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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

THE STATE,

RESPONDENT,

V.

RODNEY DAVID RIGGINS,

PETITIONER

APPELLATE CASE NO. 2026-000107

APPENDIX

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Deputy Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3737

CYNTHIA SMITH CRICK
Solicitor, Thirteenth Judicial Circuit
305 East North Street, Suite 325
Greenville, SC 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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Appeal from Pickens County

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THE STATE,

RESPONDENT,

V.

RODNEY DAVID RIGGINS,

APPELLANT

APPELLATE CASE NO. 2023-000892

FINAL BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR 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

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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-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.

Jessica Saxon
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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THE STATE,

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V.

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.

Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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APPEAL FROM PICKENS COUNTY
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v.

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FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

ANDREW D. POWELL
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

W. WALTER WILKINS III
Solicitor, Thirteenth Judicial Circuit

305 East North Street,
Suite 325
Greenville, SC 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for directed verdict when the State produced evidence reasonably tending to prove Appellant's constructive possession by showing he was in control of the vehicle, the vehicle smelled like meth, and the vehicle also contained a syringe and torch lighter.

STATEMENT OF THE CASE

Rodney Riggins was indicted by a Pickens County Grand Jury in March 2023, for trafficking methamphetamine. In May of 2023, Riggins was also indicted for possession with intent to distribute heroin. He and his co-defendant, Jodi Tippins, proceeded to a jury trial on May 30-31, 2023, before the Honorable Perry H. Gravely. Riggins was convicted as charged and sentenced to five years' imprisonment for each count, to be served concurrently. The Court entered a directed verdict on the part of Riggins' co-defendant. This appeal follows.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). In ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence rather than with its weight. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998). On appeal from the denial of a directed verdict, courts view the evidence in the light most favorable to the State. Id. If any direct evidence or substantial circumstantial evidence tending to prove the accused's guilt exists, courts must conclude the trial court properly submitted the case to the jury. State v. Dixon, 337 S.C. 455, 458, 523 S.E.2d 784, 786 (Ct. App. 1999).

STATEMENT OF FACTS

On June 7, 2020, Officer Millspaugh observed Appellant driving a white van. (R. 135-137). Appellant committed a traffic violation by failing to maintain his lane. (R. 136-137). Dispatch informed Millspaugh that the license plate was registered to a passenger truck out of Texas under the name Leslie Beauchamp. (R. 137). It was later discovered that the plate did in fact belong to the van. (R. 161-162). Subsequently, Millspaugh conducted a traffic stop. (R. 136). As is customary, Millspaugh called for a secondary unit and Officer Owens arrived at the scene shortly thereafter. (R. 195). At this time Tippins (co-defendant) was in the passenger seat. (R. 141).

At around 11:00 in the evening, Millspaugh approached the van and requested proof of registration, insurance, and Appellant's driver's license. (R. 140; 163). Appellant quickly informed Millspaugh that he was borrowing the vehicle and that it was not his. (R. 139). Appellant was unable to provide the name of the vehicle's owner; he was only able to tell the officers he knew the owner as "Pink." (R. 142). Millspaugh testified that when he first approached the vehicle Appellant was "overtly nervous." (R. 139). Appellant then informed Officer Millspaugh that his driver's license was suspended. (R. 140).

Millspaugh asked whether Appellant was intoxicated and if there was anything illegal in the vehicle. (State's Exhibit 1 at 01:00). Appellant told Millspaugh that he was not inebriated and stated that he knew of nothing illegal in the van. (State's Exhibit 1 at 01:00). Appellant did convey that he had several knives in the vehicle. (R. 141).

Appellant gave Millspaugh consent to search the vehicle. (R. 143). Officer Millspaugh noted the car was in "disarray." (R. 147). He noted that there were bags, trash, food, personal effects, and items that would usually be inside a home. (R. 147-148). When searching the vehicle

officers initially found the large knives Appellant had referenced, which were throughout the vehicle. (R. 144-145). Next, the officers found a syringe. (R. 146). While searching the vehicle Owens noted it smelled like meth. (R. 146-147). Officers then found a torch lighter. (R. 148). Lastly, officers found the bag of illegal substances. (R. 149). The bag contained over thirteen grams of methamphetamine and over two grams of heroin. (R. 155; 305). The bags were found in a hidden compartment behind the radio. (R. 179-180). At this point, Appellant was arrested. (R. 150).

Officer Millspaugh's body cam footage was admitted as State's Exhibit 1. (R. 139). The dash camera footage from Millspaugh's vehicle was also admitted. (R. 188). Owens testified that he was wearing a body camera during the search. (R. 211). He testified that the police department's policy was to activate the body camera when performing an "enforcement action". (R. 211). Nonetheless, Owens' camera did not record the incident. (R. 212-213). Owens stated the cameras used at this time were "very cheap" and often did not record correctly. (R. 203-204).

At the close of the State's case, Appellant made a motion for a directed verdict. (R. 239). Appellant argued that the State did not present evidence that Appellant had constructive possession of the drugs. (R. 239). The State argued that it had presented a factual basis sufficient to survive a directed verdict motion. (R. 243-244). The court denied the motion citing State v. Stewart[1]. (R. 244-245).

[1] State v. Stewart, 433 S.C. 382, 858 S.E.2d 808 (2021) (If the State presents evidence the defendant had control over the property on which drugs were located, then the trial court should deny a directed verdict motion, in prosecution for the offense of trafficking that is based on possession, or for the offense of simple possession).

ARGUMENT

The trial court did not err in denying Appellant's motion for directed verdict because the State produced evidence reasonably tending to prove Appellant's constructive possession by showing he was in control of the vehicle, the vehicle smelled like meth, and the vehicle also contained a syringe and torch lighter.

The trial court did not err in denying Appellant's motion for directed verdict because the State showed Appellant had constructive possession of the narcotics. First, the State showed Appellant told Millspaugh that he was borrowing the vehicle containing the narcotics. (R. 139). Officers also found a syringe and torch lighter in the vehicle. (R. 146-148). Millspaugh testified Appellant was "overtly nervous[,]" indicating he may have been aware of the narcotics. (R. 139). While searching the vehicle, Owens noted it smelled like meth, which strongly supported a conclusion Appellant may have likewise been aware of the smell and, thus, the presence of the illegal drugs that produced it. (R. 146-147). Considered holistically and in the light most favorable to the State, there was some substantial evidence tending to prove Appellant's guilt.

"When ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not its weight. A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. 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. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury." State v. Weston, 367 S.C. 279, 292-293, 625 S.E.2d 641, 648 (2006) (citing State v. Cherry, 361 S.C. 588, 591-592, 606 S.E.2d 475, 477-478 (2004)).

On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

The United States Supreme Court noted the following:

> [T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, **and to draw reasonable inferences from basic facts to ultimate facts.**

Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis added). "When evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury." State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968).

Section 44-53-375 of the South Carolina code makes it unlawful for a person to "knowingly [be] in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine[.]" To establish constructive possession, the State must show a defendant "had dominion and control, or the right to exercise dominion and control, over the [drugs]. Constructive possession can be established by circumstantial as well as direct evidence, and possession may be shared." State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 774–75 (1981). A showing of possession requires more than simply showing presence. State v. Stanley, 365 S.C. 24, 43, 615 S.E.2d 455, 465 (Ct. App. 2005).

"In drug cases, the element of knowledge is seldom established through direct evidence but may be proven circumstantially." State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). "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." Id.

In Hudson, our Supreme Court found there was sufficient evidence from which a reasonable trier of fact could conclude defendant possessed heroin. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981). Officers went to search defendant's house pursuant to a search warrant and found the defendant's wife by the bathroom door with bags of heroin in the toilet. Hudson, 277 S.C. 202, 284 S.E.2d 774 (1981). Officers also found syringes, rolling paper, and pipes. Id. Even though defendant was not home at the time of the search, the Hudson Court found "there was sufficient evidence from which a reasonable trier of fact could conclude beyond a reasonable doubt defendant constructively possessed heroin[.]" Hudson, 277 S.C. 203, 284 S.E.2d 775 (1981).

Also, in Davis, this Court found the trial court's denial of defendant's motion for directed verdict was proper. State v. Davis, 422 S.C. 472, 480, 812 S.E.2d 423, 428 (Ct. App. 2018). Defendant moved for a directed verdict on a possession with intent to distribute charge arguing that the state failed to show she had control over the drugs in her car because they found her on the roof of a home, rather than inside the vehicle. Id. The trial court denied the motion for directed verdict because the state also presented circumstantial evidence that showed the drugs were in defendant's control because they were in a bag next to her purse in a car she conceded to driving. Id. This Court affirmed because the narcotics were in a bag in the driver's seat of the vehicle she drove, a pipe rolled down from the roof where she was hiding, and she claimed the drugs after being arrested. Davis, 422 S.C. 484, 812 S.E.2d 430.

Other courts have reached similar conclusions. The Arkansas Court of Appeals found sufficient evidence from which a jury could convict where the defendant was in control of and

drove the vehicle containing narcotics, was suspiciously "spooked" by police presence, indicated to his partner he knew where the narcotics were hidden, and was in close proximity to the narcotics. Baker v. State, 588 S.W.3d 844, 848 (Ark. Ct. App. 2019).

Similarly, the Court of Appeals of Kentucky found no error in the trial court denying a motion for directed verdict where no cocaine was found on defendant's person, but rather found in the kitchen and bathroom. Clay v. Commonwealth, 867 S.W.2d 200, 202 (Ky. Ct. App. 1993). The court noted that it was uncontested that defendant lived in the home and used the bathroom and kitchen where the cocaine was stored. Id.

Conversely, in Jackson, this Court found the denial of defendant's motion for directed verdict an error. State v. Jackson, 395 S.C. 250, 717 S.E.2d 609 (Ct. App. 2011). In Jackson, the defendant was a passenger of an automobile where marijuana was found in the center console. The Jackson Court found the State failed to establish constructive possession because he was a passenger, he did not own or rent the vehicle, he had only met the driver once, and no evidence was presented showing he was nervous or made suspicious movements. Id.

Here, the court properly denied Appellant's motion for directed verdict because the State produced evidence and testimony which reasonably tends to prove Appellant's guilt. On the other hand, the court granted Jodi Tippins' motion for directed verdict. (R. 250-251). The court relied on Jackson noting it was "directly on point." (R. 251). The court distinguished Appellant from his co-defendant by noting Appellant had items in the vehicle, was driving it, and was the one who borrowed it. (R. 250-251).

The courts distinguishment was proper. First, Appellant was driving the vehicle where the narcotics were found. (R. 149). Millspaugh testified that when he first approached Appellant he was "overtly nervous." (R. 139). Appellant borrowed the vehicle, which

he had been in control of for some time. (R. 147-148). In fact, as noted by the court, Appellant's knives were located in the car. (State's Exhibit 1 at 9:50; 10:40). Like the defendant in Hudson, Appellant had control of the area surrounding the narcotics.

The element of knowledge may be proven with circumstantial evidence, as it was here. State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). Officers also found a syringe and a torch lighter. (R. 146-148). Additionally, while searching the vehicle Owens noted it smelled like meth, indicating Appellant knew of the narcotics presence. (R. 146-147). Cf. Miller v. State, 6 S.W.3d 812, 814 (Ark. Ct. App. 1999) ("we believe that the fact that the police officer smelled marijuana upon approaching the vehicle tends to establish that appellant had knowledge of the presence of the marijuana"). See also Burwell v. United States, 901 A.2d 763, 766 (D.C. 2006) ("[t]he smell of PCP emanating from the car indicated [that] it was likely that appellants knew [that] the car contained drugs").

The State produced some evidence that Appellant had dominion and control over the narcotics by showing Appellant's dominion and control of the vehicle, the presence of an odor of methamphetamine, and the presence of drug paraphernalia. See State v. Bennett, 415 S.C. 232, 236–37, 781 S.E.2d 352, 354 (2016) ("[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and must submit the case to the jury 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.'"); see also State v. Stewart, 433 S.C. 382, 389, 858 S.E.2d 808, 811 (2021) ("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"). Accordingly, the State met its burden and the motion was properly denied. Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

ANDREW D. POWELL
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

W. WALTER WILKINS III
Solicitor, Thirteenth Judicial Circuit

305 East North Street,
Suite 325
Greenville, SC 29601
(864) 467-8647

BY: _____
ANDREW D. POWELL
Bar # 106415

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3747

ATTORNEYS FOR RESPONDENT

October 14, 2024

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
Court Of General Sessions
The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2023-000892

THE STATE, Respondent,

v.

RODNEY DAVID RIGGINS, Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Respondent on Jessica M. Saxon, Esquire, counsel of record for the Appellant by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 14th day of October, 2024.

Grace Sommer
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Rodney David Riggins, Appellant.

Appellate Case No. 2023-000892

Appeal From Pickens County
Perry H. Gravely, Circuit Court Judge

Unpublished Opinion No. 2025-UP-372
Submitted October 23, 2025 – Filed November 5, 2025

AFFIRMED

Appellate Defender Jessica M. Saxon, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Andrew Douglas Powell, both of Columbia; and Solicitor Cynthia Smith Crick, of Greenville, all for Respondent.

PER CURIAM: Rodney David Riggins appeals his convictions for trafficking methamphetamine and possession with intent to distribute heroin and concurrent sentences of five years' imprisonment. On appeal, Riggins argued the circuit court

erred in denying his directed verdict motion because the State failed to present evidence he had dominion and control over the borrowed van in which the drugs were found or that he knew the drugs were in the van; rather, he asserts the evidence at trial only raised a suspicion of his guilt. We affirm pursuant to Rule 220(b), SCACR.

Viewing the evidence in the light most favorable to the State, we hold the circuit court did not err in denying Riggins's directed verdict motion because the evidence showed Riggins had constructive possession of the drugs found in the van. *See State v. Fennell*, 340 S.C. 266, 270, 531 S.E.2d 512, 514 (2000) ("In considering a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not with its weight."); *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("A defendant is entitled to a directed verdict when the [S]tate fails to produce evidence of the offense charged."); *Fennell*, 340 S.C. at 270, 531 S.E.2d at 514 ("The case should be submitted to the jury if there is any direct evidence or substantial circumstantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly or logically deduced."); *Weston*, 367 S.C. at 292, 625 S.E.2d at 648 ("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 [S]tate."); S.C. Code Ann. § 44-53-375(C) (2018) (stating a person is guilty of trafficking in methamphetamine if a person "knowingly sells, manufactures, delivers, purchases, or brings into this State, or . . . provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or . . . is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in" certain statutes); S.C. Code Ann. § 44-53-370(b)(1) (Supp. 2025) (stating a "person who violates subsection (a) with respect to . . . a controlled substance classified in Schedule I (B) and (C) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony"); *State v. Stewart*, 433 S.C. 382, 387, 858 S.E.2d 808, 810 (2021) (stating that in order "to prove trafficking (when based on possession) . . . , the State must prove two elements": the defendant (1) "had either actual physical custody of the drugs, or the right or power to exercise control over the drugs" and (2) "must have knowledge of the drugs and the intent to control their disposition or use"); *id.* at 389, 858 S.E.2d at 811 ("[I]f 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 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.").

AFFIRMED.[1]

WILLIAMS, C.J., and VINSON and CURTIS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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

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

ATTORNEY FOR PETITIONER

This 20th day of November, 2025.

RECEIVED
Nov 20 2025
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,

PETITIONER

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

The South Carolina Court of Appeals

The State, Respondent,

v.

Rodney David Riggins, Appellant.

Appellate Case No. 2023-000892

ORDER

After careful consideration of the petition for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ C.J.

_____ J.

_____ J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Jessica M. Saxon, Esquire
Cynthia Smith Crick, Esquire
The Honorable Perry H. Gravely

FILED
Dec 18 2025