's evidence had arguably established only that Heath had the right to access the area where the crack was found, not actual dominion and control of the property. Where the State was not able to establish that Heath had dominion and control over the controlled substance itself, the South Carolina Supreme Court reversed Heath's conviction because the State failed to establish an essential element of the crime charged. State v. Heath, 370 S.C. 326, 328-330, 635 S.E.2d 18, 18 - 19 (2006).

Similar to Brown and Heath, the State failed to prove by substantial circumstantial evidence that Appellant was knowingly in constructive possession of the drugs found in a hidden compartment of the van. Appellant did not own the van and did not rent it; he had borrowed the van for some unknown length of time from an acquaintance he knew as "Pink." The solitary fact that Appellant was driving the van is not substantial circumstantial evidence that would support an inference of knowledge and constructive possession sufficient to survive a directed verdict motion. Much like in Heath, the State only showed that Appellant had the right to access the van, not actual dominion and control over the van, such that the drugs found in a hidden compartment could be imputed to him.

Furthermore, the State offered no evidence whatsoever that Appellant had knowledge that there were drugs hidden in the van. There was no evidence that Appellant had handled the drugs or the alleged paraphernalia that Millspaugh claimed was indicative of drug use. Appellant made no incriminating statements and flatly denied any knowledge of illegal items in the van, both

prior to and after the discovery of the hidden compartment. Even Appellant's co-defendant maintained that they had no knowledge of any drugs in the borrowed van.

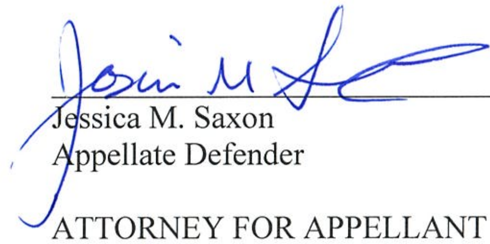
The element of knowledge can be proven by the evidence of acts, declarations, or conduct of the accused from which the inference may be drawn that the accused knew of the existence of the prohibited substances. State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). While the State may argue that Appellant's nervousness and sweating was conduct from which an inference can be drawn, the body camera video belies Millspaugh's assertion that Appellant was "overtly nervous, shaking and sweating profusely." Appellant can be seen holding numerous documents steadily in his hands. His answers to Millspaugh's questions were respectful, prompt, honest, consistent, and coherent. He was admittedly sweating, as was Owens during the search of the vehicle. Even Millspaugh commented on the humidity that night, and Tippins requested to roll down the window due to the temperature. There was no evidence of acts, declarations, or conduct from which Appellant's knowledge of the drugs in a hidden compartment could be inferred.

Appellant was the driver of a borrowed van. The State wholly failed to introduce competent evidence of any relationship between Appellant and the owner of the van such that control and dominion over the van could be imputed to Appellant. The State failed to introduce competent evidence demonstrating how long Appellant had been borrowing the van and assumed that Appellant had been in the van for weeks. The State failed to produce competent evidence of knowledge, as there were no acts, declarations, or conduct by Appellant from which knowledge could be inferred. At most, the evidence presented by the State raised a mere suspicion that Appellant was guilty of the charged crimes. The State failed to present competent, substantial circumstantial evidence of constructive possession and knowledge that pointed conclusively to

the guilt of Appellant to the exclusion of every other reasonable hypothesis, therefore it was error for the circuit court to deny Appellant's motion for a directed verdict. See State v. Odems, 395 S.C. 582, 590, 720 S.E.2d 48, 52 (2011).

CONCLUSION

Based on the forgoing argument, Appellant respectfully requests that this Court reverse his convictions and entered a directed verdict of not guilty as to both charges.



Jessica M. Saxon
Appellate Defender

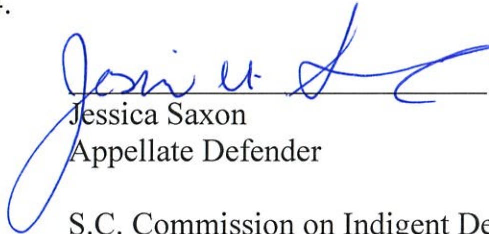
ATTORNEY FOR APPELLANT

This 14h day of October, 2024.

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 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."

October 14, 2024.



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THE STATE,

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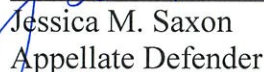
RODNEY DAVID RIGGINS,

APPELLANT

APPELLATE CASE NO. 2023-000892

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Andrew D. Powell, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 14th day of October, 2024.



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From: Leverett, Scott
Sent: Monday, October 14, 2024 2:20 PM
To: Andrew Powell
Cc: Grace Sommer; Saxon, Jessica
Subject: 2023-000892 - State v. Rodney Riggins - Final Brief of Appellant
Attachments: 2023-000892 - State v. Rodney Riggins - Final Brief of Appellant.pdf

Dear Mr. Powell,

Attached please find a copy of the Final Brief of Appellant in the above referenced case that is being filed today with the Court of Appeals.

-Scott Leverett
Admin. Asst. for Jessica Saxon
Appellate Defense