

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Alexander S. Macaulay, Circuit Court Judge
Appellate Case No. 2012-213383

RECEIVED

APR 23 2014

SC Court of Appeals

THE STATE,

Respondent,

vs.

BENJAMIN J. NEWMAN,

Appellant.

RETURN TO PETITION FOR REHEARING

On January 29, 2014, this Court issued an unpublished opinion in which it unanimously affirmed Appellant's convictions for trafficking in marijuana and trafficking in cocaine. State v. Newman, Op. No. 2014-UP-034 (S.C. Ct. App. filed Jan. 29, 2014): Pursuant to Rule 221(a), SCACR, Appellant petitioned this Court for rehearing, and this Court requested that Respondent ("the State") file a return to Appellant's petition. For the following reasons, Appellant's petition for rehearing should be denied.

Suppression Issue

In his petition for rehearing, Appellant first contends that this Court erred in affirming the trial judge's decision to deny Appellant's motion to suppress the drug evidence obtained as a result of an allegedly unlawful search. In support of that contention, Appellant initially maintains that the law enforcement officers had no authority to remain inside Appellant's residence pending their receipt of a search warrant. (Pet. for Reh. p. 2). Appellant further

maintains the audio recording at the scene documented that “officers were searching around for cocaine prior to the search warrant being there.” (Pet. for Reh. p. 3). Contrary to Appellant’s contentions, neither this Court nor the trial judge committed any error in finding Appellant’s motion to suppress the drug evidence in his case to be meritless, and Appellant’s conviction was properly affirmed on appeal.

As this Court noted in its opinion, “Under the ‘plain view’ exception to the warrant requirement, objects falling within the plain view of a law enforcement officer who is rightfully in a position to view the objects are subject to seizure and may be introduced as evidence.” State v. Wright, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011). Furthermore, this Court noted that law enforcement may enter a dwelling “to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside [the] dwelling.” State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004).

Ample evidence existed to support the trial court’s denial of Appellant’s motion to suppress the drug evidence. The trial court held a thorough suppression hearing, during which multiple witnesses testified. The agent who participated in the drug deal testified he could have arrested Appellant immediately following the deal because it occurred in his presence and he was inside the residence by consent. He also testified that no one was searching the house during the time Appellant was removed, that officers were merely clearing out the house and removing the people, and that no one was searching while they waited for the search warrant. He explained that officers were merely looking around the backyard for both Appellant and the cocaine after Appellant fled. He testified that when the officers entered the residence, the marijuana was readily visible.

The testimony demonstrates the drug evidence was obtained without the need for a search warrant because the transaction occurred in the presence of a law enforcement agent, who had the authority to arrest Appellant as soon as the exchange took place. Also, the marijuana was in plain view when the officers lawfully entered the residence when attempting to arrest Appellant during the drug bust. In addition to the lawful entry to arrest, the agent was lawfully in the residence by consent. Under either scenario, the initial intrusion that afforded the plain view was lawful. Similarly, the cocaine was located in plain view in an open book bag without officers having to search underneath items or manipulate items. Thus, the drug evidence fell within the plain view exception to the warrant requirement and was properly admitted. Accordingly, Appellant's petition for rehearing should be denied.

Directed Verdict Issue

In his petition for rehearing, Appellant next contends this Court erred in affirming the trial judge's denial of his directed verdict motion on the trafficking cocaine charge. In support of that contention, Appellant submits the transfer of the cocaine for the marijuana had already taken place prior to the law enforcement raid on Appellant's residence. Accordingly, he contends a directed verdict of acquittal should have been granted on the cocaine charge because law enforcement had taken physical custody of the cocaine prior to Appellant's arrest and the cocaine was under the dominion and control of law enforcement agents.

As this Court correctly noted in its opinion, "In reviewing the denial of a motion for a directed verdict, the evidence must be viewed in the light most favorable to the State. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find that the case was properly submitted to the jury." State v. Williams, 346 S.C. 424, 430, 552 S.E.2d 54, 57 (Ct. App. 2001). Furthermore, this

Court noted, "Where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be sufficient to carry the case to the jury." Id.

The details of the drug transaction demonstrate Appellant's dominion and control over the drugs when he invited the agent and the confidential informant into his home and engaged in a drug transaction by accepting the fifty pounds of marijuana in exchange for twenty-seven ounces of cocaine. The audiotape provided further evidence of Appellant's participation in the drug deal. Appellant was heard asking for 1,000 pounds of marijuana for the next deal and was also heard giving the agent two extra ounces of cocaine and telling him how to work with the cocaine when he unwrapped it. Sufficient evidence existed to support the denial of Appellant's directed verdict motion and the trial court properly submitted the case to the jury for its resolution. As a result, the trial judge properly denied Appellant's motion for a directed verdict on the trafficking cocaine charge, and this Court correctly affirmed the trial judge's ruling. Appellant's petition for rehearing should be denied.

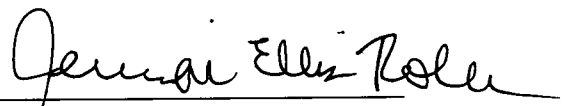
Conclusion

Based on the foregoing, coupled with the arguments raised in the Final Brief of Respondent, the State respectfully requests that Appellant's petition for rehearing be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

By: 
Jennifer Ellis Roberts

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

April 23, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Lexington County
Honorable Alexander S. Macaulay, Circuit Court Judge
Appellate Case No. 2012-213383

APR 23 2014

SC Court of Appeals

THE STATE,

Respondent,

vs.

BENJAMIN J. NEWMAN,


Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Return to Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tara Dawn Shurling, Esquire
3614 Landmark Drive
Suite A
Columbia, SC 29204

I further certify that all parties required by Rule to be served have been served.
This 23rd day of April, 2014.


ANGELA BENNETT
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727



ALAN WILSON
ATTORNEY GENERAL

April 23, 2014

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: State v. Benjamin J. Newman
Appellate Case No. 2012-213383

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Return to Petition for Rehearing, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/ab
Enclosures

cc: Tara Dawn Shurling, Esquire
Victim Services

RECEIVED

APR 23 2014

SC Court of Appeals