

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County
Michael G. Nettles, Circuit Court Judge

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SEP 18 2013

S.C. Supreme Court

Opinion No. 2013-UP-326 (S.C. Ct. App. filed 7/17/2013)

08-GS-43-927, 929, 931-934

THE STATE,

RESPONDENT,

V.

GREGORY WRIGHT,

PETITIONER

APPELLATE CASE NO. 2009-113766

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on August 22, 2013.

QUESTION PRESENTED

Whether the Court of Appeals erred in failing to grant a directed verdict to the drug charges when the State failed to present sufficient evidence or substantial circumstantial evidence that petitioner constructively possessed the drugs?

STATEMENT OF THE CASE

Appellant was convicted of the following charges and sentenced respectively after a jury trial held before the Honorable Michael G. Nettles on January 12-13, 2009, in Sumter County.

Trafficking in crack cocaine	25 years
Trafficking in cocaine	25 years
Possession of marijuana	30 days
Ill treatment of animals	5 years
Animal fighting	5 years
Owning animals for fighting	5 years
Possession of a firearm	5 years

Cameron B. Littlejohn was trial counsel.

On July 21, 2010, an Anders brief was submitted raising the following issue:

Whether the trial court erred in refusing to grant a directed verdict to the drug charges when the State failed to prove that appellant was in constructive possession of the drugs?

On November 4, 2011, this Court issued an order denying appellant counsel's petition to be relieved as counsel and directing the parties to brief the issue now presented. A brief of appellant was submitted on December 2, 2011. A brief of respondent was filed on July 2, 2012. Oral argument was held on April 1, 2013. The Court of Appeals issued an opinion affirming petitioner's convictions on July 17, 2013. A petition for rehearing was filed on August 1, 2013. It was denied on August 22, 2013.

This petition for writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in failing to grant a directed verdict to the drug charges because the State failed to present sufficient evidence or substantial circumstantial evidence that petitioner constructively possessed the drugs.

Petitioner was charged with having crack cocaine, cocaine, and marijuana on his property at 4915 Silo Road in Sumter County. The problem with the State's case was that the drugs were found on Frank Wilson's person, nearby his person on the ground, and in a shed he lived in on the property. Wilson rented this shed from petitioner. Petitioner lived in a double-wide home on the property with Gwen Burris. He was not at home when Wilson was caught with the drugs. (Tr. p. 67, line 24 – p. 68, line 6; tr. p. 77, line 9 – p. 79, line 1; tr. p. 81, lines 13 – 20; tr. p. 94, lines 13 – 19). Frank Wilson gave an affidavit after being arrested and admitted the drugs were his and none of the other persons charged had knowledge or anything to do with the drugs that were found. (Tr. p. 120, line 7 – p. 122, line 24). No drugs were found in the home petitioner and Gwen Burris lived in. (Tr. p. 150, lines 5 – 8).

The State even introduced a letter written by petitioner while in jail to Larry Rose, AKA Hammer, where petitioner said they were trying to give him jail for something he really had nothing to do with. (Tr. p. 117, lines 21-23).

Frank Wilson testified as a State's witness and again admitted that the drugs were his. (Tr. p. 262, line 18 – p. 264, line 3). He said he did not want anybody to get in trouble for the drugs. (Tr. p. 267, lines 23-25). He had already pled guilty to the charges. (Tr. p. 269, lines 12-19). Petitioner had no knowledge that he was doing drugs and selling drugs. (Tr. p. 272, lines 9-16).

Defense counsel moved for a directed verdict at the end of the State's case because the State failed to prove that petitioner was in constructive possession of the drugs, especially in light of the


fact that Frank Wilson admitted the drugs were his. That motion was denied. (Tr. p. 274, line 16 – p. 279, line 7).

The directed verdict issue was raised on appeal. The Court of Appeals cited in State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981) for the proposition that “where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury.” But as noted above, the contraband was found under the renter’s (Frank Wilson’s) dominion and control, not petitioner’s. A landlord is not responsible for the drugs a renter possesses. Also, in Hudson, that case dealt with a husband and wife who lived in the same house. That is not the situation in this case. In this case, the “evidence does not constitute substantial circumstantial evidence of knowledge.” State v. Hernandez, 382 S.C. 620, 625, 677 S.E.2d 603, 605 (2009). There was no dominion and control by petitioner and no knowledge was shown. “Mere presence is insufficient to prove possession.” State v. Heath, 370 S.C. 326, 635 S.E.2d 18 (2006), citing State v. Tabory, 260 S.C. 355, 196 S.E.2d 111 (1973).

CONCLUSION

Petitioner's writ should be granted.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER.

This 18th day of September, 2013

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Sumter County
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CERTIFICATE OF SERVICE

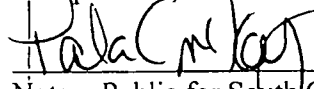
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and the S.C. Court of Appeals, 1015 Sumter Street, Columbia, SC 29201, this 18th day of September, 2013.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 18th day
of September, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022