

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RONALD DAVID RATLIFF,

APPELLANT

APPELLATE CASE NO 2016-001267

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT

The trial judge erred in denying appellant’s new trial and directed verdict motions on both possession charges because appellant had neither dominion and control nor actual possession over the marijuana he found in the state’s police transport van because he was a temporary passenger who had no ownership or possessory interests or rights in this state owned and operated vehicle.....3

CONCLUSION.....6

TABLE OF AUTHORITIES

Cases

<u>Jackson v. Virginia</u> , 443 U.S. 307 (1979).....	5
<u>McColman v. Wilkes</u> , 34 S.C. 465, 3 Strob 465 (1849).....	4
<u>State v. Bowers</u> , 301 S.C. 457, 392 S.E.2d 482 (1990).....	5
<u>State v. Brown</u> , 267 S.C. 311, 227 S.E.2d 67 (1976)	5
<u>State v. Cain</u> , Opinion No. 27694 S.C. filed January 5, 2017).....	6
<u>State v. Hernandez</u> , 382 S.C. 620, 677 S.E.2d 603 (2009).....	5
<u>State v. Hudson</u> , 277 S.C. 200, 284 S.E.2d 773 (1981).....	5
<u>State v. Jackson</u> , 395 S.C. 250, 717 S.E.2d 609 (2011).....	5
<u>State v. Muhammed</u> , 388 S.C. 22, 524 S.E.2d 637 (2000).....	5
<u>State v. Pradubsri</u> , 403 S.C. 270, 743 S.E.2d 98 (2013).....	5
<u>State v. Stanley</u> , 365 S.C. 24, 615 S.E.2d 455 (2005)	5
<u>State v. Wise</u> , 272 S.C. 384, 252 S.E.2d 294 (1979).....	5
<u>State v. Heath</u> , 370 S.C. 326, 635 S.E.2d 181 (2006).....	4

Constitutional Provisions

U.S. Const. amend. XIV	5
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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's new trial and directed verdict motions on both possession charges because appellant had neither dominion and control nor actual possession over the marijuana he found in the state's police transport van because he was a temporary passenger who had no ownership or possessory interests or rights in this state owned and operated vehicle.

STATEMENT OF THE CASE

Appellant Ronald David Ratliff was convicted per jury trial of simple possession of marijuana and possession of contraband during the June 2016 term of the Charleston County General Sessions Court before Judge Deandre L. Jefferson. Appellant was sentenced to an aggregate term of five years, suspended upon the service of two years and three years probation. Mary Ford represented appellant at trial and Assistant Solicitors Daniel Cooper and Jenna Newman appeared on behalf of the state.

Appellant appealed his convictions and sentences. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's new trial and directed verdict motions on both possession charges because appellant had neither dominion and control nor actual possession over the marijuana he found in the state's police transport van because he was a temporary passenger who had no ownership or possessory interests or rights in this state owned and operated vehicle.

On December 18, 2014, transport police officers Ernest Lewis and Daniel Gibbs drove appellant from the Charleston County Jail to the Charleston City Court located on Lockwood Boulevard in Charleston, South Carolina. Officer Lewis testified that upon entering the van, he noticed that the van reeked of the smell of marijuana inside. Officer Lewis stated that the van had been checked for the presence of drugs prior to transporting appellant and that none had been found. Tr. 60, l. 20 – p. 71, l. 25.

Officer Gibbs testified also that the van had been inspected for the presence of drugs prior to leaving the jail, but admitted that the van smelled of marijuana nonetheless. Officer Gibbs added that appellant stated that he smelled marijuana in the van and offered to search for it. The inference was that appellant apparently found marijuana inside the van. Tr. 86, l. 4 – p. 94, l. 6. Upon arriving at the Lockwood Boulevard facility, intake Officer Donald Salters stated that there was a smell of marijuana about appellant and as a result, he made preparations to conduct a strip search of appellant immediately. At that point, appellant requested leave to speak with higher authorities. Soon thereafter, however, appellant surrendered a plastic bag of marijuana to Officer Salters. Tr. 110, l. 12 – p. 116, l. 25.

Appellant testified at trial and explained that the smell of marijuana was easily identifiable as soon as he entered the van on the day in question, and that he found marijuana

right where he sat inside the transport van. Tr. 219, l. 1 – p. 221, l. 11. Appellant’s testimony regarding the matter follows:

Q. So what was your understanding after talking to them?

A. Well, he told me that they had found some earlier that day, and that they couldn’t find the rest. They had somebody clean it out, but there was still some stuck somewhere in there they hadn’t found it. They had ripped up the cushions. They said they couldn’t find it.

Q. And so what did you decide to do?

A. I told the officers, playing around, I’m going to look for it, not thinking that I would find anything. They had already said they had looked for it. So, lo and behold, it was literally right behind my back, right where I was sitting. App. 220, l. 22 – p. 221, l. 1.

Appellant added that after they reached their destination, he “handed over the marijuana [to Officer Salters] and [reported that he] found this in the van.” App. 228, lines 1 – 7.

At the close of the case, counsel moved for directed verdicts (sufficiency of the evidence) on both charges and renewed those motions at the close of the case. Tr. 208, l.1 – p. 209, l. 9 ; Tr. 265, l. 22 – 25. All motions were denied. Tr. 210, l. 11 – p. 212, l. 19; Tr. 266, lines 8 – 14.

Actual possession occurs when drugs are found in the actual physical custody of a defendant and constructive possession arises when 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). A closer inspection of actual possession reveals that it is a “continuous...exercise of full dominion.” McColman v. Wilkes, 34 S.C. 465, 3 Strobs 465 (1849). In the case at bar, appellant had no continuous direct dominion and control over drugs or anything located inside the state’s transport van that he found inside. Appellant was being transported, which meant his temporary presence inside the state owned and operated van was limited and not continuous; and therefore, his authority to control or exercise control over any object found inside that state

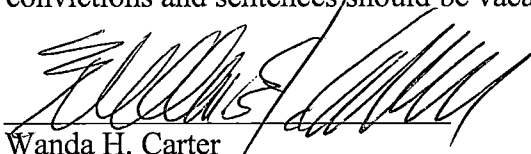
owned van was non-existent. Appellant had no ownership or right of ownership in a state-owned van in which he was present temporarily for a small segment of time. Thus, the marijuana that he found in a van that did not belong to him and in which he had no ownership rights, could not have been assigned to him. The marijuana that appellant found and surrendered was not in his actual possession according to the legal meaning of actual possession, and by the same analogy and argument, there was no constructive possession of the same by him either. Heretofore, the cases with respect to the actual or constructive possession of drugs included some type of possessory interest in the place where the drugs were found albeit a house or vehicle. For example, compare the following cases that include likely venues where drugs were found. Drugs were found in a truck in State v. Wise, 272 S.C. 384, 252 S.E.2d 294 (1979) and State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009). Drugs were found in a vehicle in State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (2005) and State v. Brown, 267 S.C. 311, 227 S.E.2d 67 (1976). See similar car scenarios in State v. Pradubsri, 403 S.C. 270, 743 S.E.2d 98 (2013) and State v. Jackson, 395 S.C. 250, 717 S.E.2d 609 (2011). Drugs were found in an apartment in State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981). Drugs were found in house in State v. Bowers, 301 S.C. 457, 392 S.E.2d 482 (1990) and State v. Muhammed, 388 S.C. 22, 524 S.E.2d 637 (2000).

By contrast in the case at bar, appellant had no possessory interest in a state owned transport van in which he was temporarily present and could not have been in actual or constructive possession of the marijuana which he found inside the van, which was later surrendered to police upon exiting the van. Hence, there was no proof beyond a reasonable doubt of the possession charges levied against appellant as required under the Fourteenth Amendment Due Process Clause See Jackson v. Virginia, 443 U.S.307 (1979). See also, State

v. Cain, Opinion No. 27694 S.C. filed January 5, 2017). The trial judge erred in denying appellant's directed verdict and new trial motions in the case.

CONCLUSION

Based on the foregoing argument, appellant's convictions and sentences should be vacated.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of January, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

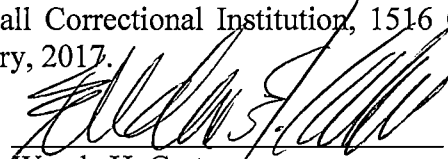
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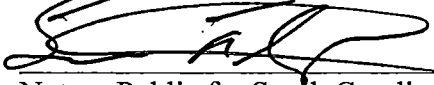
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Ronald David Ratliff, #363973, at MacDougall Correctional Institution, 1516 Old Gilliard Road, Ridgeville, SC 29472, this 6th day of January, 2017.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of January, 2017.

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

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