

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Darlington County

SEP 26 2014

J. Michael Baxley, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHRISTOPHER JERMANE HICKS,

APPELLANT

APPELLATE CASE NO. 2014-000392

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

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

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying defense counsel's motions for directed verdicts on the drug charges lodged against appellant in the case because the state failed to prove that appellant was in actual or constructive possession of the drugs found at the scene.

STATEMENT OF THE CASE

Appellant Christopher Jermane Hicks was found guilty of possession of marijuana with intent to distribute, possession of cocaine with intent to distribute, and possession of crack cocaine with intent to distribute per a bench trial held before Judge J. Michael Baxley during the January 2014 term of the Darlington County General Sessions Court. Appellant was sentenced to imprisonment for an aggregate period of ten years. Christine Wise represented appellant at trial and Assistant Solicitor Wendall Burch appeared on behalf of the state.

Appellant appealed his convictions and sentences. This brief follows.

ARGUMENT

The trial judge erred in denying defense counsel's motions for directed verdicts on the drug charges lodged against appellant in the case because the state failed to prove that appellant was in actual or constructive possession of the drugs found at the scene.

The state's case consisted of the testimony of two police officers, the homeowner on whose property the drugs were found, and two drug analysts.

Police Officer Jacqueline Gause testified that she and Officer Weatherford were guarding a check point road block at the intersection of High Hill Road and Potatoe House Road in Darlington County on the night of January 6, 2012, when they saw a vehicle approach and then turn into a residential driveway before reaching the check point. Officer Gause stated that Officer Weatherford immediately pulled into the same residential driveway and made contact with appellant, who was the driver of the vehicle that turned into the residential driveway, and arrested him for driving without a license. Tr. 77, 1.16-p. 83, 1.23. Also, Officer Gause stated that since there are usually other acts connected to a driving violation, she then began to look around in the vicinity where Officer Weatherford was looking near the house and moved over to the area where the trash can was located, particularly after she saw appellant look over towards the area where the trash can stood. Officer Gause stated that she went to the trash can, and that when she opened the top lid, she saw plastic baggies of marijuana and a bag of crack cocaine. Tr. 84, 1.25-p. 90, 1.14.

Officer Weatherford testified that when he pulled into the residential driveway in question, he saw appellant, who had already parked there, exit and start walking toward the house by the patio of the house; and as a result, he (Officer Weatherford) started to look around the house to see if something had been "thrown down," but did not find anything. Tr. 110, 1.8-p. 114, 1.3.

Officer Weatherford stated that minutes later, Officer Gause informed him that she had found a “package.” (in the trash can). Tr. 114, 1 lines 3-5.

Narcotics analysts Lawrence Zivkovich and John Speckt identified the drugs found at the scene as marijuana and cocaine (crack). Tr. 71, 1. 1 – p. 76, l. 16; Tr. 119, 1. 1 – p. 123, l. 15.

The residential driveway appellant turned into and the place where the events of this case transpired occurred on the property of homeowner Shannon Windham. At trial, Windham testified that she had previously reported to police suspicious activities of individuals who appeared on her property near the creek by her home. Tr. 63, -1.17-p. 68, 1.16.

Appellant testified at trial and explained that he was driving to a Dollar General Store on that night when he saw lights flashing at the check point, but did not know for sure that it was a check point so he turned around and found himself on someone else’s property. Appellant explained that he knocked on the door of the home where he found himself, but no one answered the door, and that he never paid attention to or noticed the trash can by the home. Soon thereafter, one officer found dope in the trash can and arrested him in connection with it. App. p. 133, 1. 17 – p. 145, l. 4.

At the close of the state’s case and the case for the defense, counsel moved for directed verdicts because there was insufficient evidence of guilt presented by the state at trial in the case. Tr. 130, 1.12-, Tr. 6, 1.11.

Clearly, the state relied on the theory of constructive possession to prove petitioner guilty of the drug charges as the drugs were found in the trash can outside the house of the driveway where appellant was arrested. In other words, the state purported via constructive possession to attach appellant to the contents of a trash can of a home where he (appellant) did not reside. In short, the state’s theory was that appellant threw drugs into the homeowner’s trash can.

Here, appellant drove his vehicle into the driveway of a stranger's residence. The contents of that residential homeowner's trash can belonged not to appellant, but rather to the homeowner and the occupants who lived in the home with the homeowner. There was no evidence justifying assigning possession of the contents of a home owner's trash can to appellant, who did not live at that residence, because he walked in the vicinity of the homeowner's trash can prior to his arrest. Also, note that although the mother of the home denied possession of the drugs in her own trash can; nonetheless, the two teenaged sons who lived in the home were not questioned or presented as witnesses to testify at trial regarding the possibility of their connection to the contents of the trash can. Tr. 106, lines 11-15.

Actual possession occurs when the drugs are found in the actual physical custody of a defendant and constructive possession arises a defendant has dominion and control or the right to exercise dominion and control over the drugs. State v. Heath, 370 S.C. 326, 635 S.E.2d 181 (2006). See also, State v. Burgess, 408 S.C. 421, 759 S.E.2d 407 (2014). In Heath, supra, the Court held that there was insufficient evidence that the defendant, who lived with his mother at the time of the arrest, was in constructive possession of crack found in a car washing mitt in a recycling bin outside at the back of a house owned by the defendant's mother.

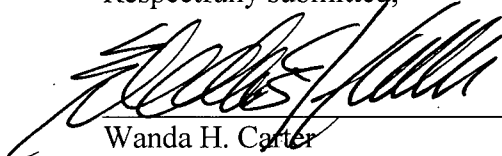
Likewise, in the case at bar, the state failed to prove that appellant was in actual or constructive possession of the drugs found in the homeowner's trash can in question. Additionally, since possession was a material element of the crime charged, the conclusion is the same as reached in Heath, i.e., that the state "failed to establish an essential element of the crime charged." In reviewing a denial of a motion for a directed verdict motion, an appellate court must review the evidence in the light most favorable to the state, and a case can only be submitted to the jury if there is any direct or substantial circumstantial evidence in existence that reasonably tends to

prove the guilt of the accused or from which his guilt maybe fairly or logically deduced. State v. Jackson, 395 S.C. 250, 717 S.E.2d 609 (2011). In the case at bar, the state's case lacked competent evidence of drug possession against appellant, which in turn meant that the trial judge erred in failing to grant appellant's motions for directed verdicts in the case. The state failed to prove every element of the offense charged as required via the Fourteenth Amendment due process clause and article 1, §3 of the South Carolina State Constitution. See Jackson v. Virginia, 443 U.S. 307 (1979). The trial judge erred in denying appellant's motions for directed verdicts of acquittal on the drug offenses charged against him.

CONCLUSION

Based on the foregoing argument, appellant requests that the Court reverse appellant's convictions and enter directed verdicts of acquittals on the charges, or in the alternate, reverse and remand for a new trial in the case

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of September, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
J. Michael Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER JERMANE HICKS,

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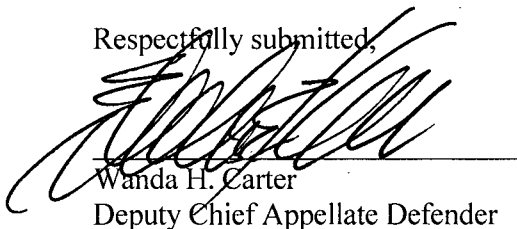
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher Jermane Hicks states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge J. Michael Baxley, which was held on February 27, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Christopher Jermane Hicks.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of September, 2014.

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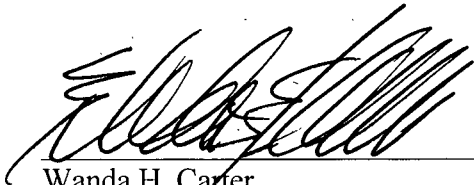
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript dated January 27, 2014
- (3) Entire Trial Transcript dated February 24, 2014.

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

September 25th, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

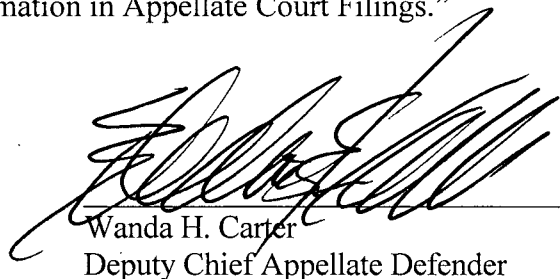
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Attorney for Appellant

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."

September 25, 2014

A handwritten signature in black ink, appearing to read "Wanda H. Carter", is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

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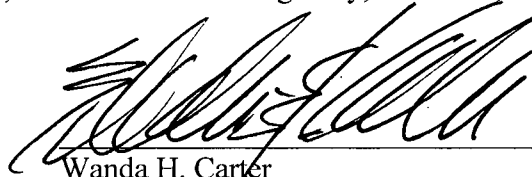
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CERTIFICATE OF SERVICE

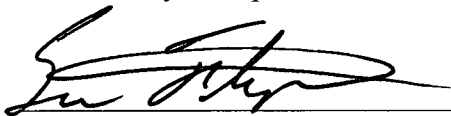
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Christopher Jermane Hicks, #246896 at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 25th day of September, 2014.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of September, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022