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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Richland County
Honorable Roger L. Couch, Circuit Court Judge
Appellate Case Tracking No. 2015-000171

SC Court of Appeals

The State,

Respondent,

vs.

Reginald R. White,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly allowed testimony regarding a prior bad act in which Appellant distributed crack cocaine to two individuals at the location in which crack cocaine and cocaine were found two days later and he contested dominion and control over the drugs at trial. Further, the issue is blatantly not preserved for review on appeal because Appellant's counsel first presented the facts to the jury during opening statement and later failed to object when the prior bad act testimony was admitted in front of the jury.
- II. The trial court properly denied Appellant's motion for a directed verdict because the State presented ample evidence Appellant knew of the existence of the drugs and had dominion and control over the drugs in question.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

- I. **The trial court properly allowed testimony regarding a prior bad act in which Appellant distributed crack cocaine to two individuals at the location in which crack cocaine and cocaine were found two days later and he contested dominion and control over the drugs at trial. Further, the issue is blatantly not preserved for review on appeal because Appellant's counsel first presented the facts to the jury during opening statement and later failed to object when the prior bad act testimony was admitted in front of the jury.**

Appellant contends the trial court erred in allowing testimony regarding a prior bad act of distributing crack cocaine. First, the issue is blatantly not preserved and was clearly waived by Appellant. Further, the testimony was properly admitted. Appellant has challenged ownership of the drugs and the evidence he was distributing crack cocaine from the location the drugs were seized is significant probative evidence establishing his dominion and control over the drugs. Appellant is charged with possession with intent to distribute crack cocaine, and as a result the evidence also establishes his intent to distribute the crack cocaine. Accordingly, the trial court did not err in admitting the testimony.

Preservation

First, the issue of the admission of testimony is clearly not preserved for review on appeal. Appellant raised the issue in a pre-trial motion. Detective Neely, who testified to the prior bad act testimony, was not the first officer to testify after the pre-trial hearing. As a result, Appellant was required to object to the admission of the testimony when it was actually presented to the jury. See State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) ("In most cases, '[m]aking a motion in limine to exclude evidence at the

beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced.”); State v. Kirton, 381 S.C. 7, 43, 671 S.E.2d 107, 125 (Ct. App. 2008) (same). He failed to raise any objection to the testimony. (T.256-257; R. 173-174). As a result, he failed to preserve the issue for review on appeal.

Further, Appellant waived his right to contest the admission of the evidence before the jury because he first addressed the evidence during his opening statement. Appellant’s counsel during opening statement said: “You will even hear probably that Mr. White a few days before this gave someone some kind of smokeable drug a few days before this.” (T.166; R. 88). By raising the evidence to the jury, Appellant has waived any issue with regards to its admission.

Merits

Even if the issue could conceivably be considered preserved, the trial court properly admitted the testimony to establish Appellant’s dominion and control over the drugs as well as his intent to distribute the crack cocaine. In the instant case, in order to support the conviction for both drug offenses, the State had to prove Appellant possessed the drugs and intended or knew he had possession of the drugs. See State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995). As the South Carolina Supreme Court explained:

Conviction of possession of [illegal drugs] requires proof of possession-either actual or constructive, coupled with knowledge of its presence. Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession. To prove constructive possession, the State must show a defendant had dominion

and control, or the right to exercise dominion and control, over the [drugs]. Constructive possession can be established by circumstantial as well as direct evidence, and possession may be shared.

State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 774–75 (1981).

Appellant, throughout trial, contested the State's evidence regarding whether he had dominion and control over the drugs found in the trailer rented by the mother of several of his children.¹ The testimony presented by the State through Detective Neely established Appellant provided two individuals with crack cocaine to smoke while they were at the same residence searched two days later in which crack cocaine and powder cocaine were found. (T.256-257; R. 173-174). The fact Appellant was able to provide two individuals with crack cocaine at that same residence is certainly highly probative circumstantial evidence establishing his constructive possession over the drugs found two days later. The testimony was not unduly prejudicial because it established the required element of his possession by showing his dominion and control over the drugs within that residence.

Additionally, Appellant was charged with possession with intent to distribute crack cocaine, which clearly requires the State to establish he had an intent to distribute the drugs. His prior distribution of the crack cocaine clearly indicates an intent to distribute and not one of mere possession. Accordingly, the testimony was highly probative to this element of the offense and certainly not unduly prejudicial.

¹ Appellant's directed verdict motion was based on whether the State provided sufficient evidence of his dominion and control to establish constructive possession and this issue has been raised as Appellant's second issue on appeal. The State had the right to present the testimony demonstrating Appellant's dominion and control to establish this highly contested fact.

II. The trial court properly denied Appellant's motion for a directed verdict because the State presented ample evidence Appellant knew of the existence of the drugs and had dominion and control over the drugs in question.

Appellant maintains the trial court erred in denying his motion for a directed verdict because the State failed to establish Appellant had dominion and control over the drugs such that he was in constructive possession of the drugs. The State presented ample evidence including testimony and evidence Appellant lived at the residence where the drugs were located, knew of the existence of the drugs and types of drugs at the residence, and had dominion and control over the drugs at the residence.

“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. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). “When reviewing a denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the state.” Id. A directed verdict motion should be denied if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Latimore, 397 S.C. 9, 12, 723 S.E.2d 589, 591 (2012).

As discussed previously, the State must prove Appellant possessed, either through actual or constructive possession, the drugs found in the residence. See State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995). Appellant was not in actual possession of the drugs, so the State presented ample evidence demonstrating Appellant's constructive possession of the drugs.

To prove constructive possession, the State must show a defendant had dominion and control, or the right to exercise dominion and control, over the [drugs]. Constructive

possession can be established by circumstantial as well as direct evidence, and possession may be shared.

State v. Hudson, 277 S.C. 200, 202, 284 S.E.2d 773, 774–75 (1981). “Possession requires more than mere presence.” State v. Jackson, 395 S.C. 250, 717 S.E.2d 609 (Ct. App. 2011) (quoting State v. Stanley, 365 S.C. 24, 43, 615 S.E.2d 455, 465 (Ct. App. 2005)). Possession, however, can be shared among two or more people. See Hudson, 277 S.C. at 202, 284 S.E.2d at 774–75; State v. Muhammed, 338 S.C. 22, 27, 524 S.E.2d 637, 639 (Ct. App. 1999). Further, “actual knowledge of the presence of the drug is strong evidence of intent to control its disposition or use, knowledge may be equated with or substituted for the intent element.” State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) (citing State v. Lane, 271 S.C. 68, 245 S.E.2d 114 (1978)); see also, State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) (finding the jury may consider the actual knowledge as evidence of intent to control and the legal proposition may be appropriate for a court to consider in a sufficiency of the evidence case, even if not appropriate for a jury charge).

In his interviews with multiple law enforcement officers, Appellant admitted he lived at the residence where drugs were located. Appellant explained to Investigator McGarity that he lived at the residence with the mother of his children, Ms. Collins. (T.196; R. 118). Investigator McGarity asked Appellant what they would find if they searched the house. Appellant responded: “cocaine, crack, and pills Oxycodone pills.” (T.196; R. 118).

Appellant further informed Detective Neely he lived at the Silver Creek Road address where the drugs were found. (T.256; R. 173). He specifically told Detective Neely about an occurrence two days prior to the execution of the search warrant in which

Appellant provided crack cocaine to two individuals at the Silver Creek residence where the crack cocaine and cocaine were later found. (T.256-257; R. 173-174).

In addition, officers found numerous personal items of Appellant's at the residence to establish he lived at the residence on a regular basis. The officers found Appellant's bank statements on a bedroom dresser; men's clothing and shoes, prescription pill bottles beside the master bed with the prescription in Appellant's name, and a post-it note with Appellant's name on it stuck to the refrigerator. (T.178-180; 183-184; R. 100-102;105-106). The bank statements and pill bottles containing Appellant's prescription were found in the same bedroom with the drugs. (T.214-215; R. 131-132).

Finally, a neighbor testified she used to live in the trailer beside Ms. Collins and Appellant. She testified both Ms. Collins and Appellant lived in the trailer on Silver Creek. (T.262-263; R. 179-180). When asked how she knew he was not just visiting his kids, she responded: "Because his car would be there sometimes during the day every day sometime and at night sometimes, but like I said, I have known him to be playing the field, so to speak." (T. 265; R. 182).²

The evidence presented including Appellant's personal items located in the vicinity of the drugs; the testimony by a neighbor regarding Appellant living at the address; and the testimony from the officers, especially regarding the statements by Appellant that he lived at the address and provided individuals with cocaine from the address, demonstrate he had such dominion and control over the drugs to be in constructive possession of the drugs.

² The State established several addresses Appellant frequented where mothers of his children lived. (T. 218-219; R. 135-136).

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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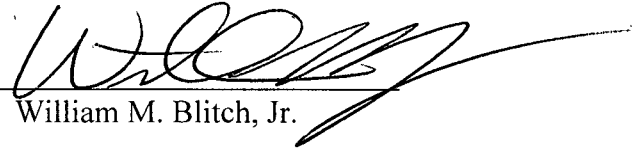
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, Order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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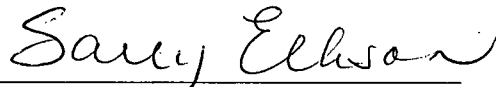
Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify that I have served the within Final Brief of Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 5th day of February, 2016.



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