STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

Opinion No. 2025-UP-372 (submitted October 23, 2025 – filed November 5, 2025)

THE STATE,

RESPONDENT,

V.

RODNEY DAVID RIGGINS,

PETITIONER

APPELLATE CASE NO. 2023-000892

PETITION FOR REHEARING

On November 5, 2025, this Court affirmed the trial court's denial of Petitioner's motion for a directed verdict finding the evidence, when viewed in the light most favorable to the state, showed Petitioner had constructive possession of the drugs found in the van. State v. Riggins, Op. No. 2025-UP-372 (S.C. Ct. App. filed November 5, 2025). This Court, much like the trial court, relied primarily upon State v. Stewart, 433 S.C. 382, 389, 858 S.E.2d 808, 811 (2021), which reads "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." Pursuant to

Rule 221(a), SCACR, Petitioner respectfully requests this Court rehear the matter to consider significant points overlooked and/or misapprehended by this Court as discussed below.

In State v. Stewart, 433 S.C. 382, 858 S.E.2d 808 (2021), a confidential informant purchased heroin from Stewart at his home with five marked $20 bills. A search warrant was obtained for Stewart's home based on the sale. A large plastic basket containing 23.83 grams of heroin, fifty-six (56) oxycodone tablets, a digital scale with powdery residue on it, and $2,730 in cash was located on top of the refrigerator. Stewart was sleeping on the couch when officers entered to perform the search and requested permission to put his pants on. An officer searched the pants locating an additional $1,173 – including the five marked $20 bills – in one of the pants pockets. Id. at 385, 858 S.E.2d at 809.

On appeal, our Supreme Court reviewed the propriety of the trial court's constructive possession definition and explanation of the inference of knowledge and possession. In addition to charging the jury that the defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control, the trial court had charged the jury that "[t]o prove possession, ... the State must prove beyond a reasonable doubt the defendant had knowledge of, power over, and the intent to control the disposition or use of the drugs involved....Constructive possession means that the defendant had dominion and control or the right to exercise dominion and control over either the drugs itself or the property upon which the drugs were found." In its discussion on the propriety of the constructive possession charge the Court stated:

> If we considered the statement only in isolation as a complete definition of constructive possession, the statement would be problematic. The primary problem would be that the statement ignores the second element we described above. We are particularly concerned with the language "the property upon which the drugs were found." 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. But, the mere existence of evidence the defendant had control over the property does not equate to a finding of constructive possession. It remains the burden of the State to convince the jury the defendant had the requisite knowledge and intent.

Id. at 388-89, 858 S.E.2d at 811. The Court ultimately held that it was improper for the trial court to instruct the jury that it may infer knowledge and possession of drugs found on property under the defendant's control.

Stewart is highly distinguishable from Petitioner's case. First, the property at issue was Stewart's own home not a borrowed vehicle. Second, the narcotics were found in common area of Stewart's home, out in the open, as opposed to inside of a hidden compartment in a vehicle. Third, the state presented other evidence of knowledge and an intent to control the drugs based on the prior sale by Stewart to a confidential informant. Finally, when taken in context, the statement from Stewart is arguably *dicta* and should not be relied upon to affirm Petitioner's conviction when other cases dealing with direct verdict motions make clear that "[p]ossession requires more than mere presence. The State must show the defendant had dominion or control *over the thing* allegedly possessed or had the right to exercise dominion or control over it." State v. Muhammed, 338 S.C. 22, 27, 524 S.E.2d 637, 639 (Ct.App.1999) (emphasis added). Further, as the Supreme Court set out in State v. Hudson, "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." 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981) (emphasis added). Here, the fact that Petitioner was the driver, without more, is not sufficient to carry the case to the jury.

To survive a motion for a directed verdict, the state must present evidence of each element of the charged offense. In Petitioner's case that required showing 1) constructive possession by proving that Petitioner had the right or power to exercise control over the drugs, 2) that Petitioner had knowledge of the presence of the drugs, and 3) the intent to control their disposition or use. Stewart, 433 S.C. at 387, 858 S.E.2d at 810. The state did not meet this burden during Petitioner's trial, as it failed to establish that Petitioner had any right or power to exercise control over the drugs discovered in a secret compartment of a borrowed vehicle. Further, the state offered no evidence as to knowledge of the drugs or the intent to control the drugs.

Petitioner neither owned nor rented the van, and the state did not produce any evidence that Petitioner 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 Petitioner had been in possession of the van. The arresting officer admitted he merely assumed Petitioner had been in the van for up to two weeks, and it was entirely possible that Petitioner could have only had the van for a few hours. The state did not produce any evidence suggesting that Petitioner 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 – two items that have ordinary, non-criminal, every day uses. No used methamphetamine or other drug residue was found in or about the vehicle, despite an officer's claim that the van smelled like burnt methamphetamine.[1] No narcotics were discovered in Petitioner's belongings, on his person, or in an area that would be easily seen and

[1] Respondent places stock in the "smell of burnt methamphetamine." At trial, the officer testified that burnt methamphetamine smelled like cat urine. It is equally plausible that the smell was, in fact, cat urine as there was no evidence discovered or collected to indicate methamphetamine had been consumed in the vehicle by Petitioner or his co-defendant.

accessed by him. Petitioner 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.

The trial court granted a directed verdict for Petitioner's co-defendant relying on State v. Brown 267 S.C. 311, 227 S.E.2d 674 (1976). The only distinguishing fact between Petitioner and the defendant in Brown or Petitioner's co-defendant was that Petitioner was driving the van. There was no other evidence presented to show constructive possession, knowledge, and an intent to control the distribution of the narcotics found in a hidden compartment of a van not owned by Petitioner nor driven by him for any set amount of time. The evidence adduced at trial raised nothing more than a mere suspicions that Petitioner was guilty of trafficking and possession with intent to distribute. This Court should find it was error for the trial court to deny the motion for a directed verdict.

Jessica M. Saxon
Appellate Defender

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PO Box 11589
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ATTORNEY FOR PETITIONER

This 20th day of November, 2025.

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Nov 20 2025
SC Court of Appeals

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Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

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V.

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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 Petition for Rehearing 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 Rodney David Riggins, #315504, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 20th day of November, 2025.

Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

Warren, Kaylynn

From: Warren, Kaylynn
Sent: Thursday, November 20, 2025 11:36 AM
To: Mark Farthing
Cc: Saxon, Jessica; Caroline Collins
Subject: 2023-000892 The State v. Rodney David Riggins
Attachments: 2023-000892 The State v. Rodney David Riggins Petition for Rehearing.pdf

Good Morning,

Attached for service in the above-referenced case is the Petition for Rehearing which will be filed today, November 20, 2025, with the Court of Appeals via email filing.

Respectfully,
Kaylynn

Kaylynn Warren
Administrative Assistant
South Carolina Commission on Indigent Defense
Division of Appellate Defense
(803) 734-1330