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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Doyet A. Early, III, Circuit Court Judge

Opinion No. 2016-UP-040 (S.C. Ct. App. filed 1/20/2016)

13-GS-40-04661

THE STATE,

RESPONDENT,

V.

JONATHAN XAVIER MILLER,

PETITIONER

APPENDIX

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INDEX

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Jonathan Xavier Miller, Appellant.

Appellate Case No. 2013-001860

Appeal From Richland County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2016-UP-040
Submitted November 1, 2015 – Filed January 20, 2016

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Interim Senior Assistant Deputy Attorney General John Benjamin Aplin, and Solicitor Daniel Edward Johnson, all of Columbia, for Respondent.

PER CURIAM: Jonathan Xavier Miller appeals his conviction of simple possession of crack cocaine arguing the trial court erred in denying his: (1) motion to suppress crack cocaine found during an inventory search of his vehicle; and (2)

his motion for a directed verdict. We affirm[1] pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in denying Miller's pre-trial motion to suppress crack cocaine found during an inventory search of his vehicle: S.C. Code Ann. § 56-5-5635(A) (2006) ("Notwithstanding another provision of law, a law enforcement officer who directs that a vehicle be towed for any reason, whether on public or private property, must use the established towing procedure for his jurisdiction. A request by a law enforcement officer resulting from a law enforcement action, including . . . vehicle recovery incident to an arrest, is considered a law enforcement towing . . . ."); *Robinson v. State*, 407 S.C. 169, 185, 754 S.E.2d 862, 870 (2014) ("[I]f police officers are following their standard procedures, they may inventory impounded property without obtaining a warrant." (citing *Colorado v. Bertine*, 479 U.S. 367, 372-73 (1987))); *State v. Weaver*, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007) ("We find there is no meaningful distinction to be made between vehicles parked in public and private places."); *State v. Cox*, 290 S.C. 489, 492, 351 S.E.2d 570, 571 (1986) ("No prior Supreme Court cases have recognized a distinction between vehicles parked in public and private places. Indeed, such a distinction would not harmonize with the Court's reasoning in automobile search cases.").

2. As to whether the trial court erred in denying Miller's motion for a directed verdict because the evidence presented at trial was insufficient to show Miller was in constructive possession of crack cocaine: *State v. Mollison*, 319 S.C. 41, 46, 459 S.E.2d 88, 91 (Ct. App. 1995) ("If there is any direct or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the issues were properly submitted to the jury."); *State v. Muhammed*, 338 S.C. 22, 27, 524 S.E.2d 637, 639 (Ct. App. 1999) ("Possession requires more than mere presence."); *State v. Hudson*, 277 S.C. 200, 202, 284 S.E.2d 773, 774-75 (1981) ("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 [evidence] as well as direct evidence . . . ."); *id.* at 202, 284 S.E.2d at 774 ("Conviction of possession . . . requires proof of possession-either actual or constructive, coupled with knowledge of its presence."); *State v. Hernandez*, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009) ("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,

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

or conduct of the accused from which the inference may be drawn that the accused knew of the existence of the prohibited substances." (citing *State v. Attardo*, 263 S.C. 546, 550, 211 S.E.2d 868, 869 (1975))).

AFFIRMED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.

4

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JONATHAN XAVIER MILLER,

APPELLANT

Appellate Case No. 2013-001860

Appeal from Richland County

Doyet A. Early, III, Circuit Court Judge

Opinion No. 2016-UP-040

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, counsel for appellant would petition for rehearing regarding this Court's decision in the above titled appeal that the search of a stranded vehicle on private property (appellant was arrested for DUS) was constitutional per §56-5-5635(A)) since this Court might have overlooked the fact that this statute addressed police **procedures** for towing stranded vehicles when actually, the issue was whether the **location** of a stranded vehicle would restrict police authority to tow or **search,** and per §56-5-20, which was the applicable statute, only stranded vehicles found on public property (highways/roadways) are searchable. Therefore, the search that uncovered crack cocaine from a stranded vehicle on private property in this case was an unconstitutional search and seizure. In support of this position, note the following points for review.

1.) At trial, Officer Westbury testified that he was responding to a theft call in the Rosewood section of Columbia, South Carolina, on January 10, 2013, when he received a neighborhood complaint regarding a particular vehicle that had large silver and green rims seen in the same neighborhood and how this vehicle was allegedly connected to drug sales in the area. Minutes later, during a routine patrol of the area, Officer Westbury happened upon the vehicle in question at a nearby mini-mart and followed the vehicle until the driver pulled into and stopped in a private driveway in front of a private residence. Officer Westbury stated that he confronted the driver, i.e. appellant, and arrested him after learning that he was driving under a suspended license. Westbury added that it was police policy to tow the vehicle after appellant's arrest. Pre-Trial Transcript Tr. 24 – p. 39, l. 21. Tr. 74, l. 22 – p. 84, l. 17.

2,) Prior to trial, defense counsel had moved to suppress the crack cocaine seized pursuant to the inventory search of the vehicle driven by appellant before the vehicle was towed because police officers had no authority to do so per S.C. Code Ann § 56-5-2520 (1976), (which the state cited as authority in support of the inventory search and subsequent tow), because this code section[1] applied to vehicles left without drivers stranded **on highways only**, and did not grant any authority to tow or search vehicles under similar circumstances found on private property. Pre-Trial Transcript Tr. 22 – p. 23, l. 19. S.C. Code Ann. § 56-5-2520 reads as follows:

> (a) Whenever any police officer finds a vehicle in violation of any of the provisions of § 56-5-2510 he may move the vehicle or require the driver or the other person in charge of the vehicle to move it to a position off the roadway.
>
> (b) Any police officer may remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any

[1] § 56-5-2520

6

> **highway**, bridge, causeway or in any tunnel in such position or under such circumstances as to obstruct the normal movement of traffic.

3.) Later, however, the trial judge denied the motion to suppress and ruled that the inventory search pursuant to the tow in question were both proper and allowed the admission of the crack cocaine found inside the car to be entered into evidence at trial based on S.C. Code Ann. § 56-5-5635. Tr. 49, l. 1 – 7. Tr. 44, l. 14 – p. 45, l. 10. The defense argued that this was an erroneous statutory interpretation. Tr. 45, l. 11 – p. 48, l. 16.

4.) On appeal, appellant raised the following issue before this Court:

> The trial judge erred in denying the pre-trial motion to suppress the crack cocaine found under the seat of the vehicle driven by appellant after the traffic stop because the seizure of the drugs that occurred during the inventory search prior to the towing of the vehicle constituted an illegal search and seizure as the vehicle was located on private property, which in turn meant that the actions taken by the police in this case were neither statutorily authorized under S.C. Code Ann §56-5-2520 nor allowed via an exception under S.C. Code Ann § 56-6-5635.

5.) On appeal, this Court affirmed and ruled as follows:

> As to whether the trial court erred in denying Miller's pre-trial motion to suppress crack cocaine found during an inventory search of his vehicle: S.C. Code Ann. § 56-5-5635(A) (2006) ("Notwithstanding another provision of law, a law enforcement officer who directs that a vehicle be towed for any reason, whether on public or private property, must use the established towing procedure for his jurisdiction. A request by a law enforcement officer resulting from a law enforcement action, including...vehicle recovery incident to an arrest, is considered a law enforcement towing....")

6.) This case boiled down to a statutory interpretation of S.C. Code Ann. 56-5-2520 and 56-5-5635, and whether the officers erred in towing the vehicle appellant drove from its location on private property and in conducting the inventory search that occurred as a result of the decision to

tow, since this ultimately led to the discovery of crack inside the vehicle. As a rule, the words of a statute are to be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Manning, 2014 WL 1805319 (May 7, 2014 S.C. App), citing to State v. Sweat, 386 S.C. 339 688 S.E.2d 564 (2010). Here, the statute in question (56-5-2520) only allows police to tow or "remove" a vehicle off a road way for whatever reason if the vehicle is found "upon a **highway.**" At the time of his arrest, appellant had already parked the vehicle on a private driveway. Therefore, since the vehicle appellant drove prior to his arrest was not parked on a highway, which is public, then the towing of the vehicle and the inventory search that was conducted prior to the towing were illegal and statutorily unauthorized actions taken by police. Again, the vehicle appellant had been driving at the time of the arrest was parked in a private roadway. The words of the statute clearly refer to circumstances that would warrant the removal of a vehicle from a public highway as opposed to a private highway. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court had no right to expand or impose another meaning. State v. Manning, supra, citing to State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621 (2011).

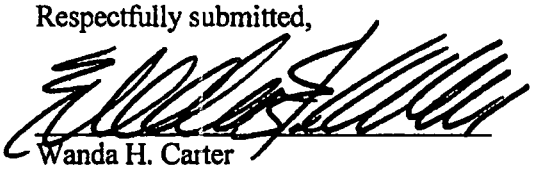
Nonetheless, the trial judge used S.C. Code Ann. §56-5-5635 (Cum. Supp. 2004), to justify the towing as proper and the admission of the crack cocaine seized via the inventory search that preceded the towing into evidence as proper as well. However, this statute[2] referred not to the authority to tow (and the accompanying inventory search prior to the tow), but rather to the proper procedure ("must use the established towing procedure") and the recovery of costs for towing a vehicle instead. To the contrary, this statute presupposes that an officer had the proper authority to tow and was previously authorized to tow any such vehicle. In other words, the proper towing

[2] §56-5-5635

procedure under S.C. Code Ann §56-5-5635, **would apply only after the threshold requirement to tow had been authorized** in the first place per S.C. Code Ann. § 5-56-2500. Therefore, since S.C. Code Ann. § 56-5-5635 was inapplicable and misapplied by the trial judge in the case at bar, the search and seizure in the case were unconstitutional and in violation of the Fourth and Fourteenth Amendments to the United States Constitution and article 1,§10 of the South Carolina State Constitution; and as a result, the crack seized constituted fruit of the poisonous tree[3] and should have been suppressed at trial.

WHEREFORE, based on the foregoing points, counsel for appellant would request a rehearing on the issue of whether This Court erred in upholding the trial judge's denial of the motion to suppress the crack cocaine found in this case.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

This 4th day of February, 2016.

[3]Wong Sun v. United States, 371 U.S. 471 (1963).

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

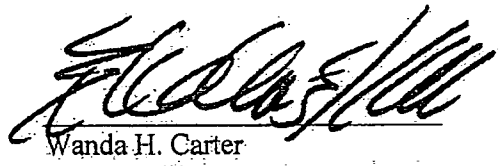
V.

JONATHAN XAVIER MILLER,

APPELLANT

CERTIFICATE OF SERVICE

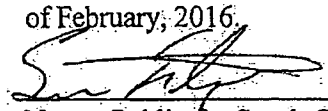
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Jonathan Xavier Miller #277973, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067-8069, this 4th day of February, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 4th day
of February, 2016.



(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Jonathan Xavier Miller, Appellant.

Appellate Case No. 2013-001860

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

J.

J.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Wanda H. Carter, Esquire
John Benjamin Aplin, Esquire
Daniel Edward Johnson, Esquire

FILED
March 24, 2016