

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDREW GRANT WHETSTONE, II

APPELLANT

APPELLATE CASE NO. 2025-002272

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in excluding third-party guilty evidence in the case because this violated appellant's right to present a complete defense at trial.

STATEMENT OF THE CASE

Appellant Andrew Grant Whetstone, II, was convicted of possession of marijuana with the intent to distribute, trafficking in methamphetamine, possession of a weapon during the commission of a violent crime, and possession of a firearm by a person convicted of a felony per jury trial held during the October 2025 term of the Pickens County General Sessions Court before Judge Perry H. Gravely. Appellant was sentenced to an aggregate twenty-five-year prison term. Attorney Catherine Anderson Wyse represented appellant at trial, and Assistant Solicitors William Edward Stolarski and Jacob Clinton Lampke prosecuted the case.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

The admission or exclusion of evidence is left to the sound discretion of the trial judge whose decision will not be reversed on appeal absent an abuse of discretion. State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001).

ARGUMENT

The lower court erred in excluding third-party guilty evidence in the case because this violated appellant's right to present a complete defense at trial.

At trial, Officer Jeff Dalton conducted a traffic stop of the vehicle (truck) appellant drove on the morning of February 3, 2023, based on an unlawful lane change violation. After smelling an odor of marijuana emanating from the vehicle and learning from dispatch that appellant had an outstanding arrest warrant lodged against him, appellant was subsequently detained and arrested. The stop occurred at a QT gas station in Easley, South Carolina, on Highway 123 in Pickens County, South Carolina. A search of the vehicle yielded the presence of marijuana, methamphetamine, and a gun. Tr. 153, l. 10 – p. 174, l. 11.

Prior to trial, defense counsel moved to include third party guilt evidence in the case on behalf of appellant's defense because the truck he drove on that morning was only a loaner vehicle that belonged to his bossman, also known as Sean Gamble, and the drugs inside belonged to Gamble as well. Tr. 64, l. 22 – p. 66, l. 13. The state opposed the motion. Tr. 24, l. 21 – p.25, l.11. A pre-trial hearing on the issue of the admissibility of third party guilt evidence followed.

During the pre-trial hearing, witness Ashley Porter testified that appellant was a painter who worked for Sean Leonard Gamble, and that appellant would drive Gamble's truck to various jobs when he worked for others as well. In other words, the truck appellant drove belonged to Gamble, not appellant. Additionally, Porter stated that after appellant's arrest, she heard Gamble admit that the drugs in his truck that appellant drove belonged to him, not appellant. Porter added that Gambel had been arrested previously for possession of drugs, which meant that it was no surprise that drugs were found inside Gamble's truck Tr. 98, l. 16 – p. 105, l. 9.

Relevant portions of Porter's testimony follow:

A: And he stated – we were all talking about the incident that had happened. And he stated to me and other people in the room that the items that he had been pulled over with belonged to him.

Q: Okay. I want to back up just a minute and clarify a little bit. You said that you were in Chantel's house, right?

A: Yes.

Q: Okay. And there was a few of you there.

A: Yes.

Q: And you said that Sean Gamble showed up.

A: Yes.

Q: And he was talking.

A: Yes.

Q: And when you said that you – referring to the incident, y'all were talking about the incident, what do you mean when you say "incident"?

A: Like he was telling me that Grant had gotten pulled over in his truck and had went to jail for the things that were in his truck that belonged to him.

Q: Okay. And that's that February of ---

A: Yes, yes. I'm sorry.

Q: I just wanted to make sure.

A: Yes, yeah.

Q: No worries. Now, did Mr. Gamble make any other statements about those drugs being his?

A: Just that Grant got caught up with his shit ---

Q: Okay.

A: --- as he --- as he said.

Q: All right.

A: Excuse my language, but those were the words that he used: Grant got caught up with my shit.

Q: Okay. And did -- so what you think Mr. Gamble was saying the drugs were his?

A: Exactly what he was saying. That's exactly what...that was no thought. That was exactly what he was saying.

Tr. 101, l.17-p. 103, l.4.

Furthermore, Porter testified that she believed appellant did not know drugs were in Gamble's truck that he drove on that day in question, and that the drugs found in the truck at that time belonged to Gamble, especially since Gamble possessed drugs previously. Tr. 104, l. 15 – p. 105, l. 9; Tr.109, lines 10-12.

Appellant testified during the pre-trial hearing and explained that the truck he drove at the time of the traffic stop belonged to Mr. Gamble, who was his bossman. Appellant stated that he had only known Gamble for approximately 45 days prior to the traffic stop, and that Gamble had allowed him to borrow his (Gamble's) truck in order to get to various paint and sheet rock jobs. Appellant added that he was not in continuous possession and use of Gamble's truck. Appellant explained that he would return the truck to Gamble as he went back and forth after odd jobs and would drop the truck off with Gambel upon completion of his jobs. Appellant stated that on the date of the stop, he was starting out on the road early to get to Greer, SC to obtain paint for his next appointed paint job there. Appellant stated further that there were multiple other people who drove Gamble's truck during the same three-week time period that he drove the truck. Appellant stated that he had no items that belonged to him in the truck. Appellant stated that the arrangement was that he and Gamble would trade off on splitting costs of odd jobs. As proof that

Gamble owned the truck, note that appellant testified that he called Gamble (bossman) when the traffic stop commenced, and thereafter Gamble came to the scene. Also, appellant stated that he knew that Gamble had been arrested previously for trafficking in methamphetamine and marijuana. Appellant added that he did not know that drugs were in Gamble's truck on the day on question. Finally, appellant stated that he had no control over Gamble's truck during the 24/48 hours before he picked up the truck prior to his arrest. Tr. 111, 1.17-p. 121, 1.19. Ultimately, the trial judge ruled that the appellant's third party guilt evidence was inadmissible at trial. Tr. 139, 1. 16 – p. 140, 1. 10.

Clearly, the truck appellant drove on the date of the traffic stop did not belong to appellant. This was also evident from the testimony presented at the proffer hearing. Moreover, note the arresting officer's testimony below regarding the same:

A: With Mr. – yes. My conversation, correct.

Q: And do you remember whether or not Sean Leonard Gamble showed up on the scene at some point?

A: Is that the owner of the vehicle?

Q: Yes.

A: Yes. The vehicle. He did show up on scene.

Q: Okay. And did you speak to him?

A: I did.

Q: All right. And did you ask him any questions?

A: I believe I asked him how he worked, who he worked for. Said he's responsible for the truck, not the owner, that Mr. Whetstone's been driving the truck, and whatever job they do, they work. That's about the extent of the conversation.

Tr. 52, 1.3-15.

Appellant had no constructive or actual possession (indicating control) or knowledge regarding the drugs found in his bossman's truck which he simply borrowed for the day as transportation for work. It was found that appellant had no identifying information signaling his connection to or ownership of Gamble's truck. The loan of the truck to appellant by Gamble was a transitory and temporary usage without any ties thereof. Again, evidence from the proffered testimony established that Gamble claimed ownership of the drugs found in the truck as Gamble admitted the drugs in the truck belonged to him per that statement made by Gamble that appellant was caught within his (Gamble's) drugs. Although actual possession exists when a person is found in actual physical custody of a substance, it must be shown that the person knew that he had the controlled substance in his possession. State v. Burgess, 393 SC 396, 712 S.E.2d 1 (2011), affirmed as modified on jurisdiction grounds in State v. Burgess, 408 S.C. 421, 759 S.E.2d 407 (2014). Also, mere presence is insufficient to prove constructive possession as the state must prove in a constructive possession case that the defendant had dominion and control, or the right to exercise dominion and control, over the substance. State v. Heath, 370 S.C.326, 635 S.E.2d 18 (2006). Here, appellant did not know anything about the contents of Gamble's truck or what was inside Gamble's bags in Gamble's truck; and appellant certainly had no dominion and control over anything inside of Gamble's truck.

The rule on the admissibility of third party defense evidence follows:

[E]vidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible... "but before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and

outside the crime itself, cannot be separately proved for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty.” State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). See also State v. Wafford, 375 S.C. 637, 654 S.E.2d 297 (2007).

In the case at bar, the third party guilt showing was met. The evidence presented by appellant raised a reasonable inference of appellant’s innocence, i.e., the evidence was inconsistent with any culpability on appellant’s behalf, and note further that the strength of the state’s case would not preclude the admissibility the allowance of third party guilt evidence in the case. See Holmes v. South Carolina, 547 U.S. 319 (2006).

A defendant has a right to present a complete defense under the Sixth and Fourteenth Amendments to the United States Constitution and S.C. Const. art. 1, §14. Appellant’s right to present a complete defense was violated when the trial judge denied the request to present third party guilt evidence to the jury on behalf of his defense at trial.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that his convictions and sentences be reversed and his case remanded to the lower court for a new proceeding.



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This 24th day of June, 2026.