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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANTIWAYNE JABAR ROUSE,

APPELLANT

APPELLATE CASE NO. 2025-000778

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by failing to grant a directed verdict for trafficking cocaine, trafficking crack cocaine, possession with intent to distribute fentanyl, and possession of a weapon during the commission of a violent crime, when the state failed to present any direct or substantial circumstantial evidence that Appellant had actual or constructive possession of the drugs found in the grassy, wooded area near where Appellant was apprehended or knowledge of the presence of the drugs, the two essential elements of trafficking and possession?

STATEMENT OF THE CASE

A Charleston County grand jury indicted Appellant on September 10, 2024, for failure to stop for a blue light, trafficking cocaine, trafficking crack cocaine, possession with intent to distribute fentanyl, and possession of a weapon during the commission of a violent crime. R. * (Indictments). Appellant's case was called to trial on April 15, 2025, before the Honorable Benjamin H. Culbertson, and a jury. Tr. 1. Assistant Solicitors Hunt Russell and Cassity Brewer represented the state. Melisa Gay represented Appellant. Tr. 1.

On April 16, 2025, the jury found Appellant guilty as indicted. Tr. 262, ll. 4-23. He was sentenced to twenty-five years for trafficking cocaine, trafficking crack cocaine, and possession with intent to distribute fentanyl, three years for failure to stop for a blue light, and five years for the weapons offense. Tr. 271, l. 23 – 272, l. 15.

This appeal follows.

STANDARD OF REVIEW

“The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged.” State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (citing State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)). “However, if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” Id. (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)) (emphasis in original). “On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State.” Id. (citing State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001)).

“A [trial] judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty.” Id. (citing State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984)). “Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-405 (2001) (citing Lollis, 343 S.C. at 584, 541 S.E.2d at 256). “When ruling on a motion for a directed verdict, the trial [judge] is concerned with the existence or nonexistence of evidence, not its weight.” State v. Shands, 424 S.C. 106, 135, 817 S.E.2d 524, 539 (Ct. App. 2018) (citing State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)).

ARGUMENT

The trial court erred by failing to grant a directed verdict for trafficking cocaine, trafficking crack cocaine, possession with intent to distribute fentanyl, and possession of a weapon during the commission of a violent crime, when the state failed to present any direct or substantial circumstantial evidence that Appellant had actual or constructive possession of the drugs found in the grassy, wooded area near where Appellant was apprehended or knowledge of the presence of the drugs, the two essential elements of trafficking and possession.

Relevant Facts

Officers Jordan Williamson, Joseph Magrane, and Sean Jellico, all of the North Charleston Police Department, were working together on the night of January 23, 2023, as part of the Special Operations Powershift Team. Tr. 143, l. 25 – 144, l. 15. The Powershift Team was created to patrol high crime areas of the city. Tr. 141, ll. 2-6. They were patrolling the “hotel corridor around the Tanger Outlets” in North Charleston. Tr. 84, ll. 1-4. Officers Magrane and Jellico were in the same patrol car. Tr. 144, l. 14 – 145, l. 3.

Shortly before 11:00 p.m., Officer Williamson, who was driving a Chevrolet Tahoe that was fully marked as a police K-9 vehicle, saw a black BMW sedan approach him from behind. According to Williamson, this car did not pass him even though Williamson was driving “significantly under the speed limit.” Williamson found this “suspicious.” The BMW then turned onto Hotel Road, a side street. Williamson pulled into the parking lot of the Aloft Hotels and parked facing the main road to see whether the BMW “came back out.” About a minute later, Williamson testified that he saw the BMW drive by the Aloft Hotels where he was parked. Williamson believed the window tint on the vehicle was darker than the legal limit so he decided to conduct a traffic stop. Tr. 85, l. 3 – 88, l. 20.

Williamson activated his blue lights and sirens, but the driver of the BMW did not pull over. The driver eventually ran a red light and increased his speed to roughly seventy miles per hour. After a short pursuit, the driver of the BMW lost control of the car on the on ramp of Interstate 26. The vehicle “fishtailed” and “jumped the curb” before coming to a stop in the grassy median between the interstate and the on ramp. The driver then fled on foot into the grassy, wooded median. Williamson immediately deployed his K-9, which apprehended the driver, who was later identified as Appellant. The K-9 bit Appellant in numerous places, including his arm and neck, before Williamson “physically removed” the dog “from the bite.” Tr. 88, l. 19 – 93, l. 20.

Officers Magrane and Jellico also engaged in the pursuit and arrived just after Williamson. After making sure no one else was in the BMW, Magrane ran to assist Williamson and placed Appellant in handcuffs. Magrane testified that when he checked the BMW, he saw a gun on the floorboard of the driver’s seat. Tr. 145, l. 7 – 150, l. 2. Appellant later admitted that this gun belonged to him. See State’s Exhibit No. 17 (Magrane Entire Body Cam).

After placing Appellant in handcuffs, Magrane walked Appellant back to where his car was parked. Magrane searched Appellant’s person and found \$4,385 dollars in cash in various denominations in his pockets. Magrane also found a small digital scale. Tr. 150, l. 2 – 151, l. 1.

After Magrane searched Appellant’s person, Officer Williamson decided to search the area where Appellant was apprehended. The black “skull cap” Appellant had been wearing when he got out of his car was discarded where Appellant was “taken into custody” by the K-9. About eight feet in front of the “skull cap” Williamson found a black drawstring bag, likely a sunglasses bag, that contained several plastic bags of suspected drugs. A plastic bag containing suspected drugs was also found right next to the black drawstring bag. Williamson believed this

plastic bag had fallen out of the black bag when it was discarded. Williamson further opined that the black bag was “freshly discarded” because there was no dirt on the bag, the bag did not appear to have been affected by sunlight, and the bag was not wet to the touch. Tr. 95, l. 2 – 99, l. 2.

Williamson, Magrane, and Jellico all claimed that, over the last several years, they had never seen anyone in the grassy, wooded area where Appellant was apprehended. Tr. 99, ll. 10-23. Tr. 158, l. 21 – 159, l. 8. Tr. 168, l. 18 – 169, l. 11. However, there was trash in area suggesting other people had visited the location. Tr. 129, l. 17 – 131, l. 8. Williamson admitted that there were no eyewitnesses who saw Appellant toss the black drawstring bag nor any other direct evidence that Appellant threw the bag into the woods. Williamson testified that he was roughly fifty yards behind Appellant when Appellant was apprehended by the K-9. Tr. 128, l. 9 – 129, l. 16.

The suspected drugs were later determined to be 17.25 grams of crack cocaine, 26.74 grams of cocaine, and 0.48 grams of fentanyl. Tr. 186, ll. 7-25.

After the state rested, Appellant moved for a directed verdict. Defense counsel argued that there was no direct or substantial circumstantial evidence that Appellant was in actual or constructive possession of the drugs. She asserted that Appellant was merely present eight feet or so away from where the drugs were found. Counsel argued that knowledge is an element of possession and knowledge may be inferred when the defendant has control over the premises where the drugs were found, like an individual’s home or car. However, in this case, Appellant had no control over the wooded area where the drugs were found. Counsel further emphasized that there were no witnesses who saw Appellant toss the bag of drugs nor any body worn camera footage showing Appellant throwing the bag. Appellant also never admitted the drugs were his.

Counsel concluded that there was zero evidence connecting Appellant to the drugs that were found. Tr. 188, 19 – 193, l. 7.

The trial court denied the motion. It found there was sufficient evidence to “send it to the jury.” Tr. 195, ll. 21-24.

The jury struggled to reach a verdict. After an hour of deliberating, the jury sent a note, which was marked as Court’s Exhibit No. 1, stating, “Jury is hard split on the evidence of his drugs or not and all unwilling to say any discussion or further review will alter their decision / made up minds. And dug in this question on burden of proof – None willing to discuss. Suggestions, or further guidelines for jury?” Tr. 253, l. 25 – 255, l. 4. R. * (Court’s Exhibit No. 1). The state requested the court give the jury an Allen¹ charge and defense counsel agreed. Tr. 255, ll. 4-11. About twenty minutes after the court gave the jury an Allen charge, the foreperson stated the jurors were “in disagreement on reasonable doubt” and asked for a written definition. Tr. 257, l. 18 – 258, l. 7. R. * (Court’s Exhibit No. 2). The court provided the jury with a printed copy of the entire jury charge. Tr. 258, l. 8 – 260, l. 18. Just over forty minutes later, the jury reached a verdict finding Appellant guilty as indicted. Tr. 260, l. 19 – 262, l. 23.

Discussion

The trial court erred by failing to grant a directed verdict of acquittal for trafficking cocaine, trafficking crack cocaine, possession with intent to distribute fentanyl, and possession of a weapon during the commission of a violent crime, when the state failed to present any direct or substantial circumstantial evidence that Appellant had actual or constructive possession of the drugs found in the grassy, wooded area near where Appellant was apprehended or knowledge of the presence of the drugs, the two essential elements of trafficking and possession.

¹ Allen v. United States, 164 U.S. 492 (1896).

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (citing State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)). “If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001) (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant’s favor unless there is *substantial* circumstantial evidence which reasonably tends to prove the guilt of the defendant 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) (citing State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)).

Likewise, a directed verdict is proper when the evidence produced “merely raises a suspicion the accused is guilty.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256 (citing State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984)). Our courts define suspicion as “a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” Lollis, 343 S.C. at 584, 541 S.E.2d at 256 (citing State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963)).

Appellant was indicted for trafficking cocaine pursuant to S.C. Code Ann. § 44-53-370(e)(2)(a)(3), which states in relevant part, “Any person . . . who is knowingly in actual or constructive possession . . . of . . . ten grams or more of cocaine or any mixtures containing cocaine . . . is guilty of a felony, which is known as ‘trafficking in cocaine’ . . .” Appellant was also indicted for trafficking crack cocaine pursuant to S.C. Code Ann. § 44-53-375(C)(1)(c), which

states in relevant part, “A person . . . who is knowingly in actual or constructive possession . . . of ten grams or more of . . . cocaine base . . . is guilty of a felony which is known as ‘trafficking in . . . cocaine base.’” Finally, Appellant was indicted for possession with intent to distribute fentanyl pursuant to S.C. Code Ann. § 44-53-370(a)(1), which states in relevant part, “It shall be unlawful for any person to . . . possess with intent to distribute . . . a controlled substance . . .”²

To prove trafficking (when based on possession) and possession with intent to distribute, the state must prove two elements. First, the state “must prove the defendant had either actual physical custody of the drugs, or the right or power to exercise control over the drugs.” State v. Stewart, 433 S.C. 382, 387, 858 S.E.2d 808, 810 (2021) (citing State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 774-75 (1981) and State v. Ellis, 263 S.C. 12, 22, 207 S.E.2d 408, 413 (1974)). Second, the state must prove the defendant had knowledge of the presence of the drugs.” Id. (citing State v. Brown, 267 S.C. 311, 315, 227 S.E.2d 674, 676 (1976) and Hudson, 277 S.C. at 202, 284 S.E.2d at 774). After State v. Lane, 271 S.C. 68, 73, 245 S.E.2d 114, 116 (1978), the second element is now stated as “the defendant must have knowledge of the drugs and the intent to control their disposition or use.” Id.

“Mere presence is insufficient to prove constructive possession.” State v. Heath, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006) (citing State v. Tabor, 260 S.C. 355, 364, 196 S.E.2d 111, 113 (1973)). In order to prove constructive possession, the state must show a defendant had dominion and control, or the right to exercise dominion and control over the illegal substance. Id. (citing State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980)). The state may establish constructive possession by either direct or circumstantial evidence. Id. “The defendant’s knowledge and possession may be inferred if the substance was found on premises

² Appellant was also indicted for possession of weapon during the commission of a violent crime based on the trafficking offense.

under his *control*.” Id. at 329-330, 635 S.E.2d at 19 (citing State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987)) (emphasis in original).

In Heath, our Supreme Court held the evidence presented was insufficient to establish Heath was in constructive possession of crack cocaine and consequently directed a verdict of acquittal in his favor. 370 S.C. at 328, 635 S.E.2d at 18. Heath lived in a house with his mother and a young child. His mother owned the house. Id. at 328, 635 S.E.2d at 18. Law enforcement obtained a warrant to search in and around the house for crack cocaine. Id. When officers arrived to execute the search warrant, Heath and his brother were outside in front of the house. It appeared Heath had just finished washing his car. Id. Upon the officers’ arrival, Heath’s brother ran inside the house and locked himself in a bathroom. Id. at 328, 635 S.E.2d at 19. Officers ultimately found crack cocaine, numerous plastic baggies (allegedly the type used by crack dealers), scales, and twenty five hundred dollars in cash inside the home. Id. Additionally, a police dog discovered a car washing mitt in a recycling bin near the back door of the house containing 43.48 grams of crack cocaine. Id. at 329, 635 S.E.2d at 19.

The Supreme Court held the state presented no direct or substantial circumstantial evidence linking Heath to the crack cocaine. Id. at 330, 635 S.E.2d at 19. The Court further held the state failed to present evidence Heath could exercise dominion and control over the area where the crack was found. Id. In so holding, the Court noted that, while Heath lived in the home where the crack was found, the home was owned by his mother. Id. As a result, the Court concluded, “It was arguable that [Heath] *merely had a right to access the area where the crack was found, not actual dominion and control of the property*.” Id. (emphasis added).

Here, there was no evidence Appellant had actual possession or constructive possession of the drugs found. There was no evidence Appellant had the right and power to exercise control

over the drugs. There was no evidence Appellant, while he had access to the area where the drugs were found, had actual dominion and control of the property, or the right to exercise dominion and control over the property. The evidence established that Appellant merely ran into the grassy, wooded area to avoid law enforcement. The land was open to the public and there was evidence other people visited the area since various trash was found near where the drugs were located.

Moreover, there was no evidence Appellant had knowledge of the drugs and the intent to control the disposition or use of the drugs. The evidence established that the drugs were found roughly eight feet away from where Appellant was apprehended. There was no evidence Appellant had knowledge that the drugs were there or an intent to control the disposition of the drugs. As defense counsel argued at trial, there was no evidence whatsoever connecting Appellant to the drugs. See State v. Brown, 267 S.C. 311, 316, 227 S.E.2d 674, 677 (1976) (“Proof of possession requires more than proof of mere presence, and the state must show defendant had dominion and control over the thing allegedly possessed or had the right to exercise dominion and control over it.”). There were no eyewitnesses or other direct evidence showing Appellant tossed the drugs nor did Appellant admit to tossing the drugs.

Because the state failed to present any evidence establishing the two essential elements of the crimes charged, respectfully, this Court should reverse Appellant’s convictions and direct a verdict in his favor.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal for trafficking in crack cocaine, trafficking in cocaine, possession with intent to distribute fentanyl, and possession of a weapon during the commission of a violent crime.

Respectfully submitted,

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Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of August, 2026.