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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM STATE GRAND JURY, PICKENS COUNTY

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2024-001236

THE STATE,

Respondent,

v.

WILLIAM RUSSELL OLIVER, II,

Appellant.

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUES PRESENTED

1. Did the trial judge err in refusing to suppress the drugs when the State failed to establish a complete chain of custody?
2. Did the trial judge err in instructing the jury that, "Constructive possession means that [t]he Defendant had dominion or control or the right to exercise dominion or control of either the methamphetamine itself or the property on which the methamphetamine was found"?

RESPONDENT'S COUNTERSTATEMENT OF THE ISSUES PRESENTED

1. The trial court correctly overruled Appellant's "chain of custody" objection to the drug evidence where the identity of each person in the chain was adequately established by the testimony.
2. The trial court did not err in instructing the jury on constructive possession, where the trial court correctly instructed the jury that constructive possession requires *both* dominion and control over the drugs themselves or the property on which they were found *and* the intent to control their disposition or use.

STATEMENT OF THE CASE

On May 20, 2021, the State Grand Jury of South Carolina indicted Appellant William R. Oliver, II, alongside eighty-two other defendants, in a “Fourth Superseding Indictment for Unlawful Drugs.” (2019-GS-47-23).

On June 24, 2024, Appellant proceeded to trial before the Honorable R. Lawton McIntosh and a jury on count 55 (Trafficking methamphetamine, 28-100 grams), count 56 (Possession of a weapon during the commission of or attempt to commit a violent crime), and count 58 (Possession of a schedule II controlled substance). *Id.* Lawrence Crane represented Appellant, and Savanna Goude and Christopher Fazel represented the State. Following a two-day trial, Appellant was found guilty on all counts. (Tr. 292:2-10). Appellant’s sentencing was deferred to a subsequent hearing, where Judge McIntosh sentenced him to twenty-five (25) years’ imprisonment for the trafficking charge, five years (5) for the weapons charge, and five (5) years for the possession charge, to be served concurrently. (Tr. II 43:11-14). Appellant filed a timely notice of appeal.

STATEMENT OF THE FACTS

On February 16, 2018, law enforcement executed a search warrant at the residence of William R. Oliver II (“Appellant”) as part of the department’s ongoing Prison Empire operation, a large-scale investigation into a drug trafficking ring operating out of Pickens and neighboring counties. (Tr. 42:9-21, 89:8-14). The search was initiated following an informant’s tip that Appellant was selling large quantities of methamphetamine out of an outbuilding located behind Appellant’s residence.¹ (Tr. 43:18-44:12). As Appellant was on probation at the time, the Sheriff’s

¹ The property was owned by Appellant’s uncle, but Appellant was a full-time resident at the home. (Tr. 190:20-21).

Office also contacted his probation officer, who agreed to assist them with a home visit. (Tr. 45:7-17).

Corporal Corey Baker of the Pickens County Sheriff's Office testified at trial that he responded to Appellant's known address to assist with the search. (Tr. 89:8-23). Only Appellant's sister and father were home at the time, but Appellant was eventually located at his girlfriend's home and brought back to the house. (Tr. 110:8-17, 112:1-5). Appellant was searched and police found a key ring and approximately \$2,563 in cash on his person. (Tr. 107:8-11). Corporal Baker testified that while law enforcement was unable to enter the outbuilding until Appellant arrived, as the other residents stated they were unable to unlock it, law enforcement were able to unlock the building using one of the keys found on Appellant. (Tr. 92:17-25).

Deputy Jeremy Stone testified that after police made entry, he walked his K-9 through the outbuilding, where the dog alerted beside a safe, indicating the presence of narcotics. (Tr. 123:18-25). Both the safe and the cash register drawer on top of the safe were locked, but Lieutenant Tommy Blankenship of the Pickens County Sheriff's Office was able to unlock both items using keys from Appellant's key ring. (Tr. 92:17-93:16). Inside the drawer police found small plastic bags, a glass smoking pipe, meth residue, digital scales, measuring spoons and cups, a white powder, and brown and white crystal-like substances (later identified as methamphetamine) in plastic baggies. (Tr. 93:3-94:19). A gun and a baggie of pills were also found in the safe. (Tr. 134:24-136:3).

The State attempted to enter the paraphernalia seized from the drawer into evidence as State's Exhibit #8, to which the Defense objected on chain of custody grounds, arguing that Corporal Baker had failed to identify who he'd given the items to. (Tr. 95:22-96:4). The State responded outside the presence of the jury that the drug paraphernalia consisted of non-fungible

items, which are not subject to the same chain of custody requirements as fungible items like the drugs themselves. (Tr. 96:14-22). The trial court agreed and allowed Exhibit #8 into evidence, over the Defense's objection. (Tr. 98:10-13). Corporal Baker further testified that a search of Appellant's room inside the house revealed several more smoking pipes that appeared to contain meth residue and a ledger that appeared to be a record of Appellant's drug sales with a pre-paid "green dot" card in Appellant's name tucked into the back. (Tr. 100:21-106:25, 108:19-21).

Lieutenant Tommy Blakenship, who unlocked the safe and handled the drugs, testified that he took the items from the safe, including the firearm and suspected drugs, and handed them over to the case agent. (132:1-5). Lieutenant Andy Robinson, also from the Pickens County Sheriff's Office, identified himself as the case agent on scene that day, testifying "my role at the scene was I was the deputy at the collection point for all evidence that was brought to me." (Tr. 137:22-25). Lieutenant Robinson further clarified that he personally collected all of the evidence that had been testified to at that point. (Tr. 138:1-3).

Lieutenant Robinson also testified that, once delivered to him, he placed the drugs in a BEST evidence kit, sealed it, and transported the evidence to a secure evidence locker at the Pickens County Sheriff's Office. (Tr. 139:14-140:22). The drugs were retrieved from that locker by Anthony Raines, a Pickens County evidence technician, who logged them into the system and transported them to SLED, where he placed them in another secured evidence locker. (Tr. 146:17-148:2). Lynn Black, the forensic chemist at SLED who analyzed the drugs, testified to the chain of custody of the drugs after they arrived at the SLED evidence locker. (Tr. 149:6, 154:8-23). Black testified that the sealed packaging would have shown if the evidence had been opened or tampered with, but there was no indication of tampering by the time she got the drugs. (Tr. 155:10-20).

The SLED evidence bag with the drugs was marked as exhibit 17, and Black identified it as the evidence she analyzed in this particular case. (Tr. 155:21-25, 159:6-25). The Defense objected on chain of custody grounds. (157:21-158:11). The Defense argued that the State had failed to lay a foundation or a proper chain of custody for the meth itself, as none of the law enforcement officers had specifically identified the meth brought to court as the meth found in Appellant's safe. (Tr. 156:4-9). The State responded that they had laid the foundation, first through law enforcement's identification of the meth in photographs taken at the scene and through their descriptions of the chain of custody to the point Black received the evidence for testing. (Tr. 156:11-157:14). The trial court overruled the Defense's objection. (Tr. 157:15-158:12).

During her testimony Black identified the pills found in Appellant's safe as Hydrocodone and Acetaminophen. (Tr. 160:17-22). Black further testified that samples 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9, and 1.10 all tested positive for methamphetamine. (Tr. 165:17-167:7). In total, the samples amounted to approximately 93.07 grams of meth. (Tr. 167:11).

Following the conclusion of the State's case the Defense moved for a directed verdict, citing chain of custody deficiencies. (Tr. 174:8-177:17). The motion was denied, and Appellant exercised his Fifth Amendment right not to testify. (Tr. 182:19-20). The Defense called one witness, Appellant's sister Heather Oliver. (Tr. 189:10). Oliver testified that the outbuilding where the drugs were located also served as their father's bedroom until recently, and that their father was a long-time methamphetamine user and dealer. (Tr. 191:1-191:9). Oliver also testified that her and her father also had keys to the outbuilding, along with other unidentified individuals. (Tr. 192:1-9). The State then called Corey Baker as a rebuttal witness, who testified that it did not look like anyone lived in the outbuilding, nor did it appear to be suitable for habitation. (Tr. 201:25-202:10).

During jury charge discussions, the Defense noted that the judge's proposed instructions included several references to "inferences" that the jury could make from the evidence. The Defense stated, "I do try to read the case law that comes down from the courts. With some of their rulings recently on inferences, . . . I would object to the language of inference." (Tr. 223:10-20). The trial court replied that, "if . . . you show me some authority, I will take it out in a second." (Tr. 223:21-25).

The following morning, the charge conference resumed, and the trial court explained that it had struck several lines from the proposed jury charge, "consistent with the *Stewart* ruling and *Custard* [sic]," presumably referring to *State v. Stewart*, 433 S.C. 382, 858 S.E.2d 808 (2021) and *State v. Custer*, 443 S.C. 172, 903 S.E.2d 237 (Ct. App. 2024). (Tr. 225:1-23).

The trial court asked the Defense if there was "[a]nything else," and the Defense responded, "Well, yes, sir, Judge. In talking with my law partner this morning, he—I would—I would request [t]he Court, based on *Stewart* and . . . *Custard* [sic] . . . not only can you not charge what you've taken out, but, quite honestly, I would ask that you charge just the converse. And that would be that they cannot infer possession of the drugs simply if possession of property is proven." (Tr. 229:1-11). The trial court replied, "I'm not going to charge that." (Tr. 229:12-20).

The trial court instructed the jury that "[c]onstructive possession means that [t]he defendant had dominion or control or the right to exercise dominion or control [over] the methamphetamine itself or the property on which the methamphetamine was found." (Tr. 269:17-21). The trial court did not include any language about what the jury may or may not infer from possession of the property.

After the jury left to deliberate, the Defense again challenged the trial court's constructive possession instruction as inconsistent with "*Stewart* and *Custard* [sic]." (Tr. 278:24-25). The trial

court asked what the Defense thought the charge should have been, and the Defense responded, “I would have you charge up to where it says, Right to exercise dominion and control over the methamphetamine itself, period. Not the property.” (Tr. 280:8-20). The trial court replied, “I will not charge that to the jury.” (Tr. 280:22).

The jury ultimately convicted Appellant on all charges. (Tr. 292:2-10). In a subsequent hearing, Appellant was sentenced to twenty-five years for trafficking, five years for the weapon charge, and five years for the possession charge, all to be served concurrently. (Tr. II 43:11-14).

STANDARD OF REVIEW

“Courts have abandoned inflexible rules regarding the chain of custody and the admissibility of evidence in favor of a rule granting discretion to the trial courts.” *State v. Hatcher*, 392 S.C. 86, 94, 708 S.E.2d 750, 754 (2011). “The admission or exclusion of evidence is a matter within the trial court's sound discretion, and an appellate court may only disturb a ruling admitting or excluding evidence upon a showing of a ‘manifest abuse of discretion accompanied by probable prejudice.’” *State v. Commander*, 396 S.C. 254, 262–63, 721 S.E.2d 413, 417 (2011) (quoting *State v. Douglas*, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006)).

“An appellate court will not reverse a trial court’s decision regarding a jury instruction unless there is an abuse of discretion.” *State v. Brooks*, 428 S.C. 618, 625, 837 S.E.2d 236, 239 (Ct. App. 2019).

“An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Id.* (quoting *State v. Pittman*, 373 S.C. 527, 570, 647 S.E.2d 144, 166–67 (2007)).

ARGUMENT

1. The trial court correctly overruled Appellant’s “chain of custody” objection to the drug evidence where the identity of each person in the chain was adequately established by the testimony.

Appellant argues first that the trial court erred in admitting State’s Exhibit #17—the drug evidence analyzed by SLED forensic chemist Lynn Black—over his “chain of custody” objection. Appellant argues that, because the officers who initially seized the evidence testified that they turned it over to an unnamed “case agent,” there was a missing link in the chain of custody. Appellant also argues that the offices who collected the evidence never identified State’s Exhibit #17 as the evidence they found. Both of these arguments are meritless.

[A] party offering into evidence fungible items such as drugs or blood samples must establish a complete chain of custody as far as practicable. *Benton v. Pellum*, 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957). Where an analyzed substance that has passed through several hands, the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture. *Id.* at 33–34, 100 S.E.2d at 537. Accordingly, if the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive. *State v. Taylor*, 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004).

Testimony from each custodian of fungible evidence, however, is not a prerequisite to establishing a chain of custody sufficient for admissibility. *Id.* at 27, 598 S.E.2d at 739. Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness.

State v. Sweet, 374 S.C. 1, 6–7, 647 S.E.2d 202, 205–06 (2007).

In this case, Corporal Baker testified that he found glass smoking pipes with residue, spoons, and cups that appeared to be used for scooping quantities of drugs in a drawer located in the outbuilding. He took the evidence from the drawer to the “central collection point” where they would be photographed and “the person that’s going to be . . . submitting the evidence takes all of that and brings it back to the office to submit into evidence.” (Tr. 95:6-21).² Corporal Baker also testified that he collected additional glass smoking pipes with residue and a plastic bag of pipe scrapings from Appellant’s bedroom. Corporal Baker again testified that everything he collected was photographed and then brought “to the collection point. Then once it was turned over to that person, then it was brought back to the sheriff’s office.” (Tr. 107:10-16).

Lieutenant Blankenship testified that he found several bags containing a white crystalline substance, as well as a hard case containing a pistol, in a safe located in the outbuilding on the property. Once the evidence was photographed and the location where it was found was documented, he turned the items over to the case agent. (Tr. 132:1-5).

Lieutenant Robinson identified himself as the case agent on scene that day, testifying “my role at the scene was I was the deputy at the collection point for all evidence that was brought to me.” (Tr. 137:22-25). Lieutenant Robinson further clarified that he personally collected all of the evidence that had been testified to at that point. (Tr. 138:1-3). He sealed the evidence in the BEST

² Appellant challenged the admissibility of the drug paraphernalia seized by Corporal Baker—State’s Exhibit #8—on chain of custody grounds. However, the State responded that the items in question were non-fungible and, therefore, were not subject to the same kind of chain of custody requirements as fungible evidence like drugs or blood. The trial court agreed with the State and overruled Appellant’s objection to the admission of State’s Exhibit #8. Although Appellant now challenges the admission of the *drug evidence* in State’s Exhibit #17, he does not appear to be challenging the trial court’s determination that the *drug paraphernalia* in State’s Exhibit #8 is non-fungible and was admissible.

evidence kit and brought it to the secure evidence locker at the Pickens County Sheriff's Office. (Tr. 139:14-140:22).

Appellant argues that this testimony did not adequately establish the chain of custody because Baker and Blankenship did not identify Robinson *by name* as the officer to whom they submitted the evidence seized during the search, nor did Lieutenant Robinson identify Baker and Blankenship *by name* as the officers from whom he collected the evidence. However, Appellant has failed to point to any authority for the supposed requirement that each person in the chain of custody must identify the next "link" *by name*, in order for the chain to be sufficiently established. To the contrary, our courts have held such testimony is *not* necessary "[w]here other evidence establishes the identity of those who have handled the evidence." *Sweet*, 374 S.C. at 7, 647 S.E.2d at 206.

"It is unnecessary . . . that the police account for "every hand-to-hand transfer" of the item; it is sufficient if the evidence demonstrates a reasonable assurance the condition of the item remains the same from the time it was obtained until its introduction at trial.'" *Hatcher*, 392 S.C. at 94, 708 S.E.2d at 754 (quoting *State v. Price*, 731 S.W.2d 287, 290 (Mo.Ct.App.1987)). Here, however, the case is even stronger: the officers involved *did* account for "every hand-to-hand transfer" of the evidence. Baker and Blankenship both explained that, after photographing and documenting the evidence they found, they brought that evidence to another officer who served as the central "collection point" for all evidence obtained during the search. Robinson identified himself as the "deputy at the collection point," and he explained that he was the one who "collected all of the evidence that's been testified about today." While the officers did not identify each other by name in their testimony, they clearly identified each other by the role they played during the search. There is no "missing link" in the chain of custody; all the testimony, taken together, clearly

and consistently shows that Robinson was the deputy who collected the evidence seized by Baker and Blankenship during the search.

Next, Applicant argues it was error for the trial court to admit State's Exhibit #17—the evidence kit that was sent to SLED and tested by Lynn Black—because none of the officers involved in the search specifically identified State's Exhibit #17 as containing the drugs they obtained from the scene. This argument is also meritless. “The trial judge acts as the authentication gatekeeper, and a party may open the gate by laying a foundation from which a reasonable juror could find the evidence is what the party claims.” *State v. Green*, 427 S.C. 223, 230, 830 S.E.2d 711, 714 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020).

Contrary to Appellant's argument, there is no requirement that every custodian of the evidence must independently affirm that the exhibit sought to be introduced is what it purports to be. *See, e.g., Sweet*, 374 S.C. at 7, 647 S.E.2d at 206 (“Testimony from each custodian of fungible evidence . . . is not a prerequisite to establishing a chain of custody sufficient for admissibility.”). As long as there is some evidence from which the *jury* could reasonably determine that the evidence analyzed by Lynn Black was the same as the evidence seized by law enforcement, the requirement of authentication has been satisfied.

The record in this case amply supports the trial court's determination of admissibility in this regard: Baker and Blankenship described finding the evidence and turning it over to the collection agent; Robinson identified himself as the collection agent, explained that he sealed the evidence in a BEST evidence kit to prevent tampering, which he dropped off in the secure evidence locker at the Pickens County Sheriff's Office; Picken County evidence technician Anthony Raines testified that he obtained the drugs from that locker, logged them into the system, and transported them to another secured evidence locker at SLED; finally, Lynn Black testified that SLED forensic

technician Jackie Davis retrieved the evidence from the locker at SLED, logged it in and gave it a unique crime lab case number, and placed it in the drug evidence intake storage area, where it was picked up by SLED evidence technician Charlotte Pitts and taken to Black herself. Black also explained that everybody at SLED had a bar code that is scanned to identify who has possession of the evidence in their computer system, so that each custodian of the evidence while it remains at SLED is accounted for. Black explained that, when she obtained the evidence, it was still sealed in the BEST evidence kit and showed no evidence of having been opened or otherwise tampered with.

There can be no question that this testimony sufficiently accounted for the chain of custody such that the trial court did not manifestly abuse its discretion in admitting the evidence. Taken together, this testimony overwhelmingly clears the bar for authentication of evidence: any reasonable juror would be justified in concluding that State's Exhibit #17 was, in fact, exactly what it purported to be—the bag containing drugs seized from Appellant's property by Baker and Blankenship during their execution of the search warrant.

For these reasons, the trial court did not abuse its discretion in deciding to admit the drug evidence, and its decision should be affirmed.

2. The trial court did not err in instructing the jury on constructive possession, where the trial court correctly instructed the jury that constructive possession requires *both* dominion and control over the drugs themselves or the property on which they were found *and* the intent to control their disposition or use.

Appellant next argues that the trial court erred in instructing the jury that “[c]onstructive possession means that [t]he defendant had dominion or control or the right to exercise dominion or control [over] the methamphetamine itself or the property on which the methamphetamine was

found.” (Tr. 269:17-21). In support of his position, Appellant cites *Stewart*, 433 S.C. 382, 858 S.E.2d 808, and *Custer*, 443 S.C. 172, 903 S.E.2d 237.

In *Stewart*, a case involving constructive possession of heroin, our Supreme Court held that the trial court erred in charging that “[t]he defendant’s knowledge and possession may be inferred when a substance is found on the property under the defendant’s control.” *Stewart*, 433 S.C. at 390, 858 S.E.2d at 812. In *Custer*, which came out after *Stewart*, the South Carolina Court of Appeals applied the holding of *Stewart* to a similar case involving constructive possession of stolen vehicles, finding again it was error for the trial court to charge that “knowledge and possession may be inferred when a substance is found on the property under the defendant’s control.” *Custer*, 443 S.C. at 180–81, 903 S.E.2d at 241.

In the present case, however, the trial court never used such “permissive inference” language anywhere in its jury charge. Appellant candidly admits that “[t]he present case does not involve the erroneous inference instruction found in *Stewart* and *Custer*.” (Br. App. 17). Appellant also candidly admits that the definition of constructive possession given in the present case was the same as the definition given in *Stewart*, which the Supreme Court expressly found *not* to be erroneous. *Id.* (quoting *Stewart*, 433 S.C. at 390, 858 S.E.2d at 812 (“[W]e find no error in the trial court’s definition of constructive possession.”)). Nevertheless, he contends the trial court erred in this case because, in contrast to *Stewart*, the constructive possession charge given in the present case was not prefaced by the following language: “To 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.” *Stewart*, 433 S.C. at 388, 858 S.E.2d at 811 (holding the trial court’s definition of constructive possession would have been “problematic” without such language).

Appellant is correct that, in this case, the trial court's definition of constructive possession was not *prefaced* by this language. What Appellant fails to mention is the fact that the trial court's definition of constructive possession was *followed* by virtually identical language; after defining constructive possession, the court went on to charge the jury that, "[t]o prove possession, [t]he State must prove beyond a reasonable doubt that [t]he Defendant had both the power and intent to control the disposition or use of the methamphetamine." (Tr. 272:3-6).

The record clearly shows that the trial court included in its jury charge substantially the same language our Supreme Court noted favorably in *Stewart*. As the *Stewart* opinion acknowledged, "we do not consider jury instructions in isolation, but as a whole." 433 S.C. at 390, 858 S.E.2d at 812 (citing *State v. Herndon*, 430 S.C. 367, 371, 845 S.E.2d 499, 502 (2020)). With this language, the trial court accurately conveyed the doctrine of constructive possession to the jury. *See Stewart*, 433 S.C. at 390, 858 S.E.2d at 812 ("When considered as a whole, the trial court's definition of constructive possession adequately conveyed both elements to the jury. Therefore, we find no error in the trial court's definition of constructive possession.").

Whether this language comes before or after the definition of constructive possession makes no difference; the jury was clearly instructed that the State had the burden of proving Appellant possessed the "intent to control the disposition or use of the methamphetamine." There was no error in the trial court's jury instructions, and the trial court's correct ruling should be affirmed.

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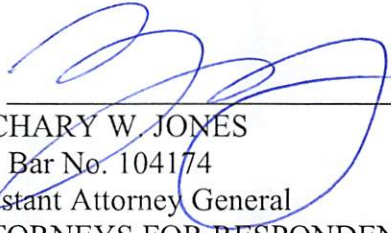
CONCLUSION

For the foregoing reasons, this Court should affirm Appellant's convictions and sentences.

Respectfully submitted,

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