

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

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JAN 02 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RAHEEM JAMAR BONHAM,

APPELLANT

APPELLATE CASE NO. 2013-001364

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion for a directed verdict of acquittal on the drug offense charged against him because he was merely present in the vehicle during the search and neither in actual nor constructive possession of the drugs seized from of the vehicle.

STATEMENT OF CASE

Appellant Raheem Jamar Bonham was convicted of possession of crack cocaine per jury trial held during the June 2013 term of the Lexington County General Sessions Court before Judge William P. Keesley. Appellant was sentenced to imprisonment for a period of one year. Bennett E. Casto represented appellant at trial, and Assistant Solicitors Michael D. Ross and Gill Bell appeared on behalf of the state.

Appellant appealed his conviction and sentence in the case. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motion for a directed verdict of acquittal on the drug offense charged against him because he was merely present in the vehicle during the search and neither in actual nor constructive possession of the drugs seized from the vehicle.

Police Officers Nicholas Burt, John Finch, and Barron Thomas conducted a drug surveillance operation at a particular house located in West Columbia, South Carolina, on August 10, 2012, after receiving neighbors' complaints of suspected drug activity coming from that house. Officer Burt testified that on that date, he observed a white Kia pull into the driveway of this home for a few minutes, and then pull out of the driveway. Officer Burt stated that as the driver of the Kia drove forward, he and the other officers followed in order to intercept, but that soon thereafter the driver of the Kia stopped the vehicle. There were three occupants inside the Kia: the female driver, a male front seat passenger, and a female back seat passenger. The female driver gave Officer Burt consent to search the Kia vehicle. Shortly thereafter, Officer Burt stated that he heard Officer Thomas confirm that crack cocaine was found under the front passenger seat. App. 141, 1.1- p.148, 1.6. Tr. 220, 1.18- p221, 1.25. Note that the vehicle was a rental car that was not registered in appellant's name. Tr. 168, 1. 15 – p. 169, 1. 8.

Officer Finch testified that he was able to detain appellant during this vehicle search. Tr. 190, 1.15 – p.191, 1.10; Tr. 197, 1.7 –p. 199, 1.22. Finch stated that appellant denied initially that the crack cocaine belonged to him, but later admitted that he was in possession of the crack cocaine. Tr.200, 1. 3-9, Tr. 201, 1. 7 – p. 202, 1. 21; Tr. 205, ll. 8-21.

Appellant neither testified at trial nor presented witnesses in his defense. The state's theory of the case was that since appellant was seated in the front passenger seat and because crack cocaine was found under the front passenger seat, then appellant had constructive possession of the drugs and thus was guilty of drug possession. Tr. 134, l. 16 – p. 135, l. 15.; Tr. 258, l. 10- p.261, l.1. At the close of the state's case, appellant moved for a directed verdict of acquittal because there was insufficient evidence establishing guilt on the drug charge. The court denied appellant's directed verdict motion. Tr. 242, lines 8 -17.

Actual possession occurs when the drugs are found in the actual physical custody of a defendant and constructive possession arises when a defendant has dominion and control or the right to exercise dominion and control over the drugs. State v. Heath, 370 S.C. 326, 635 S.E.2d 181 (2006). In Heath, supra, the Court held that there was insufficient evidence that the defendant, who lived with his mother at the time of the arrest, was in constructive possession of crack found in a car washing mitt in a recycling bin outside at the back of a house owned by the defendant's mother.

In the case at bar, there was no evidence presented establishing that appellant had any possessory control either actually or constructively over the crack cocaine found in the vehicle searched. For example, appellant was merely a passenger in the front seat of a vehicle that did not belong to him. The vehicle was a rental car rented under another's name. Also, note that it was the driver who gave the police consent to search because she (driver) had control over the vehicle and was in actual and constructive possession of the car and what was inside of it. Hence, appellant's presence as a passenger in the vehicle at issue did not assign him any possessory interest either actually or constructively over the drugs found therein. Mere presence at the crime scene does not translate into one having dominion and control or the right to exercise

dominion and control over any drugs via constructive possession. State v. James, 386 S.C. 689 S.E.2d 643 (2012).

Compare following vehicle cases where the defendants were found not to have been in actual or constructive possession of the drugs found pursuant to police searches. In State v. Pradubsri, 403 S.C. 270, 743 S.E.2d 98 (2013), where a traffic stop of the defendant's vehicle resulted in a search where crack cocaine was found only on his girlfriend (actual possession) who was a passenger in the vehicle, the Court held that there was insufficient evidence that the defendant was in constructive possession of the drugs found on his girlfriend without his girlfriends' testimony to that effect. Also, in State v Jackson, 395 S.C. 250, 717 S.E.2d 609 (2011), the Court held that the State's evidence was insufficient to establish that the defendant had actual or constructive possession of the marijuana found under the center console of the vehicle where the drugs were not visible and where the defendant was merely a passenger in the vehicle who had only met the driver once at his (defendant's) grandchild's party before riding to Greenville, South Carolina, to promote a music gig. Compare, State v. Brown, 267 SC 311, 227 S.E. 2d 674 (1976), where the defendant was merely a passenger in the vehicle, who had neither ownership rights to the vehicle nor a relationship with the driver of the vehicle, and could not have seen or known of the opaque bag of marijuana found under the rear floorboard of the vehicle, and thus had no dominion and control over the marijuana. Compare also, State v. Hernandez 382 S.C. 620, 677 S.E.2d 603 (2009), where the Court held that the defendants who occupied a rental moving truck following a trailer were only present and had no knowledge that drugs were in the trailer they followed, and that as a result, the state's evidence of trafficking was insufficient and "merely speculation."

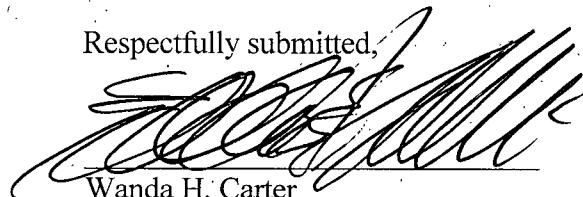
Here, the state failed to prove that appellant was in actual or constructive possession of the drugs found in the vehicle that was searched in the case; and since possession was a material

element of the crime charged, the conclusion is the same as reached in Heath, i.e., that the state “failed to establish an essential element of the crime charged.” In reviewing a denial of a motion for a directed verdict motion, an appellate court must review the evidence in the light most favorable to the state, and a case can only be submitted to the jury if there is any direct or substantial circumstantial evidence in existence that reasonably tends to prove the guilt of the accused or from which his guilt maybe fairly or logically deduced. State v. Jackson, supra. In the case at bar, the state’s case was lacking in competent evidence of drug possession against appellant, which in turn meant that the trial judge erred in failing to grant appellant’s motion for a directed verdict of acquittal in the case. The state failed to prove every element of the offense charged as required via the Fourteenth Amendment due process clause and article 1, §3 of the South Carolina State Constitution. See Jackson v. Virginia, 443 U.S. 307 (1979). The trial judge erred in denying appellant’s motion for a directed verdict of acquittal on the drug offense charged against him.

CONCLUSION

Based on the foregoing argument, appellant would request that his conviction be reversed and his case remanded to the lower court for a new trial.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of January, 2014.

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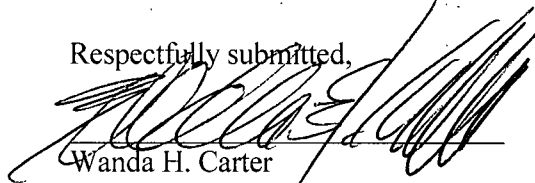
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Raheem Jamar Bonham states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on June 5-6, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Raheem Jamar Bonham.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 2nd Day of January, 2014.

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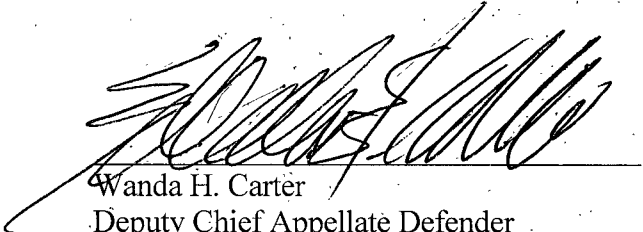
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Transcript

I certify that this designation contains no matter which is irrelevant to this appeal.

January 2, 2014.


Wanda H. Carter
Deputy Chief Appellate Defender

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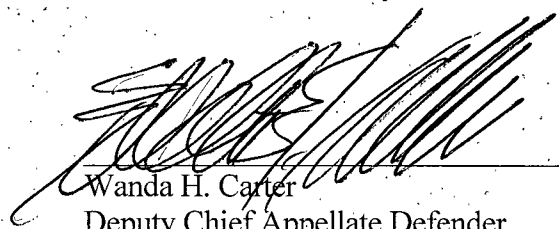
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Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

(January 2, 2014)



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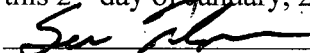
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon, Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Raheem Jamar Bonham, at 3018 Princeton Road, West Columbia, SC 29170, this 2nd day of January, 2014.


Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of January, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

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