STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2014-002392

THE STATE,

Respondent,

v.

CHARLES TRAMAYNE MYERS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court properly denied Appellant's motion for a directed verdict where the State presented substantial circumstantial evidence from which the jury could fairly and logically find him guilty of each charge.

II.

The trial court properly charged the jury on the hand of one is the hand of all even though Appellant was the only one charged with a crime.

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant for trafficking in cocaine more than twenty-eight grams but less than one hundred grams, possession with intent to distribute (PWID) marijuana, and possession of a weapon during the commission of a violent crime. (R.* Indictments.) On October 6–8, 2014, Appellant proceeded to a trial before the Honorable R. Knox McMahon and a jury. Benjamin Lewis, Esquire, represented Appellant, and Assistant Solicitors Lauren Mulkey and Lindsey Byrd represented the State. The jury found Appellant guilty of the trafficking charge and the PWID charge but not guilty of the weapon charge. Judge McMahon sentenced him to twenty-five years' imprisonment on the trafficking charge and five years' imprisonment on the PWID charge, to run concurrently. (Tr. 513.)

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On October 26, 2012, Detective Tireka Cerone of the City of North Charleston Police Department executed a search warrant at the home of Shirley and Crystal Nelson based on an anonymous tip that Appellant was selling drugs from that house. (Tr. 94, lines 19–23; Tr. 97, lines 8–13; Tr. 323, lines 14–19; Tr. 408, lines 4–9; Tr. 409, lines 15–20.) The information Detective Cerone received from the tipster indicated Appellant was also selling drugs around the neighborhood in his vehicle and would return to the home. (Tr. 97, lines 8–13.) Based on the tip, Detective Cerone verified Appellant's identity through the DMV and began conducting drive-bys to check for the vehicles the tipster described. (Tr. 99, lines 18–25.) Detective Cerone surveilled the residence for two months, observing Appellant entering and exiting the residence, getting into a vehicle, leaving, and retuning within a few minutes. (Tr. 100, lines 6–10.) She believed his behavior was consistent with him living at the residence (entering like he lived there; coming and going without having to knock) and consistent with illegal drug activity (different vehicles stopping by and people getting out and returning quickly to their vehicles; Appellant making hand-to-hand transactions from his vehicle). (Tr. 100, line 12–Tr. 103, line 5.) Based on what police found during the search, Appellant was arrested and charged with trafficking in cocaine more than twenty-eight grams but less than one hundred grams, possession with intent to distribute (PWID) marijuana, and possession of a weapon during the commission of a violent crime. (R.* Indictments.)

Pretrial, Appellant argued the search warrant was invalid because it lacked probable cause and as a result, the evidence discovered in the search should be suppressed. (Tr. 155–59.) The trial court denied the motion, finding sufficient probable

cause existed for the search warrant. (Tr. 166–70.) Later during trial, Appellant successfully argued to suppress a confession he gave the police. (Tr. 286, lines 5–8.)

Crystal Nelson, Appellant's girlfriend, testified she lived with her mother, Shirley Nelson, and that Appellant stayed overnight on a regular basis. (Tr. 301, line 2–Tr. 303, line 11.) She testified she and Appellant had dated on and off for thirteen to fourteen years and that he kept personal items in her bedroom, helped out around the house, gave her money toward bills and groceries, and came and went even when she was not there. (Tr. 302, line 5–Tr. 305, line 13.) She testified the police found the drugs in a box under the bed in the bedroom she shared with Appellant. (Tr. 305, line 14–Tr. 306, line 5; Tr. 309, lines 15–20.) She denied the drugs were hers and admitted Appellant was the only other person who shared the bedroom with her. (Tr. 306, lines 6–21.) The police also found a firearm in the same box where they located the drugs. (Tr. 307, lines 6–19; Tr. 309, lines 15–20.) Crystal testified the gun was hers and that she had last seen it the night before the search when she placed it in a box under the bed to keep it away from her nephews, and she stated that nothing else was in the box when she placed the gun there. (Tr. 307, lines 6–25; Tr. 308, line 1–Tr. 309, line 8.) She confirmed that Appellant slept there the night before the search. (Tr. 304, lines 15–21.) She admitted it would have been possible for Appellant to access the box without her knowledge. (Tr. 309, line 24–Tr. 310, line 10.) She repeated that only she and Appellant shared that bedroom and testified that no one else had access to it. (Tr. 311, lines 13–22.) She testified Appellant knew she had a gun, had access to it, had handled it previously, and had helped her put bullets in it. (Tr. 319, lines 17–18; Tr. 320, lines 1–13.)

Detective Cerone testified that when she arrived to execute the search warrant, Appellant was in the passenger seat of a car in the driveway of the residence, while

Crystal was in the driver's seat. (Tr. 325, lines 14–18.) She searched the car and found marijuana in the glove box, baggies in the center console, a digital scale under the passenger seat, and some marijuana on the passenger seat itself. (Tr. 326, lines 8–15.) She opined that, based on her training and experience, the items found in the car indicated Appellant was selling drugs from the vehicle. (Tr. 329, lines 16–20.) She testified two bedrooms were in the house: bedroom 1 belonging to Crystal and Appellant, and bedroom 2 belonging to Shirley Nelson. (Tr. 330, line 13–Tr. 332, line 23.) In bedroom 1, she found male and female clothing and some mail belonging to Appellant. (Tr. 331, line 3–Tr. 332, line 14.) She also found the box containing the gun and drugs in that bedroom. (Tr. 333, lines 23–25.) In bedroom 2, she found marijuana in Shirley's nightstand in an amount consistent with personal use. (Tr. 332, lines 17–23.) Detective Cerone testified she found thirty-four grams of cocaine and 200 grams of marijuana in the box, which were amounts consistent with dealing drugs rather than personal use. (Tr. 343, lines 20–24; Tr. 345, line 1–Tr. 346, line 3.)

Shirley Nelson testified Appellant was her daughter Crystal's boyfriend and stayed in Crystal's room when he slept at the house. (Tr. 409, lines 2–12.) She recalled the day police searched the house and explained she was issued a ticket for a pipe and some "reefer" the police found in her room. (Tr. 409, line 15–Tr. 411, line 18.) When questioned about what the police found in Crystal's room and listed on the search warrant return, she stated, "Crack cocaine and reefer, something like that. I was very shocked. I didn't even know." (Tr. 415, line 19–Tr. 416, line 19.) Shirley testified she did not put any drugs in Crystal's room. (Tr. 420, lines 2–11.) She also indicated she knew Crystal had a gun but did not know where she hid it. (Tr. 420, lines 12–20.)

After the State rested, Appellant moved for a directed verdict, arguing only a mere suspicion existed that Appellant had dominion and control over the gun and drugs. (Tr. 428, line 18–Tr. 429, line 11.) The State argued substantial circumstantial evidence had been presented to reasonably tend to prove Appellant's guilt. (Tr. 429, lines 17–23.) The trial judge denied the motion. (Tr. 430, lines 9–13.) He pointed out that the other adults in the house denied the drugs belonged to them, specifically noting that Crystal only claimed ownership of the gun, not the drugs, and that she testified no drugs were in the pink box when she placed her gun in it. (Tr. 430, lines 15–25; Tr. 431, lines 9–10.) He noted the jury could believe her or not on that issue. (Tr. 430, line 25–Tr. 431, line 2.) He further pointed out that Shirley Nelson only claimed ownership of the pipe found in her bedroom and testified that although she knew her daughter had a gun, she did not know where her daughter kept it. (Tr. 431, lines 10–19.) He ruled that when viewed in the light most favorable to the State, sufficient circumstantial evidence existed to support each charge. (Tr. 432, lines 13–17.)

The trial judge then announced that because Appellant had requested a charge on mere presence, he would also charge the "hand of one is the hand of all." (Tr. 432, lines 18–24.) Appellant's counsel interjected that he did not think any evidence in the record suggested Appellant worked with anyone or was involved in any conspiracy. (Tr. 433, lines 15–19.) Further, counsel argued the charge was not applicable because Crystal was never charged. (Tr. 433, line 23–Tr. 434, line 5.) The trial court pointed out that because Appellant was sleeping in the same bed with Crystal, under which the box was found containing her weapon and the drugs, combined with the fact that Crystal denied the drugs were hers, sufficient evidence existed to justify the "hand of one is the hand of all" charge. (Tr. 434, lines 6–15.)

The trial court charged the jury as follows regarding constructive possession and the "hand of one is the hand of all":

> The State must prove beyond a reasonable doubt that the Defendant possessed marijuana with the intent to distribute. To prove possession, the State must prove beyond a reasonable doubt that the Defendant had both the power and the intent to control the disposition or use of the marijuana.
>
> Possession may be either actual or constructive, just as it could be with trafficking in cocaine. Constructive possession means that the Defendant had dominion and control or the right to exercise dominion and control over either the marijuana itself or cocaine itself, or the property on which the marijuana or cocaine was found.
>
> Mere presence at the scene where drugs are found is not enough to prove possession. The Defendant's knowledge and possession may be inferred when a substance is found on the property under the Defendant's control; however, this inference is simply an evidentiary fact to be taken into consideration by you, along with the other evidence in the case, and to be given the weight and value you decide it should have. Two or more persons may have joint possession of a drug.
>
> If a crime is committed by two or more people who are acting together in committing the crime, the act of one is the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable and natural consequence of the acts done in carrying out the common plan and purpose.

(Tr. 484, line 5–Tr. 485, line 5; Tr. 487, lines 12–20.)

Ultimately, the jury found Appellant guilty of the trafficking charge and the PWID charge but not guilty of the weapon charge. (Tr. 499.) Judge McMahon sentenced him to twenty-five years' imprisonment on the trafficking charge and five years' imprisonment on the PWID charge, to run concurrently. (Tr. 513.)

ARGUMENT

I.

The trial court properly denied Appellant's motion for a directed verdict where the State presented substantial circumstantial evidence from which the jury could fairly and logically find him guilty of each charge.

Appellant argues the trial court erred in denying his motion for a directed verdict because the State did not present substantial circumstantial evidence that the drugs belonged to him and the evidence only raised a mere suspicion of his guilt. On the contrary, the trial court properly denied Appellant's motion for a directed verdict because substantial circumstantial evidence existed that the drugs were in the dominion and control of Appellant, which is all that is required to show constructive possession. The trial court correctly submitted the case to the jury for its resolution, and this Court should affirm its decision.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Larmand, Op. No. 27562 (S.C. Sup. Ct. filed Aug. 12, 2015) (Shearouse Adv. Sh. No. 31 at 31, 35). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury. Id. The trial court should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. State v. Hernandez, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009). A defendant is entitled to a directed verdict when the State fails to

produce evidence of the offense charged. State v. Ladner, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

"Possession of drugs may be inferred from the circumstances and may be imputed to anyone who has the power and intent to control the disposition and use of the drugs." State v. Brown, 319 S.C. 400, 404, 462 S.E.2d 828, 830 (Ct. App. 1995). Possession may be actual or constructive. State v. Mollison, 319 S.C. 41, 459 S.E.2d 88 (Ct. App. 1995). Constructive possession can be inferred when the drugs are in the joint control of Appellant and another person. State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981). Mere presence is insufficient to establish possession. Mollison, 319 S.C. at 45, 459 S.E.2d at 91. It has been held that knowledge of the presence of drugs is evidence of intent to control its disposition and use. Brown, 319 S.C. at 404, 462 S.E.2d at 830. Knowledge can be shown circumstantially through evidence of Appellant's conduct, acts, or declarations from which an inference could be drawn that he knew of the existence of the drugs. State v. Gore, 318 S.C. 157, 163, 456 S.E.2d 419, 422 (Ct. App. 1995); Mollison, 319 S.C. at 45, 459 S.E.2d at 91.

"Constructive possession can be established by circumstantial as well as direct evidence, and possession may be shared." Hudson, 277 S.C. at 202, 284 S.E.2d at 775. Constructive possession is proven by showing the accused has dominion and control, or the right to exercise dominion and control, over the contraband. Id. at 202, 284 S.E.2d at 774-75 (emphasis added). Acts, declarations, or conduct of the accused may create an inference that the accused knew of the existence of the contraband. Mollison, 319 S.C. at 45, 459 S.E.2d at 91. "The proper charge on constructive possession is to instruct the jury that the defendant's knowledge and possession may be inferred if the substance was found on premises under his control." State v. Adams, 291 S.C. 132, 135, 352 S.E.2d

483, 486 (1987). "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." State v. Muhammed, 338 S.C. 22, 26-27, 524 S.E.2d 637, 639 (Ct. App. 1999) (citing Hudson, 277 S.C. at 203, 284 S.E.2d at 775). See also United States v. Poore, 594 F.2d 39, 43 (4th Cir. 1979) (finding because Appellant resided with a woman in her apartment for a period of time and the shotgun was discovered in that apartment, the jury could properly have concluded Poore was in constructive possession of the shotgun).

In Muhammed, this Court affirmed the trial court's denial of the appellant's directed verdict motion. Muhammed argued no evidence existed he had dominion and control over the drugs and the evidence raised a mere suspicion of guilt. 338 S.C. at 26, 524 S.E.2d at 639. This Court based its ruling on evidence showing Muhammed's constructive possession of the drugs. The evidence included a witness who testified Muhammed had been visiting her for two days and had access to her house while she was gone. 338 S.C. at 28, 524 S.E.2d at 640. She testified he and his codefendant put a lock on the door and gave her a key. Id. She denied the drugs were hers. Id. This Court concluded there was sufficient evidence of Muhammed's control over the drugs to properly deny the directed verdict motion. Similarly here, Appellant had control over the drugs that were found in the bedroom he shared with his girlfriend, who denied the drugs were hers. This evidence was sufficient to survive a directed verdict motion and go to the jury for its resolution.

Appellant argues only a mere suspicion of his guilt existed because there were no witnesses or forensic evidence. However, our jurisprudence does not require witnesses and forensic evidence to reasonably tend to prove the guilt of the accused and survive the

directed verdict stage of a trial. The drugs were found in the house that was occupied by three adults and specifically found under the bed Appellant slept in. Evidence existed that the drugs were under the dominion and control of Appellant due to his living in the bedroom where they were found. He received mail there, had been dating Crystal for thirteen–fourteen years (during which time he stayed regularly at the house), paid bills, and came and went on his own. See Mollison, 319 S.C. at 45, 459 S.E.2d at 91. The trial judge thoroughly ruled as follows on the directed verdict motion:

> The testimony is such that Ms. Crystal Nelson claimed ownership of the gun, but not of the drugs, and that they were not there – I think she actually testified that she had seen the gun the day before. It was in the box the day before the execution of the search warrant, and there were no drugs in the pink box at that time.
>
> The testimony from the officers is, there was cocaine, marijuana and the firearm all in the same box. So she denied ownership of the drugs. The jury could or could not believe her on that issue or could or could not believe her on the issue of the ownership of the gun.
>
> . . .
>
> And I guess the testimony from Ms. [Shirley] Nelson is she didn't know anything about any drug except that pipe that they found in her bedroom. So that would be circumstantial evidence that she had no knowledge of any drugs in the house. . . . The weight is certainly present for both the trafficking in cocaine if you believe the testimony of the – the evidence custodian, Ms. Mouzan – that's on the possession with intent to distribute marijuana – Ms. Mouzan and Ms. Black, I believe it was, the forensic drug analysis, there's evidence that that weight was present.
>
> So I think there is substantial circumstantial evidence in the record.

(Tr. 430, line 15–Tr. 431, line 2; Tr. 431, lines 10–15; Tr. 431, line 19–432, line 3.) The trial court's ruling shows the sufficient circumstantial evidence that existed to support its

denial of Appellant's directed verdict motion. See Larmand, Op. No. 27562 (S.C. Sup. Ct. filed Aug. 12, 2015) (Shearouse Adv. Sh. No. 31 at 31) ("If there is either any direct evidence or any substantial circumstantial evidence reasonably tending to prove the defendant's guilt, appellate courts must find that the trial judge properly submitted the case to the jury.").

Here, the trial judge accurately assessed the evidence and determined it sufficient to allow Appellant's guilt to be fairly and logically deduced by the jury, when taken in a light most favorable to the State. The evidence reflects that Appellant and Crystal shared a bedroom at her mother's house. Furthermore, Appellant was not merely present or an unwary guest at the residence where the drugs and gun were found. Rather, he stayed there on a regular basis with his girlfriend of thirteen–fourteen years. He kept personal items in the bedroom and had personal mail there. Evidence showed he slept there the night before the search. (Tr. 304, lines 15–21.) Appellant had access to the house even when his girlfriend was gone. The fact that he lived in the house, in the particular bedroom where the contraband was found, gives rise to the inference of knowledge and possession which was sufficient to carry the case to the jury. Muhammed, 338 S.C. at 26-27, 524 S.E.2d at 639. It was certainly enough to show Appellant had the right to exercise dominion and control over the drugs and gun. Hudson at 202, 284 S.E.2d at 774-75.

Accordingly, the trial judge properly denied the motion for directed verdict, and this Court should affirm the trial court's ruling.

II.

The trial court properly charged the jury on the "hand of one is the hand of all" even though Appellant was the only one charged with a crime.

Appellant claims the trial judge erred by giving the jury an instruction regarding the "hand of one is the hand of all" theory of accomplice liability because, he asserts, the doctrine should not apply where the State never charged anyone else with the crime. However, this argument is plainly without merit. Appellant cites no case law requiring that a defendant's confederate under the "hand of one is the hand of all" theory be charged with the crime.

"A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law." State v. Mattison, 388 S.C. 469, 478, 697 S.E.2d 578, 583 (2010) (citations omitted). "The law to be charged must be determined from the evidence presented at trial." Id. at 479, 697 S.E.2d at 583 (citation omitted) (stating that appellate courts should "consider the court's jury charge as a whole in light of the evidence and issues presented at trial").

Copious case law exists stating that an accessory may be convicted even if the principal is never charged with the crime. See State v. Massey, 267 S.C. 432, 443-46, 229 S.E.2d 332, 338-39 (1976); see also State v. Blakely, 402 S.C. 650, 656-57, 742 S.E.2d 29, 32 (Ct. App. 2013). In State v. Woomer, 276 S.C. 258, 277 S.E.2d 696 (1981), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), the "hand of one is the hand of all" theory was appropriate even though the co-participant shot and killed himself before he could be captured. Therefore, the State submits that Appellant's argument on this issue is without merit.

Appellant additionally asserts that the trial court should not have charged the jury with the "hand of one is the hand of all" where "no evidence showed that Appellant and Crystal Nelson were working in concert to own the drugs." (App.Br.12). The trial judge did not err in giving the "hand of one is the hand of all" charge because evidence existed to support the charge. Under the "hand of one is the hand of all" theory, one who joins with another to accomplish an illegal purpose is criminally liable for everything done by his accomplice incidental to the execution of the common plan. State v. Langley, 334 S.C. 643, 648, 515 S.E.2d 98, 101 (1999). The evidence presented at trial, as described above, supported a reasonable inference that either Appellant, both Appellant and Crystal, or Crystal were in possession of the drugs. See State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) (the State need not show a "formal expressed agreement" to prove that parties agreed and combined to achieve an illegal purpose, but may prove the agreement "by circumstantial evidence and the conduct of the parties"). Based upon the drugs' presence under the bed in a box with Crystal's gun, in the bedroom they shared, the jury was entitled to infer that both persons, or either person, had dominion and control over the drugs. If the jury concluded that both persons possessed the drugs, it could reasonably infer that Appellant and Crystal possessed them pursuant to a common plan. Furthermore, given the nexus between guns and drugs, the fact that Crystal's gun was found in the box with the drugs indicates she may have been part of a common plan. See State v. Whitesides, 397 S.C. 313, 319, 725 S.E.2d 487, 490 (2012) (finding a nexus between possession of a firearm and drug trafficking if the firearm is accessible to the trafficker and thereby "provides defense against anyone who may attempt to rob the trafficker of his drugs or drug profits").

The jurors were entitled to an instruction on the "hand of one is the hand of all" so that it would be clear that, even if the State could not definitively prove which one of the two persons who occupied the bedroom where the drugs were found possessed the drugs, Appellant was still guilty if they concluded that he and Crystal acted pursuant to, and carried out, a common plan to possess the drugs. See Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (2011) (holding that a charge on the "hand of one is the hand of all" is appropriate where the evidence is equivocal as to which of several persons acting in concert physically committed the crime). Likewise, the jury could have determined Crystal possessed the drugs and still found Appellant guilty pursuant to the "hand of one is the hand of all." See State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999) ("It is well-settled the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it should be given.").

Appellant argues he was prejudiced by the charge "because there was a reasonable probability the jury could have believed the drugs belonged to Crystal," effectively conceding the drugs could have belonged to Crystal, which is sufficient to have warranted an instruction on the "hand of one is the hand of all." (App.Br.12.) Specifically, he argues that but for the charge, "the jury could have found him not guilty and blamed the crime on the third party." (App.Br.12.) The problem with this logic, however, is that the jury found Appellant *not* guilty of the weapon charge, which the jury presumably blamed on the third party considering that third party (Crystal) admitted the weapon belonged to her. Thus, the jury demonstrated in its verdicts that it was able to find Appellant not guilty even after being charged with the "hand of one is the hand of all." Appellant has shown no prejudice from this instruction, and this Court should affirm the trial court's ruling.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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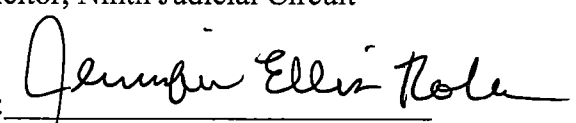
BY: 
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August 27, 2015

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Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 27th day of August, 2015.

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