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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal from Pickens County
Honorable Perry H. Gravely, Circuit Court Judge

Opinion No. 2025-UP-372 (S.C. Ct. App. Filed November 5, 2025)

Lower Court Case Nos. 2023-GS-39-00604, 2023-GS-39-00839

THE STATE,

RESPONDENT,

V.

RODNEY DAVID RIGGINS,

PETITIONER

APPELLATE CASE NO. 2026-000107

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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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 December 18, 2025.

QUESTION PRESENTED

Whether the Court of Appeals erred in finding the trial court properly denied Petitioner's motion for a directed verdict in this constructive possession case where the state failed to offer proof that Petitioner had dominion and control over the borrowed van, that Petitioner had knowledge of drugs were in the van, and where the evidence only raised a suspicion of guilt?

STATEMENT OF THE CASE

Petitioner 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; R. 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. Petitioner was tried jointly with his co-defendant, Jodi Tippins. Petitioner was represented by Jeremy Crane. R. 1. The trial court entered a directed verdict on the part of Tippins. R. 250, l. 20 – 251, l. 10. After a two-day trial, Petitioner was found guilty as indicted. R. 290-291. Petitioner was sentenced to five years' incarceration on each charge, to be served concurrently. R. 302, ll. 16-20; R. 307 – 308; R. 311 – 312.

Petitioner timely appealed his convictions and sentences. Final briefing was completed in October 2024. The case was decided without oral argument on November 5, 2025. A petition for rehearing was filed on November 11, 2025, and denied on December 18, 2025. This petition for a writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in finding the trial court properly denied Petitioner's motion for a directed verdict in this constructive possession case where the State failed to offer proof that Petitioner had dominion and control over the borrowed van, that Petitioner 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 Petitioner. Tippins was seated in the passenger seat. R. 135, ll. 3-17; R. 136, l. 23 – 138, l. 17; R. 141, ll. 7-8.

Millspaugh approached the van and requested proof of registration, insurance, and Petitioner's driver's license. While Petitioner was looking through some documents, Millspaugh asked if Petitioner 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. Petitioner 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

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

2 Millspaugh admitted that he did not perform any investigation into Beauchamp, the actual van owner. R. 166, l. 8 – 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 – 300, l. 7.

her knowledge, there was nothing illegal in the van. During the initial encounter, Tippins 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, Petitioner 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". Petitioner did not know the legal name of the person who owned the van. Whenever questioned, both Petitioner and Tippins repeatedly stated they had no knowledge of anything illegal in the van. Petitioner initially stated that if Millspaugh wanted to search the van, he had to contact the owner. However, after further conversation, Petitioner 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 – 143, l. 6; R. 164, l. 19 – 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 – 174, l. 17; R. 201, l. 23 – 202, l. 5. As the search continued, Millspaugh commented on how humid it was getting that evening. State's Ex. 1 at 17:06.

Eventually Owens, while 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

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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.

to Owens that he "didn't even see it" regarding the area where Owens ultimately located the drugs. State's Ex. 1 at 19:10. No narcotics were located on Petitioner's person, on Tippins, or anywhere else in the vehicle. R. 166, ll. 1-7; R. 65, ll. 20-22; R. 185, l. 14 – 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 – 237, l. 6.

During trial, Millspaugh stated Petitioner 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 Petitioner never expressly stated he had been using the van for one-to-two weeks. He conceded that he was *assuming* Petitioner had the van for an extended period. He admitted that it was a possibility that Petitioner could have borrowed the van that morning, as camping for one-to-two weeks did not automatically equate to Petitioner 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 – 178, l. 10; R. 179, ll. 4-18.

Owens testified that he was wearing a body camera during the search. He admitted that the 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 – 214, l. 1. Regarding the discovery of the hidden compartment, Owens testified he

"believed he picked up on something that looked abnormal in the dash" that he "just happened to feel it and notice it was loose." R. 198, ll. 22-25. Owens testified that he was not aware of anything that would indicate Petitioner regularly drove the van and there was nothing, outside of the fact that Petitioner was driving, that evidenced Petitioner's ownership of the drugs. R. 202, l. 20 – 203, l. 9; R. 208, l. 25 – 209, l. 11.

At the close of the State's case, Counsel Crane made a motion for a directed verdict. Counsel Crane argued that the State had not presented competent evidence that Petitioner 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 Petitioner had been in the van for an extended period. While he conceded that Petitioner'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 Petitioner 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 reads, "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 Petitioner's trial, the State failed to present competent evidence of constructive possession and knowledge. The trial court erred in denying Petitioner's directed verdict, and the Court of Appeals erred in affirming the trial court.

"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).

This 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 Petitioner's control and knowledge of the drugs found in a hidden compartment in the van should be inferred because Petitioner 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 Petitioner's case. Petitioner did not own or rent the van, and the State did not produce any evidence that Petitioner had a special relationship with the owner of the van (an individual whose name he did not know). The State did not produce any evidence establishing how long Petitioner had been in possession of the van. Millspaugh 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 no true "paraphernalia" located.[4] 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 Petitioner'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

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[4] A syringe and torch lighter were found during the search of the van but not collected or tested. A syringe is not inherently illegal drug paraphernalia, such as a crack pipe or water bong would be, because a syringe can have a legal, valid function. Importantly, neither Petitioner nor Tippins was charged with paraphernalia.

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, this 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, this 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, this 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 Petitioner was knowingly in constructive possession of the drugs found in a hidden compartment of a borrowed van. Like in Brown, the state failed to produce evidence as to the ownership of the van or any special relationship Petitioner had with "Pink" from which is control of the van could be inferred. The state did not even affirmatively establish how long Petitioner had the van. There was no evidence that Petitioner was a seller or user of drugs or that he was aware of the hidden compartment where the drugs were stored. Further while the officers purported to smell "burnt meth" – a smell associated with the production not use of

methamphetamine[5] – there was no residue found in or about the van to suggest methamphetamine had been used. The solitary fact that Petitioner was driving the borrowed 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 Petitioner 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 Petitioner had knowledge that there were drugs hidden in the van. There was no evidence that Petitioner had handled the drugs or the alleged "paraphernalia" that Millspaugh claimed was indicative of drug use. 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. Even Petitioner'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 Petitioner's nervousness and sweating was conduct

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5 Millspaugh testified burnt meth smells like cat urine – that its potent and chemically smelling. R. 147, ll. 12-15. However, the strong ammonia he testified to is associated with the production, not the use of, methamphetamine. The van was not a mobile methamphetamine lab. Therefore, it was highly likely that the ammonia odor in the dirty van was merely that, an odor, and not proof of any drug use. See https://www.dubuquecountyiowa.gov/499/Spotting-a-Meth-Lab (When manufacturing methamphetamine different chemicals are used. Each has a very strong and distinctive odor associated with it.) https://ag.nv.gov/Hot_Topics/Issue/Meth_House/ (Unusual Odors: Making meth produces powerful odors that may smell like ammonia or ether. These odors have been compared to the smell of cat urine or rotten eggs.); https://www.ncsbi.gov/Divisions/Special-Services-Unit/Clandestine-Labs/Signs-of-A-Meth-Lab (A telltale sign of a meth lab is a powerful chemical smell. The odor of an active meth lab can be like: Paint thinner or varnish smell, Fuel smell, Ether or a "hospital smell", Sour or vinegary smell, Ammonia-like smell (like the smell of window cleaner, fertilizers or even cat urine)).

from which an inference can be drawn, the body camera video belies Millspaugh's assertion that Petitioner was "overtly nervous, shaking and sweating profusely." Petitioner 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 Petitioner's knowledge of the drugs in a hidden compartment could be inferred.

The Court of Appeals, much like the trial court, relied primarily upon a sentence in 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." 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, this 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 discussing the propriety of the constructive possession charge this 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. This 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, the issue in Stewart was the propriety of the jury charge, not whether a directed verdict motion should have been granted. Thus, when taken in context, the statement from Stewart is arguably *dicta* and should not be

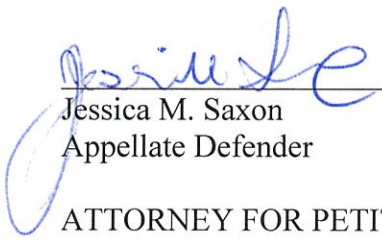
relied upon to affirm Petitioner's conviction when other cases dealing with direct verdict motions make clear that "[p]ossession requires more than mere presence. The State must show the defendant had dominion or control *over the thing* allegedly possessed or had the right to exercise dominion or control over it." State v. Muhammed, 338 S.C. 22, 27, 524 S.E.2d 637, 639 (Ct.App.1999) (emphasis added). Further, as this 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 did not establish he had control over the van. The evidence presented was not sufficient to carry the case to the jury.

Petitioner was the driver of a borrowed van. The state wholly failed to introduce competent evidence of any relationship between Petitioner and the owner of the van such that control and dominion over the van could be imputed to Petitioner. See Brown, *supra.* The state failed to introduce competent evidence demonstrating how long Petitioner had been borrowing the van. The state failed to produce competent evidence of knowledge, as there were no acts, declarations, or conduct by Petitioner from which knowledge of narcotics in a hidden compartment in a van he did not own could be inferred. At most, the evidence presented raised a mere suspicion that Petitioner 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 Petitioner to the exclusion of every other reasonable hypothesis, therefore it was error for the circuit court to deny Petitioner's motion for a directed verdict. See State v. Odems, 395 S.C. 582, 590, 720 S.E.2d 48, 52 (2011).

CONCLUSION

Based upon the foregoing, Petitioner respectfully requests that this Court grant the petition for writ of certiorari to the Court of Appeals to allow full briefing on the issues presented.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of January, 2026.