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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
Hon. G. D. Morgan, Jr., Trial Judge

Appellate Case No. 2025-001368

State .... Respondent.

vs.

Jason R. Stewart .... Appellant

INITIAL BRIEF OF APPELLANT

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010
Rauchwise@gmail.com
S.C. Bar No. 6188

Charles Grose
Grose Law Firm
305 Main Street
Greenwood, SC 29646
(864) 538-4466
Charles@groselawfirm.com
S.C. Bar No. 66063

Attorneys for Appellant

Index

Page:

Table of Authorities ii

Statement of Questions Presented. 1

Statement of the Case 2

Standard of Review. 3

Argument:

Question I: Did the trial court err in instructing the jury that "Constructive possession means that the Defendant had dominion and control or the right to exercise dominion or control over the drug -- the drug itself or the property on which the drug was found."? 4

Question II: Did the trial court err in instructing the jury that they could convict Jason Stewart if he were reckless or negligent as to his knowledge or possession of the drugs in this matter? 7

Question III: Did the trial court err in failing to suppress the drugs seized from the storage units when the affidavit for the search warrant failed to establish that any drugs would be found in any particular storage unit?. 8

Question IV: Did the trial court err in failing to direct a verdict in favor of Jason Ramon Stewart when the state failed to prove Mr. Stewart ever entered the storage unit where the drugs were found nor prove that he had access to the storage unit where the drugs were found and thus there was no substantial circumstantial evidence to sustain the conviction? 13

Conclusion 17

Table of Authorities

Cases: **Page:**

Carter v. United States, 530 U.S. 255, 269 (2000) 5

Commonwealth v. Sespedes, 442 Mass. 95, 810 N.E.2d 790 (2004) 4

Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997) 15

People v. Pace, 102 Mich. App. 522, 302 N.W.2d 216 (1980) 8

Richardson v. Marsh, 481 U.S. 200 (1987) 6

State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009) 7

State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976) 15

State v. Butler, 407 S.C. 376, 755 S.E.2d 457 (2014). 3

State v. Clifton, 302 S.C. 431, 396 S.E.2d 831 (Ct. App. 1990) 3

State v. Daniels, 234 Or. App. 533, 228 P.3d 695 (2010) 13

State v. Heath, 370 S.C. 326, 635 S.E.2d 18 (2006) 14

State v. Philpot, 317 S.C. 458, 454 S.E.2d 905 (Ct. App. 1995) 12

State v. Pradubsri, 420 S.C. 629, 803 S.E.2d 724 (Ct. App. 2017) 3

State v. Stewart, 433 S.C. 382, 858 S.E.2d 808 (2021) 5

State v. Taylor, 323 S.C. 162, 473 S.E.2d 817 (Ct. App. 1996) 7, 8

State v. Thompson, 419 S.C. 250, 797 S.E.2d 716 (2018) 9

State v. Washburn, 201 N.C. App. 93, 685 S.E.2d 555 (2009) 9

State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997) 12

State v. Williams, 346 S.C. 424, 552 S.E.2d 54 (Ct. App. 2001) 4

Town of Blacksburg v. Beam, 104 S.C. 146, 88 S.E. 441 (1916) 9

United States v. Brown, 828 F.3d 375 (6th Cir. 2016). 9

Zurcher v. Stanford Daily, 436 U.S. 547 (1978) 9

Other Authorities:

Just the Facts, Ma'Am: The Authorized Biography of Jack Webb (2001). 13

Statement of Questions Presented

Question I: Did the trial court err in instructing the jury that "Constructive possession means that the Defendant had dominion and control or the right to exercise dominion or control over the drug -- the drug itself or the property on which the drug was found."?

Question II: Did the trial court err in instructing the jury that they could convict Jason Stewart if he were reckless or negligent as to his knowledge or possession of the drugs in this matter?

Question III: Did the trial court err in failing to suppress the drugs seized from the storage units when the affidavit for the search warrant failed to establish that any drugs would be found in any particular storage unit?

Question IV: Did the trial court err in failing to direct a verdict in favor of Jason Ramon Stewart when the state failed to prove Mr. Stewart ever entered the storage unit where the drugs were found nor prove that he had access to the storage unit where the drugs were found and thus there was no substantial circumstantial evidence to sustain the conviction?

Statement of the Case

Jason Ramon Stewart was arrested on April 20, 2021 and charged with several drug charges. On March 3-6, 2025 he was tried before Judge J. D. Morgan, Jr. and a jury on three trafficking charges. On March 6, 2025 the jury convicted him for convicted of trafficking heroin more than 28 grams, trafficking methamphetamine 100 to 200 grams, and trafficking cocaine 28 to 100 grams. He was sentenced to 25 years imprisonment. All three sentences were run concurrent.

Mr. Stewart filed a timely Motion for a New Trial. The motion was denied by order dated June 27, 2025 and filed on June 27, 2025. Mr. Stewart filed his Notice of Appeal on July 7, 2025.

Standard of Review

"The standard for review of an ambiguous jury instruction is whether there is a reasonable likelihood that the jury applied the challenged instruction in a way that violates the Constitution." *State v. Pradubsri*, 420 S.C. 629, 639, 803 S.E.2d 724, 729 (Ct. App. 2017)(internal citation omitted). "The task of a court reviewing a decision to issue a search warrant is simply to decide whether the issuing magistrate had a substantial basis for concluding that probable cause existed." *State v. Clifton*, 302 S.C. 431, 433, 396 S.E.2d 831, 832 (Ct. App. 1990), overruled on other grounds by *Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999). "On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014).

Question I

Did the trial court err in instructing the jury that "Constructive possession means that the Defendant had dominion and control or the right to exercise dominion or control over the drug -- the drug itself or the property on which the drug was found."?

This statement of law is an incorrect statement as to the definition of constructive possession in South Carolina. The law requires a defendant to have knowledge of the drugs and the ability to control the drugs. Merely having some control over the property is not sufficient. "In order to prove constructive possession, the State must show the defendant had dominion and control, or the right to exercise dominion and control, over the drug." *State v. Williams*, 346 S.C. 424, 430, 552 S.E.2d 54, 57 (Ct. App. 2001). As Massachusetts courts have said, "Constructive possession implies 'knowledge coupled with the ability and intention to exercise dominion and control.'" *Commonwealth v. Sespedes*, 442 Mass. 95, 99, 810 N.E.2d 790, 793 (2004)(internal citations omitted). Simply having some control, whether joint or exclusive, over the place where the drugs were found is not sufficient to sustain a conviction. Such a charge completely eliminates any mens rea as to knowledge of any drugs being present. A charge that eliminates the required mens rea is an improper charge. As such the charge is an incorrect statement of the law in South Carolina.

In this case the drugs used to convict Mr. Stewart were found in two storage units not in Mr. Stewart's name. The storage unit I15 was rented by his mother in 2018. ROA at ___ Court's Exhibit 12). The storage unit A23 was rented by his wife. ROA at ___ (Exhibit 9)Mr. Stewart was not an authorized use as to I15. The record did not establish who made the monthly payments. The State at trial asserted Mr. Stewart had some degree of control over the A15 unit.

A15 unit. Mr. Stewart was authorized to enter unit A23. The state never prove he actually entered either unit.

In *State v. Stewart,* 433 S.C. 382, 858 S.E.2d 808 (2021) the South Carolina Supreme Court, in discussing such a charge, stated, "If we considered the statement only in isolation as a complete definition of constructive possession, the statement would be problematic." *Id.* at 388, 858 S.E.2d at 811. The court then stated, correctly, "But the mere existence of evidence the defendant had control over the property does not equate to a finding of constructive possession." *Id.* at 389, 858 S.E.2d at 811. The court clearly stated that mere control of the property is not sufficient to establish constructive possession. The charge in this case told the jury that mere joint control of the property meant the defendant was in constructive possession of the drugs. This completely eliminated the requirement that the defendant had any knowledge of the drugs. The charge read out of the statute any mens rea as to the drugs. "The presumption in favor of scienter requires a court to read into a statute only that mens rea which is necessary to separate wrongful conduct from 'otherwise innocent conduct.'" *Carter v. United States*, 530 U.S. 255, 269 (2000). The charge here did not separate wrongful conduct from innocent conduct. Having some control over a storage that has some illegal drugs in it is not a crime.

In *Stewart,* the court held that the mere presence charge saved the improper charge from being prejudicial as it required the jury to focus on elements of knowledge and the right to control the drugs. In *Stewart,* the defendant was present in the house when the search and arrest took place. In this case, Mr. Stewart was not at the storage unit when it was searched. The jury clearly knew the mere presence charge was not relevant to the facts.

In *Stewart,* the court held that giving a charge telling the jury that they may infer

possession of the drug if the defendant had control of the premises where the drugs was located was improper. The court did not discuss the fact that telling the jury that constructive possession means control of the premises where the drugs are found is in fact more prejudicial than telling a jury they may infer such a conclusion. The court in this case told the jury if Mr. Stewart knowingly had some ownership in the storage unit that contained the drugs he was guilty of constructive possession. A mere presence charge does not save this improper charge. Mr. Stewart was not present at the location where the drugs were found. The jury easily could have determined having some control of the storage unit is more than mere presence.

The trial judge told the jury the state is required to prove, "That the Defendant was knowingly in actual or constructive possession" ROA at 727, ll 21-22. Then he tells the jury, "Constructive possession means that the Defendant had dominion and control or the right to exercise dominion or control over either the heroin or the property on which the heroin was found." ROA 728, ll 7-11. What these two statements say is if he is knowingly in control over the property where the drugs are found, he is guilty. This has never been the law in South Carolina. The improper charge was prejudicial to Mr. Stewart. As the United States Supreme Court has said, "The rule that juries are presumed to follow their instructions is a pragmatic one, rooted less in the absolute certitude that the presumption is true than in the belief that it represents a reasonable practical accommodation of the interests of the state and the defendant in the criminal justice process." *Richardson v. Marsh*, 481 U.S. 200, 211 (1987). Thus, this court has to presume that the jury followed the incorrect definition of constructive possession and convicted Mr. Stewart because he had some control of the storage unit. A conviction based on those facts is not a proper conviction.

Question II

Did the trial court err in instructing the jury that they could convict Jason Stewart if he were reckless or negligent as to his knowledge or possession of the drugs in this matter?

The required mens rea in a criminal case is not difficult to determine. If the statute states the mens rea that is the one to use. In this case, the statute set the mens rea as "knowingly." The indictment correctly states the mens rea as "knowingly." ROA at ___. This is all the trial judge was required to charge the jury as to the required mens rea.

In this matter, when discussing mens rea, the trial judge stated, "[T]he mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence." ROA 726, ll 15-18. The legislature has placed the mens rea at "knowingly." An objection was made to this charge. ROA 738, ll 10-14. After telling the jury the mens rea required in this case is as low as "recklessness, or criminal negligence" he twice told the jury it was "knowingly." ROA at 727, l 16; 728, l 18. The trial judge gave no instruction to resolve this confusion. He did not state that recklessness and negligence are not applicable in this case. Such a charge would have cleared up any ambiguity. The charge is ambiguous as to what the jury was to do with that charge. "A jury charge is no place for purposeful ambiguity." *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009), extended by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

This issue here controlled by *State v. Taylor*, 323 S.C. 162, 473 S.E.2d 817 (Ct. App. 1996). In *Taylor,* the defendant was accused of participating in a drug transaction. While the State contended Ms. Taylor made the sale, Ms. Taylor testified the sale was actually made by

Beverly Chastain, a friend of hers. After instructing the jury in accordance with the statute that the crime must be committed knowingly, the trial judge then state, "I instruct you under the law of South Carolina the State must prove beyond a reasonable doubt that the defendant was at least criminally negligent; by that I mean that she had knowledge and intent to possess or possess with intent to traffic a controlled substance, here the controlled substance being crank." *Id.* at 165, 473 S.E.2d at 818. In reversing the conviction, the court said, "It is therefore impossible to hold beyond a reasonable doubt the erroneous charge did not contribute to the verdict under these facts." *Id.* at 166, 473 S.E.2d at 819. Here, the storage unit in question was owned by the wife of Mr. Stewart. The State had not proven Mr. Stewart had ever actually entered the unit. The jury under this lesser standard, could have concluded he was negligent in allowing drugs in the unit or negligent in not inspecting the unit to see what was in it. When this improper charge is coupled with the improper charge as to the meaning of constructive possession that he has some control over the unit, then the error is compounded. As the Michigan courts have often said, "Where two instructions are given one proper and one improper it is presumed that the jury followed the erroneous one." *People v. Pace*, 102 Mich. App. 522, 535, 302 N.W.2d 216, 221 (1980). Here, as the improper instruction made the conviction easier for the jury, this presumption seems appropriate in this case. This matter should be reversed and remanded for a new trial.

Question III

Did the trial court err in failing to suppress the drugs seized from the storage units when the affidavit for the search warrant failed to establish that any drugs would be found in any particular storage unit?

"Common as the event may be, it is a serious thing to arrest a citizen, and it is a more serious thing to search his person; and he who accomplishes it, must do so in conformity to the laws of the land. There are two reasons for this; one to avoid bloodshed, and the other to preserve the liberty of the citizen. Obedience to law is the bond of society, and the officers set to enforce the law are not exempt from its mandates." *Town of Blacksburg v. Beam*, 104 S.C. 146,___, 88 S.E. 441, 441 (1916). The parties agreed that the search warrant issue would be decided based only upon the affidavits attached to the search warrants. ROA at 11, ll 11-15.

One of the mandates to a valid search is that evidence must exist which tells the officer that drugs will be found in the place to be search. "In determining whether a search warrant is supported by probable cause, the crucial element is not whether the target of the search is suspected of a crime, *but whether it is reasonable to believe that the items to be seized will be found in the place to be searched*." *State v. Thompson*, 419 S.C. 250, 256, 797 S.E.2d 716, 718 (2018)(emphasis in original). Many courts have voiced similar concerns. "The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978); "We have never held, however, that a suspect's 'status as a drug dealer, standing alone, gives rise to a fair probability that drugs will be found in his home.'" *United States v. Brown*, 828 F.3d 375, 383 (6th Cir. 2016); "However, evidence obtained in one location cannot provide probable cause for the search of another location when the evidence offered does not 'implicate the premises to be searched." *State v. Washburn*, 201 N.C. App. 93, 101, 685 S.E.2d 555, 561 (2009). Against these principles the search warrant for the various storage units must be examined.

In reviewing this issue, the fact must be noted that the affidavit for the search warrant for all the units but one are exactly the same. The search warrant for Unit I15, where some of the drugs specifically involved in this case, was issued later and has an additional "Attachment C." ROA at ___ (Court's exhibit 5.). For the convenience of the reader, all reference to the affidavit will refer to the search warrant for Unit I15. This should not be taken to mean the appellant does not object to the searches of all the storage units.

The affidavit for all the search warrant mentions the storage units twice. First it says through a document search, Mr. Stewart either "has or is financially responsible for four storage units (A12, A23, N17 & O15) at the U-Stor" ROA at __(Court's exhibit 5). The nature of the documents or facts showing his ownership or his being financially responsible for rent is not stated. The second time is to state, with no supporting facts, "Through surveillance, CIs purchases, electronic tracking statements of individuals involved in purchasing drugs from Stewart it has been determined Stewart utilizes 1) 2011 Anderson Road Lot 22, 2) 2710 White Horse Road Suite 381, 3) 2601 Anderson Road (A12, A23, O15, and N17) and 40 52 4th Ave. as all places he stashes and distributes narcotics within Greenville County." ROA at ___(Court's exhibit 5). No facts in the affidavits ever support any claim Mr. Stewart had ever entered any specific unit. There are few references in the affidavit to the U-Stor facility. The attachment does state, "Through electronic tracking during the same time period [3/14/2021 - 4/6/21] Stewart was discovered to stop one, two or three times during a single day at the U-Stor (2601 Anderson Road, Greenville, SC 29609 which is highly uncommon for occupant." ROA at ___ (Court's Exhibit 6). The attachment did not state on how any days the visits occurred nor whether they were constant over the 20 days of electronic surveillance nor the nuber of days inolved.

As to Unit I15, where the drugs involved in this case were found, the facts supporting a reason to believe drugs are there are even less. The officer added an attachment C to the search warrant for this unit. This attachment states while searching 52 4th Avenue, "deputies located documentation for a storage unit at 2601 Anderson Rd, Greenville, SC 29611. The specific storage unit is 'I15". ROA at ___(court's exhibit 5). As the officers had no knowledge of this storage unit prior to the search of the residence, they could not have had knowledge that the storage unit contained any illegal drugs prior to the issuance of the search warrant. Attachment C does not allege Mr. Stewart leased the storage unit nor does it allege facts showing he frequented the unit or had access to the unit. The attachment does allege that the other locations searched were "all associated with Jason Ramon Stewart." ROA at ___(Court's exhibit 5). The attachment does not explain how the officer knew the storage units were "associated" with Mr. Stewart.[1] Simply put, the affidavit is a conclusory affidavit with no facts beyond the statements as to Mr. Stewart participating in several drug transactions.

Granted the attachment does allege that a "CI" told the officer "Stewart stated he forgot his 'package' which the CI knew to mean as [sic] bag of narcotics. Stewart instructed the CI to follow him and Stewart led the CI to the U Stor (2601 Anderson Road, Greenville, SC 29609). At this location, Stewart entered the storage facility, the CI remained outside and Stewart exited. The CI advised that's when Stewart provided him with Heroin." ROA at ____Court's Exhibit 5. The problem with this information is that the affidavit does not explain why the informant is reliable. As this court has stated, "We conclude the search warrant should not have been issued.

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[1] While not stated in the attachment, Court's exhibit 12, ROA at __, shows the Unit I15 was leased by Gloria Stewart, the mother of Jason Stewart. Jason Stewart was not an authorized user. The Unit had been leased since July 12, 2018. A23 is in his wife's name. No evidence was introduced to show how many times the units had been entered.

The record indicates the magistrate had only the affidavit of Officer Bryant and the written statement of the confidential informant before him. We have reviewed both the affidavit and written statement and find absolutely no showing of the confidential informant's reliability." *State v. Philpot*, 317 S.C. 458, 461, 454 S.E.2d 905, 907 (Ct. App. 1995); *State v. Weston*, 329 S.C. 287, 292, 494 S.E.2d 801, 803 (1997)([T]here was absolutely nothing on the face of the affidavit from which the ministerial recorder could have assessed the veracity and basis of knowledge of the informant."). Here, there is no showing as to the reliability of any informant.[2] Obviously the officer did not supervise this alleged drug deal or they would have said they followed him to the storage facility.

The attachment makes no reference to which unit Mr. Stewart allegedly entered. Based upon Court's Exhibit 6, the officers knew they could obtain information as to "Unit activity." ROA at ___ (Court's exhibit 6). This would have told the officer which unit an individual entered when they access the storage units. No information as to unit activity was contained in the attachment.[3] Thus, any information as to any drugs being stored in a storage unit comes from an unreliable source and the unknown experience and training of the officer. Had the officer simply stated something to the effect of "I have investigated 26 drug distribution cases and 8 of

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[2] Several of the drug transactions were done while the informant was under surveillance and was being monitored. The reliability of these drug transaction is not in question. As noted earlier, the state is required to prove more than that Mr. Stewart is engaged in a drug transaction. They must prove probable cause to believe the drugs are where the police believe they are.

[3] In closing argument, counsel for Mr. Stewart noted the absence of any such records during the trial. He stated, "He told you -- he told us not only are there unique codes that go with each storage unit that when you come in, you have to put in the code and that not only opens the gate, but that turns off the alarm for each unit. And you've got to think that there's records that go with that. That would go to show which code is being put in to turn off the alarm for that particular storage unit." ROA at 713, ll 15-22.

the 10 who had storage units kept their drugs there" then the issuing magistrate would have some basis to determine if drugs were probably in the storage unit. Simply saying "based upon my training and experience gives a magistrate judge no real information. What training and experience an officer has is important to making a determination of probable cause. This would have been factual information that a magistrate could have used to make the factual determination of whether there was probable cause to believe the drugs were in the storage units. The officer failed to follow the admonishment from Sgt. Joe Friday, "Just the Facts, Ma'Am."[4] The facts in the attachments do support Mr. Stewart engaged in drugs transactions. The statements as to the drugs being in any particular storage unit are simply conclusory. They are based upon his training and experience without saying why his training and experience led him to that conclusion. As the Oregon Court of Appeals so aptly stated, "The phrase 'training and experience,' in other words, is not a magical incantation with the power to imbue speculation, stereotype, or pseudoscience with an impenetrable armor of veracity." *State v. Daniels*, 234 Or. App. 533, 541, 228 P.3d 695, 700 (2010). More is needed. The more is absent here.

For the foregoing reasons, this court should declare the search warrant invalid, suppress the evidence sized from the illegal search warrant and dismiss the charges against Jason Ramon Stewart.

Question IV

Did the trial court err in failing to direct a verdict in favor of Jason Ramon Stewart when the state failed to prove Mr. Stewart ever entered the storage units where the drugs were found nor prove that he had access to the storage units where the drugs were found

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[4] Just the Facts, Ma'Am: The Authorized Biography of Jack Webb (2001)

and thus there was no substantial circumstantial evidence to sustain the conviction?

A case of constructive possession cannot be made simply because a defendant is related to the person who has rented the unit where the drugs are found. The State must prove the defendant had some access to the unit. Without proving access or the right to have access, constructive possession has not been proven. The State is not permitted to presume access. Had any illegal drugs been found in a storage unit in his name, the case could have gone to the jury. The State never proved Mr. Stewart had the right of access to the units not in his name, except unit A23. No evidence exist Mr. Stewart ever entered that unit.

In many respects the case against Mr. Stewart is not as strong as the case against Ted Lee Heath. The facts were that crack cocaine was found in a car washing mitt in a a recycling bin near the backdoor of the house owned by Mr. Heath's mother. Mr. Heath lived in the house with his mother. In reversing the conviction, the court said, "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." *State v. Heath*, 370 S.C. 326, 330, 635 S.E.2d 18, 19 (2006). Here, there is no suggestion, aside from the relationship, that Mr. Stewart had access to the storage units in his mother's name. Just as Mr. Heath had the right of access to the recycle bin, Mr. Stewart was authorized to enter his wife's unit. The State, however, failed to prove he ever entered the unit.

As noted previously, the testimony shows when one enters an access code the alarm for the specific unit related to that code would be disabled. If Mr. Stewart ever went to U-Stor to

access unit I15 or A23, the state should have been able to prove that fact. They did not. In *Heath*, the defendant even lived in the home where the crack cocaine was found. He had access to the recycling bin. Here, the State has never proven Mr. Stewart even had access to the unit. If the biggest marihuana dealer in South Carolina lived next to a marijuana field that was not on his property, the State could not convict him of trafficking the marijuana simply because he was a big marijuana dealer. The State would be required to prove the dealer took some action to cultivate and grow the marijuana on the land next to his. A conviction is not permitted on conjecture or surmise. "However, the motion for a directed verdict should be granted where evidence merely raises a suspicion of guilt, or is such as to permit the jury to merely conjecture or to speculate as to the accused's guilt." *State v. Brown*, 267 S.C. 311, 316, 227 S.E.2d 674, 677 (1976). The State had a theory that the drugs in the unit belonged to Mr. Stewart.. A theory is not evidence. With no testimony that Mr. Stewart had ever entered the unit nor had the right to enter the unit, there is no substantial circumstantial evidence to sustain the conviction. Our courts have also said in a civil case, "However, this rule does not authorize submission of speculative, theoretical and hypothetical views to the jury" *Hanahan v. Simpson,* 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997). To find Mr. Stewart had access to the unit, the jury would have to simply accept the theory of the state that he did because of the relationship with his mother. This is speculative at best. If such is the standard in a civil case, the directed verdict standard should be more favorable to the defendant in a criminal case.

In denying the directed verdict motion the trial court cited no facts to establish the required substantial circumstantial evidence. Nor did the court call upon the State to state what the substantial circumstantial evidence was. The trial court simply stated, "As I said, I do find

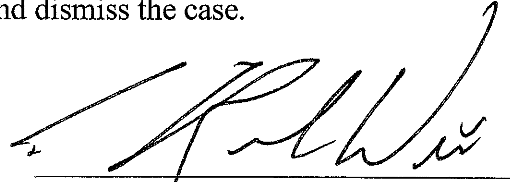
there is the existence of direct and substantial circumstantial evidence at this stage. So that motion is denied. ROA at 654, ll 23-25.

As the state produced no direct or substantial circumstantial evidence Mr. Stewart had access to the storage unit, the state has failed to prove his guilt. This court should hold the facts are not sufficient to convict and reverse the convictions

CONCLUSION

For the reasons set forth in Questions I and II, this Court should reverse the conviction of Jason Ramon Stewart and remand the case for a new trial. As to Issue III, this court should hold the search warrant is not valid as to the search of the storage units, suppress the evidence sized from the storage units and dismiss the charges against Jason Ramon Stewart. As to Question IV, this Court should reverse the conviction of Mr. Stewart and dismiss the case.

May 22, 2026



C. Rauch Wise
305 Main Street
Greenwood, SC 29649
(864) 229-5010
rauchwise@gmial.com
S.C. Bar № 6188

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
305 Main Street
Greenwood, SC 29646
(864) 538-4466
Email: charles@groselawfirm.com

Attorneys for
Jason Ramon Stewart