

State Of South Carolina
In The Court Of Appeals

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SC Court of Appeals

Appeal from York County
Honorable Daniel D. Hall, Circuit Judge

The State,

Respondent,

v.

Jacob D. Hall,

Appellant.

Appellant Case No. 2024-000266

Pro Se Anders Brief Of Appellant

Jacob D. Hall, 374446

PRO SE

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Trial judge erred in denying Appellant's motion for directed verdict of acquittal on the charges of trafficking in methamphetamine and felony possession of a firearm by a person convicted of a violent crime, where the state failed to present sufficient evidence that Appellant was in actual or constructive possession of the drugs and firearms which are essential elements of the crime.

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Trial judge abused his discretion which was not harmless in allowing officer to "speculate" over trial counsel's objection that Facebook Messenger text from Appellant's mother about "three grown men" that lived with her, that she was possibly referring to Appellant as being one of the "three grown men" that lived with her.

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Statement of Issues on Appeal

Trial judge erred in denying Appellant's motion for directed verdict of acquittal on the charges of trafficking in methamphetamine and felony possession of a firearm by a person convicted of a violent crime, where the State failed to present sufficient evidence that Appellant was in actual or constructive possession of the drugs and firearms which are essential elements of the crime.

Trial judge abused his discretion which was not harmless in allowing officer to "speculate" over trial counsel's objection that Facebook Messenger text from Appellant's mother about "three grown men" that lived with her, that she was possibly referring to Appellant as being one of the "three grown men" that lived with her.

Statement Of The Case

Appellant Jacob D. Hall was convicted of trafficking in methamphetamine (100 grams or more) and felony possession of a firearm by a person convicted of a violent crime per jury trial held during the February 2024 term of the York County General Sessions Court before Judge Daniel D. Hall. Appellant was sentenced to an aggregate thirty-year prison term. Attorney Lir Derieg represented appellant at trial, and Assistant Solicitors Leslie Robinson and Chris Epting prosecuted the case.

Appellant appealed. This Pro se Anders Brief follows.

Statement Of Review

A defendant is entitled to a directed verdict when the State fails to present evidence of the offense charged. State v. McHoney, 344 S.C. 85 (2001); State v. Heath, 370 S.C. 326 (2006). In determining whether the trial court erred in denying a motion for directed verdict, we must view the evidence in the light most favorable to State. State v. Ballenger, 322 S.C. 196 (1996), State v. Brown, 267 S.C. 311 (1976).

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. State v. Pagan, 369 S.C. 201 (2006). State v. Ostrowski, 435 S.C. 364 (2021).

In Anders v. California, 386 U.S. 738 (1967), the United States Supreme Court established that the defendant must be given time to respond and to raise any additional points after his attorney submits the Anders brief. The court then is obligated to conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous." After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant "the assistance of counsel to argue the appeal." State v. McKennedy, 348 S.C. 270 (2002).

Ground 1

Trial judge erred in denying Appellant's motion for directed verdict of acquittal on the charges of trafficking in methamphetamine and felony possession of a firearm by a person convicted of a violent crime, where the state failed to present sufficient evidence that Appellant was in actual or constructive possession of the drugs and firearms which are essential elements of the crime.

Statement of Facts

On February 24, 2022, several York County police officers were dispatched to Appellant's mother's home in response to a call requesting a welfare check because children were housed therein. R. 136, 1-p. 137, 1-10. The call requesting the welfare check resulted from Appellant's Ex-wife, Kendal Harris, who at the time lived at 1824 Indian Trail, and had gotten into an argument with her ex-boyfriend and ended up staying with Appellant's mother, along with her children. As a result of the welfare check, police found guns and methamphetamine in the upper room, in two safes, one of which was locked, where Kendal Harris slept with her child. R. 189, L16-p. 201, L7-R. 343, L16-p. 262, L6; R. 267, L23-p. 275.

Subsequently, although Appellant was not living with his mother, nor was he present at the time of the incident, and despite the fact that Appellant's mother, his Step Father, Jimmy; Brother, Levi; Ex-wife, Kendal Harris; and Michael Garrett lived at the resident, Appellant was the only person arrested and charged with the drugs and firearms. At trial, trial Counsel moved for a directed motion for acquittal on the grounds that the prosecution failed to prove that Appellant was in constructive possession of the drugs and firearms. Trial judge denied Appellant's motion directed verdict and trial counsel renewed his objections. R. 443, L4-449, L1.

Discussion

At trial, the State did not allege that Appellant was in "actual" possession of the guns and drugs found at his mother's house, but that Appellant was in "constructive" possession of the guns and drugs. However, the State failed to prove the essential elements of the crimes charged as set forth in S.C. Code 1976 § 44-53-375 (c). In order to prove constructive possession, the, "State must show a defendant had dominion and control over the illegal substance." See: State v. Heath, 370 S.C. 326 (2006); State v. Jackson, 395 S.C. 250 (2011).

At trial, the State's entire case rested solely on inadmissible hearsay evidence, which consisted of

hypothetical questions and testimonies from police officers who kept referring to the room where the guns and drugs were found as "Jacob's room" without any foundation in support. The State also presented Facebook Messenger text and post alleging that they were made by Appellant, that did not prove any elements of "constructive possession," nor were the text and post directly connected to the incident that occurred on February 24 2022. The State then used this inadmissible hearsay evidence to merely conjecture and speculate to the jury that Appellant was guilty. State v. Ballenger, 322 S.C. 196 (1996), "Motion for directed verdict should be granted when jury would be speculating as to accused's guilt, or where evidence is sufficient only to raise strong suspicion of guilt." State v. Ostrowski, 435 S.C. 364 (2021), "The State asserts that text messages prove the Appellant's identity as the owner of methamphetamine. However, nowhere does the State cite any specific facts or evidence offered at trial that illustrate how the text messages - even if they do prove a drug trafficking scheme - connect Appellant to the "specific" drug at issue in this case." (See Facebook Messenger text and post testimonies. R. 343-p. 407, L1-4)

Insufficient Evidence of Constructive Possession

Testimony of Kendal Harris (Appellant's ex-wife) R. 151,

L17-152, L1-19.

17. Q Okay - On cross, the -- you were -- I believe you; 18. Stated that Jacob came and went from that house sometimes? 19. A Yes, sir.

R. 152, L3-19

3. Q When Jacob came and went from that house sometimes, do 4. you know if he had a room there?

5. A No, sir, not at the time, he did not. He was not 6. living there.

7. Q Do you know if he ever stayed the night there? 8. A It had been a while.

9. Q And when he did stay the night there, do you know 10. which room he stayed in? 11. A It

varied from room to room. It just depended, 12.

because people came and go in that room and in the house 13. so he didn't have a designated

room of his own. 14. Q And you said that multiple people came and went from 15. that specific room?

16. A Yes, sir. 17. Q And you are referring to the room that you stayed in 18. that night? 19.

A Yes, sir.

Appellant contends that the trial judge denied his motion to suppress the drugs and guns found during the search, which was illegal on the grounds that: "One, the Defense, through their one witness, indicates that he did not live in the house and had not lived in house. And so, there's the whole issue of what

his expectation of privacy in the place that he claims he didn't live in." R. 163, L20-p. 164, L1-12.

The trial record shows that the trial judge considered Kendal Harris's testimony during the suppression hearing that Appellant "did not live in the house and had not lived in house," as grounds for denying the motion to suppress. However, the trial judge did not consider Kendal Harris's testimony that Appellant "did not" and "had not lived in the house," and further testimony from Harris that multiple people came and went from the room and house where the guns and drugs were found in considering Appellant's motion for a directed verdict on the grounds that the State failed to prove "constructive possession," that Appellant had dominion and control over the room and the drugs and guns found in the room.

At trial, on cross-examination, trial counsel asked Deputy Sheriff, Joshua Hines: 6. Q When you went into that room, did you it appear to you that there was anything preventing free access into that room from anybody that was inside that house 14. A "No, there was nothing that restricted anyone from going in and out." R. 390, L6-19

At trial, on cross-examination, Lieutenant Nicholas Schifferle testified that a lower part of a gun was found in Appellant's Brother, Levi's' room, in his

drawer. 13. Q Wasn't a lower found in Levi Bacot's room in a drawer? 14. A Yes, there was. R. 264, L13-p. 265, L1-5.

Lieutenant Schifferle also testified that "all" of the items -- the ammunition, guns, safe, things with Appellant's name on it -- none of them had Appellant's fingerprints or DNA on them. R. 265, L6-12. See also Sheriff Deputy Hines testimony. R. 370, L11-371, L1-25.

Appellant contends that the State presented pictures of Appellant's "alleged" Facebook Messenger page of a hand holding what the State "alleges" without any proof in support thereof to be methamphetamine, in an attempt to misled the jury that: 1. Appellant was the one holding the "alleged" drugs; and 2. that the "alleged" drugs were the same drugs seized from Appellant's mother's house on February 24, 2022. R. 357, L25-p. 358, L1-8.

However, on cross-examination trial counsel brought out the fact that the pictures showing the hand holding the "alleged" drugs: 1. did not indicate when the picture was taken; and most importantly 2. the "identity" of the person holding the "alleged" drugs. R. 391, L16-24.

In one of the Facebook Messenger Text, by Appellant's mother, in which she was asking Appellant for help with her living conditions indicating that:

"three grown men lived in this house," and none of them were helping her. R. 387, L1-p. 388, L1-2.

Appellant contends that the record proves that these "three grown men" that lived with Appellant's mother was Jimmy, Appellant's Stepfather, Levi, Appellant's Brother, and Michael Garrett, not Appellant.

Appellant contends that it was also revealed at trial through cross-examination of Deputy Sheriff Joshua Hines that the messages presented by the State from Appellant's "alleged" Facebook Messenger page proved that at least two people believed that someone other than Appellant had access to this Facebook Messenger page and was pretending to be Appellant. R. 391, L12-p. 392, L1-3; See also R. 347, L16-21.

Safe Where Drugs And Guns Were Found

Appellant contends that evidence was presented at trial that the locked safe where drugs and guns were found had been broken into and as a result the padlock key entry was broken. R. 271, L7-12. Investigator Marschal Martens testified that the safe also had a number code pad to enter the safe and they asked Appellant's Ex-wife, Kendal Harris if she knew the codes for the safe and she provided them with codes but the codes did not work.

R. 272, L2-17.

Appellant contends that this evidence proves that:

1. The fact that Kendal Harris provided codes for the police to enter the safe, it's highly likely that she had access to the safe at some point. Appellant contends that the codes Kendal Harris provided could have been correct, but it is possible that when the keypad was broken, this could have also affected the number code pad causing it to also be dysfunctional;
2. Someone had broken into the safe, and the locking mechanisms were broke. Therefore, it could no longer be considered as a "safe" to "secure" anything or keep anyone out of, but a box that whoever broke into it knew how to get into it anytime they wanted and probably anyone else.

The State presented evidence that Appellant's social security card was found in the safe as evidence that Appellant had dominion and control over the safe.

However, it's normal that house holds have "family" safes where they store personal items such as their kids social security cards. Record from the trial

proves that there were also old Coca Cola bottles from the 60's found in the safe. R. 304, L10-15.

This evidence proves that this safe was a "family" safe that was used by the family to store valuables, and at some point became a "broken box" that anyone who had access to the room also had access to the safe and the contents inside. (Note: The State presented absolutely no evidence at trial that Appellant had keys or codes to the locked safe where the guns and drugs were found.)

Appellant contends that it is also normal that house holds that have a "family safe", more than one person in the family has codes or keys to the safe. However, the trial record proves that officers admitted that at no time did they ask Levi, Appellant's Brother, Jimmy, or Appellant's mother whether they had codes or knew how to access the safe.

R. 394, L 11-18; R. 405, L 15-20.

Law / Analysis

A defendant is entitled to a directed verdict when the State fails to present evidence of the offense charged. State v. McHoney, 344 S.C. 85 (2001). In determining whether the trial court erred in denying a motion for directed verdict, we must view the evidence in the light most favorable to State. State v. Ballenger, 322 S.C. 196 (1996). State v. Brown, 267 S.C. 311 (1976).

In State v. Heath, 370 S.C. 326 (2006), The South Carolina Supreme Court ruled that: "Evidence was insufficient to establish that defendant was in constructive possession of crack cocaine; crack cocaine was found in car-washing mitt in outside recycling bin near back door of home own by defendant's mother, there was no direct circumstantial evidence that linked defendant to crack cocaine, and State presented no evidence that defendant could exercised dominion and control over area where crack cocaine was

found."

Appellant contends that in *State v. Heath*, Appellant, Ted Lee Heath actually lived with his mother. When police arrived with a warrant to search for crack "in and around" the house, Appellant and his brother was outside and appeared to have just finished washing his car in front of the house. Appellant's brother ran into the house and locked himself in the bathroom. Police discovered crack, money, scales, and plastic baggies. A police dog discovered a car-washing mitt in a recycling bin near the back door of the house containing 43.48 grams of crack cocaine. Appellant was charged with the crack found in the recycling bin, tried, and convicted of trafficking crack cocaine, and sentenced to 25 years imprisonment, and Appellant appealed.

Appellant contends that one could argue that the evidence and circumstances surrounding Heath's case infers strong guilt compared his case. Yet, The Supreme Court, Tolal, C.J., held: "We hold that the State failed to present evidence that Appellant could exercise dominion and control over the area where the crack was found. Appellant lived in the home where the crack was found. However, the home is owned by Appellant's mother. As a result, it is arguable that Appellant merely had a right to access the area where the crack was found, not actual dominion and control of the property." See *U.S. v. Blue*, 808 F.3d 226 (2015, 4th Cir.), "the fact that Blue possessed a key to the Apartment, entered the apartment building containing the Apartment on July 13, 2011, stayed five minutes, and exited with a sandwich-

sized plastic container in his hand, standing alone, is insufficient evidence to establish his constructive possession of the heroin found in the footstool in the front bedroom of the Apartment." Goldsmith v. Witkowski, 981 F.2d 697 (1992, 4th Cir.), "Evidence was constitutionally insufficient to support finding that defendant had dominion and control over marijuana or cocaine found in apartment which was not defendant's residence as required for finding that defendant had possession of either drug and, thus, evidence was insufficient to support convictions under South Carolina law for possession with intent to distribute cocaine and marijuana, despite fact that defendant was alone in apartment except for small child at time of officers' entry; State presented only evidence of accused sitting at table laden with narcotics and narcotic paraphernalia in apartment where other drugs and paraphernalia were later discovered which, at best, showed defendant's presence in unknown person's apartment and his "knowledge" of drugs and drug paraphernalia in apartment."

Appellant contends that in his case, the State made arguments against granting his motion for directed verdict on the grounds that: "And the State has presented evidence that the defendant had knowledge of these items and the intent to exercise dominion and control over them." R. 444, L 14-17. Appellant counter argued: "In the arguments from the State, you heard knowledge and intent. You didn't hear any actual possession... or constructive possession." R. 245, L 7-24.

In viewing the evidence in the light most favorable to the State. Trial judge erred in denying Appellant's motion for directed verdict of acquittal, where State failed to present sufficient evidence that Appellant was in actual or constructive possession of the drugs and guns found at his mother's resident.

For the foregoing reasons Appellant's conviction should be vacated.

Ground 2

Trial judge abused his discretion which was not harmless in allowing officer to "speculate" over trial counsel's objections that Facebook Messenger text from Appellant's mother about "three grown men" that lived with her, that she was possibly referring to Appellant as being one of the "three grown men" that lived with her.

Statement of Facts

At trial, the State elicited testimony from Deputy Sheriff Joshua Hines: 2. Q I believe there was testimony about three grown men in 3. that house, and you testified that that occurred -- those 4. messages were in late January; correct? 9. Q It is possible that three grown men refers to her 10. husband, Jimmy, Levi, and the defendant? 11. Mr. Derieg: I'm going to object to

Speculation. 12. Ms. Robinson: He asked the question.

13. The Court: I'll overrule the objection. . . . 17. A Yes, ma'am.
R. 400, L2-p. 401, L1-5.

Appellant contends that although trial counsel initially brought up the Facebook Messenger text by Appellant's mother from evidence presented by State, and asked the question: 10. Q And then, the message that you weren't asked about 11. yesterday, read that -- that -- that next message. 12. A Yes, sir. It states, three grown men live in this 13. house and cannot do -- and cannot do a kitchen til I can 14. fix Jimmy -- Jimmy some grits and eggs. I'm getting sick. . . . 17. Q And so, three grown men being her husband, her son,¹⁶ Levi, and Michael Garrett? 19. A I'm not sure. 20. Q Well, you were in the house. Those three men had 21. lived in that house, right? 22. A Yes, sir.
R. 387, L10-22.

Trial counsel's question about the "three grown men" in reference to the text messages were based on the "foundation" of the facts from the trial record, which proves that the evidence presented by the State only showed that on February 24, 2022 when police officers searched and found drugs and guns in Appellant's mother's house; Jimmy, Michael Garrett, and Kendal Harris was present and although Levi was not present, officer's admitted that they knew he was also a resident.

However, the state presented no evidence at trial that proved that Appellant lived with his mother which provide a foundation for the trial judge to allow such testimony that Appellant could possibly be one of the

"three grown men" spoken about in Appellant's mother's text that lived with her.

Discussion

Appellant contends that it is crucial to remind the Court what was at the heart of Appellant's trial on trafficking methamphetamine and felony possession of a firearm by a person convicted of a violent crime, was the allegations that Appellant was in "constructive possession" of the drugs and guns found at his mother's house.

Appellant contends that: 1. The Facebook Messenger text were hearsay; 2. To allow officer to "speculate" that Appellant's mother could have been possibly referring to Appellant as one of the "three grown men" that lived with her, was used as "truth of the matter" to identify Appellant as a resident of his mother's house and was highly prejudicial and not harmless; 3. In light of the fact that the State had to prove beyond a reasonable doubt that Appellant had "dominion and control" over his mother's house, the room where the guns and drugs were found, and the drugs and guns; such "speculations" that identified Appellant as a resident of his mother's house lessened the State's burden of proof and so infected Appellant's trial as to deny him due process.

Law / Analysis

The State's argument against Appellant's objection to Officer Hines' speculation testimony that Appellant's mother's text about "three grown men" could have been possibly referring to Appellant as one of the "three grown men" that lived with her, that: "He asked the question," and open the door for the State to elicit such testimony to contest trial counsel's question as to whether text referred Jimmy, Levi, and Michael Garrett was improper because: 1. Defense's question was based on a foundation of facts of the trial record, and Officer Hines' statement was based on "pure speculation"; 2. Whether Appellant lived with his mother or not was not crucial to the State's case in proving "constructive possession," and therefore, such speculation was improper, and not harmless.

In State v. Ostowski, 435 S.C. 364 (2020), The Court of Appeals of South Carolina held that: "First, the State argues that Appellant invited a reply and opened the door for the State to admit his text messages based on his assertion in his opening statement that the methamphetamine belonged to another specific person." We disagree. . . . the defense's argument that Appellant was not actively involved in the distribution of methamphetamine did not by itself open the door for the State to introduce the contested evidence if it would otherwise be improper; investigator's testimony

about the meaning of certain code words in the drug trade and his characterization of text messages sent or received by phone linked to defendant was inadmissible, in prosecution for trafficking methamphetamine and weapons offenses."

Appellant contends that trial judge's decision to allow officer to "speculate" over trial counsel's objection that Facebook Messenger text from Appellant's mother about "three grown men" that lived with her, that she was possibly referring to Appellant as being one of the "three grown men" that lived with her, so infected Applicant's trial with unfairness as to deny him due process.

For the foregoing reasons Appellant's conviction should be vacated.

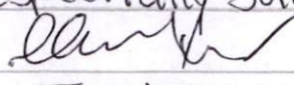
Conclusion

Appellant respectfully request that this Honorable Court:

1. Recognize that the issues raised in Appellant's Prose Anders Brief are meritorious and non-frivolous grounds for appeal
2. Find that Appellate Counsel's filing of an Anders Brief under these circumstances violated Appellant's Sixth Amendment right to counsel at a critical stage and Fourteenth Amendment right to due process.

3. Conduct an independent evaluation of the entire record, in compliance with Anders v. California, focusing particularly on the evidence presented in this brief.
4. Vacate the Anders Brief filed by Appellate Counsel.
5. Appoint new, independent counsel to represent Appellant.
6. Order new counsel to file a full merits brief on the issues identified herein, and any other meritorious issues they may identify, and conduct a full and fair adjudication on the merits.

Date November 20th 2025

Respectfully submitted,
S, 

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