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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Williamsburg County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAVERN ANDERSON,

APPELLANT

APPELLATE CASE NO. 2013-000561

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in failing to enter a directed verdict of acquittal on the charge that Appellant knowingly possessed with intent to distribute crack cocaine where the State only adduced circumstantial evidence that Appellant was sitting in a truck that was registered to another person at the scene, where the drugs were stored in the truck's center console, and where the registered owner along with a third individual were at the scene but never questioned.

STATEMENT OF THE CASE

On May 13, 2012, the Williamsburg County Grand Jury indicted Appellant Lavern Anderson on one count of possession of crack cocaine base with intent to distribute. R. 151-152. On January 30 and 31, 2013, Appellant's case proceeded to a trial in absentia before The Honorable Clifton Newman and a jury. R. 2; R. 12, ll. 13-17. Cesar McKnight represented Appellant and Kimberly Barr represented the State. R. 2. The jury found Appellant guilty. R. 141, ln. 25—R. 142, ln. 4. The trial judge entered a sealed sentence. R. 144, ll. 7-8. Appellant appeared for sentencing on March 3, 2013 and received a sentence of seven years imprisonment. R. 146; R. 147, ln. 25—R. 148, ln. 2.

ARGUMENT

THE TRIAL JUDGE ERRED IN FAILING TO ENTER A DIRECTED VERDICT BECAUSE THE STATE ONLY OFFERED CIRCUMSTANTIAL EVIDENCE RAISING A MERE SUSPICION THAT APPELLANT KNEW THE DRUGS WERE STORED IN THE CENTER CONSOLE OF THE TRUCK OWNED BY ANOTHER PERSON.

STATEMENT OF FACTS

The State alleged that police officials in Lake City in Florence County were investigating the shoplifting of a laptop computer from a local Wal-Mart. The investigation led to Appellant's residential address in Williamsburg County, where law enforcement officers found Appellant inside a vehicle that also contained crack cocaine. R. 23, ll. 7-24.

The State called Investigator Alex Edwards with the Williamsburg County Sheriff's Office to testify that on November 22, 2011, he approached Appellant's residence with a Lake City Police officer. The two saw Appellant in the driver's seat of a pickup truck parked out front. Another man was also near the vehicle. Appellant allegedly fled the scene when he recognized the officers. The officers then found inside the truck a laptop of the type reported stole along with three and one-half grams of crack cocaine and four hundred five dollars in cash in the center console. R. 29, line 7—R. 38, line 19; R. 74, lines 4-8.

The State also called Mindy Perry, who was positively identified as one of three suspects shoplifting the computer. R. 81, lines 1-14. She testified that she and one of her accomplices took the stolen laptop to Appellant's residence.¹ While Perry stayed in the vehicle, the accomplice took the laptop into the residence and eventually came out with twenty dollars in cash in one hand and a bag of powdered cocaine in the other. R. 98, line 12—R. 107, line 15.

The vehicle with the drugs was registered to a female who was at the scene. The officers admitted they did not ask or otherwise investigate whether the drugs belonged to her. The State also presented no evidence that Appellant's fingerprints were in the vehicle. R. 57, line 9—R. 58, line 7.

Nor did the officers speak with the other man at scene at all. R. 60, lines 11-20. Lieutenant Hilton, the Lake City Officer, testified that he saw the other man but apparently had no contact with him: “. . . I don't know if he was getting out of the vehicle, sitting or standing outside.” R. 79, lines 12-15; R. 91, lines 11-23.

At the close of the State's case, Appellant moved for a directed verdict, and the trial judge denied the motion. R. 108, line 5—R. 109, line 10.

DISCUSSION

The trial judge erred in failing to enter a directed verdict because the State only offered circumstantial evidence raising a mere suspicion that Appellant knew the drugs were stored in the center console of the truck owned by another person. South Carolina Code section 44-53-375 makes it a felony to possess with the intent distribute cocaine base, or “crack” cocaine. The subsection also provides that possess of one or more grams of crack is prima facie evidence of intent to distribute. S.C. Code Ann. § 44-53-375(B).

Conviction of possession of [illegal drugs] requires proof of possession—either actual or constructive, coupled with knowledge of its presence. . . . In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially. Knowledge can be proven by the evidence of acts, declarations, or conduct of the accused from which the inference may be

¹ The State alleged Perry went to Appellant's residence on November 18, 2011, four days prior to Appellant's arrest. App. 65, lines 7-9.

drawn that the accused know of the existence of the prohibited substances.

State v. Jackson, 395 S.C. 250, 255, 717 S.E.2d 609, 611-12 (Ct. App. 2011) (quotations omitted). Such circumstances from which knowledge can be inferred include the ownership of a vehicle or a special relationship to the owner or driver of a vehicle containing the drugs and that the drugs are not hidden in a non-descript baggie, container, or compartment, but are plainly visible or otherwise noticeable. *Id.*

An accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. *See State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); *In re Jeremiah W.*, 353 S.C. 90, 93-94, 576 S.E.2d 185, 187 (Ct. App. 2003) (*rev'd on other grounds*, 361 S.C. 620, 606 S.E.2d 766 (2004)); *see also In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) (“Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.”). Where an element must be proven by circumstantial evidence, to justify denial of a directed verdict the circumstantial evidence must be substantial; in other words, the evidence must do more than “merely raise a suspicion that the accused is guilty.” *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). “Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *See State v. Buckmon*, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (citing *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001)).

In this case, the State relied solely on circumstantial evidence raising a mere suspicion that Appellant knew of the presence of the crack cocaine. Appellant was sitting

in another person's truck parked in front of his residence. The State offered no evidence of his fingerprints inside. The owner of the truck and a third individual were at the scene. The evidence suggests nothing more than Appellant having a seat during a social visit. The only other conduct suggesting knowledge of the drugs was his fleeing when officers accosted him. However, the behavior is equally attributable to knowing possession of a stolen computer.

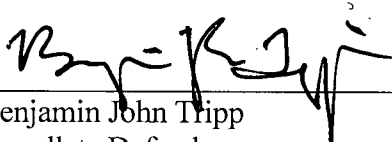
The State adduced no circumstantial evidence that Appellant had a special relationship with the owner of the vehicle in which the drugs were found. Nor did the State offer evidence that the drugs were plainly visible; the evidence permits equally likely inferences either that the drugs were in a closed compartment or in a non-descript container or baggie in the center console or that they were openly visible in the console.

Furthermore, the circumstantial evidence equally suggests that the drugs belonged to another, identifiable person with no special connection to Appellant. The police officers testified another man was in plain sight near the vehicle and could not say he did not exit the vehicle as they arrived. The truck was registered to the female at the scene. The officers did not question either about the drugs. Thus, not only does the circumstantial evidence marshalled by the State raise a mere suspicion that Appellant knew of the presence of the drugs, but the circumstances of the larger story of the offense fairly explain the presence of the drugs as possessed by up to two other identifiable individuals rather than as knowingly possessed by Appellant.

CONCLUSION

For the foregoing reasons, Appellant requests that the Court reverse his conviction and enter a directed verdict of acquittal.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of June, 2014.

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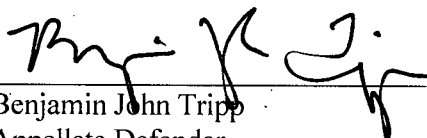
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lavern Anderson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on March 4, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Lavern Anderson.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of June, 2014.

STATE OF SOUTH CAROLINA

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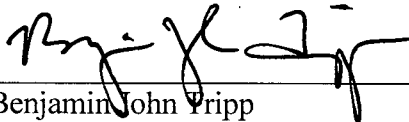
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (January 30 – 31, 2013)
- (3) Entire Sentencing Transcript (March 3, 2013)

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

June 5, 2014



Benjamin John Tripp
Appellate Defender

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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 5, 2014



Benjamin John Topp
Appellate Defender

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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 Lavern Anderson, #355401 at Palmer Pre-Release Center, 2012 Pisgah Road, Florence, SC 29501, this 5th day of June, 2014.



Benjamin John Hipp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of June, 2014.



(L.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.