

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 02 2014

SC Court of Appeals

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NOESHEA FOLLONDOUS SAMUEL,

APPELLANT

APPELLATE CASE NO 2014-000200

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
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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 evidence that Appellant was outside on his front porch with a codefendant when officers arrived at his residence; where Appellant and the codefendant then went inside and put baggies into plumbing pipes in the kitchen; where Appellant told the officers that other people had just been at his house with their own belongings; and where the codefendant admitted that the drugs were his and pled as such on the record.

STATEMENT OF THE CASE

On November 21, 2013, the Florence County Grand Jury indicted Appellant Noesha Follondous Samuel for possession with intent to distribute cocaine base. R. 170-171. On January 22, 2014, Appellant appeared at trial before The Honorable D. Craig Brown and a jury. Wallace J. Jordan represented Appellant and John C. Jepertinger represented the State. R. 1. The jury found Appellant guilty, and Judge Brown sentenced Petitioner to five years' incarceration. R. 157, line 21—R. 158, line 8; R. 167, lines 3-7.

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 THAT THE BAGGY CONTAINED CRACK.

STATEMENT OF FACTS

At trial the State alleged that around 7:00 p.m. on August 1, 2013, Florence police officers went to a house in the city and saw Appellant and his codefendant, James Jackson, sitting on the porch outside. When the two saw the officers, the two men ran inside, and the officers followed them into the house. The officers the allegedly saw Appellant and the codefendant in the kitchen putting items, later discovered to be baggies of crack cocaine, into plumbing pipes protruding from a wall in the kitchen. R. 36, line 18—R. 37, line 21.

The State called Officer Andron Brown, who testified he and another officer went to Appellant's house to execute a search warrant. He testified he was the second officer to run into the house and only saw the other officer ordering Appellant and his codefendant to move away from pipes in the kitchen. R. 44, line 7—R. 49, line 21. Officer Brown also testified he found a digital scale in the kitchen. R. 58, lines 2-12. He said Appellant told him that he ran into the house because "he had just had some friends to leave and he was making sure they didn't leave anything behind." App. 57, lines 1-5. Finally, Officer Brown testified the officers "flushed the pipes" and found two small baggies of cocaine base. R. 59, lines 8-14; R. 65, line 17—R. 66, line 6. On cross-examination, Officer Brown acknowledged that codefendant Jackson had already pled guilty to possession of the crack cocaine. R. 66, lines 13-15.

The State also called Officer William Nida, the officer who entered the house first. R. 68, line 13—R. 79, line 12. He described what he claimed he saw:

There was two pipes that come up the wall to where a washer and dryer unit would be Both of them are side by side and frantically trying to stick something in the top of these pipes. One subject, the Jackson, was on the pipe to the left, and [Appellant] was on the pipe to the right

R. 72, lines 13-21.

After the close of the State's evidence, Appellant moved for a directed verdict of not guilty on grounds that the evidence was insufficient to support a conviction of the possession charge. The trial judge denied the motion. R. 115, line 12—R. 117, line 9.

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 that the baggy contained crack. 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 possession 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 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).

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)).

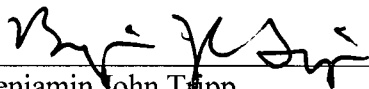
In this case, substantial evidence supported the conclusion that Appellant was unaware of what was in the baggy that he allegedly put in the pipe in the kitchen. When the officers arrived, Appellant was outside on the porch, and the baggies were inside in the kitchen. Appellant told Officer Brown that other people had just been at his house with their own belongings. Officer Nida testified he saw Appellant putting one of the baggies in a plumbing pipe. However, the codefendant with Appellant at the time claimed that the drugs were his and pled as such on the record. Based on this scant evidence, the only fair inference was that Appellant’s codefendant or a third party knowingly possessed the scale, baggies, and their contents in the kitchen, and the individual happened to do so in Appellant’s residence. Appellant was in the wrong place at the wrong time, and in the heat

of excitement, followed his codefendant's instructions or instinct in protecting his privacy as the officers stormed inside his home. Thus, only weak circumstantial evidence—and therefore legally insufficient evidence—was present in the record to support the finding that Appellant had actual knowledge of the content of the baggies.

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 2nd day of October, 2014.

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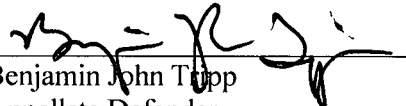
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Noeshea Follondous Samuel 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 D. Craig Brown, which was held on January 22, 2014, 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 Noeshea Follondous Samuel.

Respectfully submitted,



Benjamin John Tupp
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of October, 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 Trial Transcript (January 22, 2014)

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

October 2nd, 2014



Benjamin John Tripp
Appellate Defender

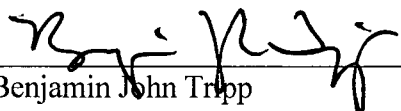
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PO Box 11589
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(803) 734-1343

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."

October 2, 2014



Benjamin John Tripp
Appellate Defender

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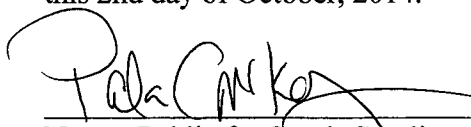
CERTIFICATE OF SERVICE

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 Noeshea Follondous Samuel, #358597 at Kirkland Correctional Institution, this 2nd day of October, 2014.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

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

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.