THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

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SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of General Sessions

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2015-000981

The State, ... Respondent,

V.

TERESA ANNETTE DAVIS .....Appellant.

APPELLANT'S FINAL REPLY BRIEF

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LAW/ANALYSIS

I. Appellant's Charges are Not Closely Related in Kind, Place, and Character

The State alleges that much of the evidence produced at trial pertained to both the possession with intent to distribute and burglary charges. (Resp. Br. at 9). However, the State concedes there is individual evidence that is specific to each crime. (Resp. Br. at 9). Nevertheless, the State rests its case on the exclusive argument that "the charges arise out of a single chain of circumstances[.]" (Id.). The State relies on State v. Rice, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006), to support its argument.

However, the facts of Rice are distinguishable from the facts in this case. In Rice, Rice's acquaintance was murdered. Id. at 612, 629 S.E.2d at 394. Officers became suspicious of Rice and began to surveillance him. Id. As he left the motel where his acquaintance was found murdered, officers pulled Rice over for improper vehicle registration. Id. When Rice was unable to provide proof of insurance, officers asked Rice to step out of the vehicle, where he was patted down. Id. Officers found a pistol in Rice's front pocket and $2,500. Id. Rice was arrested for traffic violations and an inventory search of the vehicle was conducted. Id. at 613, 629 S.E.2d at 394.

During the search, officers found a large amount of cocaine, a scale, and a rifle cut into several pieces in a plastic bag. Id. Officers believed this was the weapon used to murder Rice's acquaintance. Rice was arrested and charged with possession with intent to distribute cocaine and murder. Id. Rice moved to sever his charges; the trial court denied Rice's motion. Id.

The Court of Appeals held the trial court did not err in denying Rice's motion to severe his charges. The Court of Appeals noted the State's theory for the murder revolved around the relationship between Rice and Rice's acquaintance which was largely based on selling drugs. The Court of Appeals stated: "[W]ithout the evidence of cocaine trafficking, the jury would not have received an accurate portrayal of the case .... The information regarding the cocaine trafficking was relevant to show the complete, whole, unfragmented story regarding [Rice's acquaintance's] murder." Rice, 368 S.C. at 616, 629 S.E.2d at 396.

Unlike in Rice where the State used the evidence of trafficking cocaine as evidence of the relationship between Rice and the acquaintance and as evidence of motive, in the case at bar, evidence from one charge was not used as evidence for the other charge. Unlike Rice, Appellant's possession with intent to distribute and burglary charges were not interconnected. The State

did not rely on evidence of one charge as evidence of the other charge. Indeed, the complete story of each charge could be had without reference to the other charge. As well, the charges did not require proof by the same evidence or the same witnesses. Likewise, the evidence regarding methamphetamine in the vehicle did not provide context to the burglary.

II. The State Failed to Present Sufficient Evidence Appellant had Control over the Methamphetamine

Our law clearly provides that a 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, 677 S.E.2d 603, 305 (2009). To prove the crime of possession with intent to distribute, the State must establish the defendant possessed the drug, either actually or constructively. State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 2005).

The State argues it presented substantial circumstantial evidence at trial to establish Appellant had constructive possession over the methamphetamine found in the vehicle. (Resp. Br. at 13). The State relies on State v. Stanley, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005). However, the facts of Stanley are distinguishable from the facts at hand.

In Stanley, an officer observed a vehicle driving over the posted speed limit. Id. at 29, 615 S.E.2d at 457. The officer followed the vehicle and activated his blue lights. Id. A high speed chase ensued. Id. The officer observed two people in the vehicle. Id. After the vehicle eventually came to a stop, the driver fled the vehicle. Id. at 29, 615 S.E.2d at 458. The passenger, Stanley, then fled the vehicle. Id. at 30, 615 S.E.2d at 458. The officer immediately ordered Stanley to get on the ground, handcuffed Stanley, and arrested him. Id. The officer noticed a large bag of crack cocaine on the ground where Stanley was laying. Id. A pat-down revealed a large sum of cash. Id. An inventory search of the vehicle revealed other drug paraphernalia, plastic baggies and digital scales on the passenger-side floorboard. Id.

The driver of the vehicle gave a statement that he was driving Stanley to "sell somebody something." Id. at 43, 615 S.E.2d at 465.

In finding the trial court did not err in denying Stanley's motion for a directed verdict, the Court of Appeals noted the record provided substantial circumstantial evidence reasonably tending to prove Stanley's guilt, including: (1) the arresting officer found a large bag containing more than ten grams of crack cocaine on the ground beneath Stanley; (2) the arresting

officer discovery a large sum of cash in Stanley's pocketed; and (3) the arresting officer found plastic bags and scales on the passenger's side floorboard of the vehicle in which Stanley was the passenger. The Court further noted the driver's statement to officers that he was driving Stanley to "sell somebody something" shows intent to distribute. Id.

Conversely, in the instant case, the methamphetamine was found in a vehicle registered to Lavina Davis. (R. p. 122, lines 16-21). Furthermore, in searching the vehicle, Appellant's purse was found on the driver's seat. (R. p. 128, lines 20-21). A plaid bag was on the driver's seat next to the purse, not in Appellant's purse. (R. p. 131, lines 10-14). It was in this plaid bag the officers found the methamphetamine. (R. p. 131, line 25 – p. 132, line 5). Unlike Stanley, Appellant was nowhere near the vehicle where the methamphetamine was found, nor did officers observe Appellant in the vehicle at any time prior to discovering the methamphetamine. (R. p. 134, line 21 – p. 135, line 9).

The State failed to present sufficient evidence at trial that Appellant had control, either actually or constructively, of the methamphetamine. The evidence adduced at trial by the State only raises a mere suspicion that Appellant had either actual or constructive control and/or possession of the

methamphetamine. This mere suspicion is not enough to defeat a motion for directed verdict. See Hernandez, 382 at 625, 677 S.E.2d at 305. For these reasons, the Circuit Court erred in denying Appellant's motion for a directed verdict.

III. The Subject Home of the Alleged Burglary was Not Occupied at the Time of the Incident

A person is only guilty of burglary if the person enters a dwelling without consent and with intent to commit a crime in the dwelling. S.C. Code Ann. § 16-11-311(A)(2) (2015). A dwelling loses its status as such when the occupants or residents leave without the purpose of returning. State v. Ferebee, 273 S.C. 403, 405, 257 S.E.2d 154, 155 (1979) ("[A] house, although furnished as a dwelling house loses its character as such for the purpose of burglary, if the occupant leaves it without the intention to return.").

The State contends the homeowner, though placed in a nursing home, had the intention of returning to the home. The State rests on State v. Evans, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008), where the Court of Appeals held that while occupants were unable to live at their secondary home or spend significant amounts of time at the home due to the wife's medical

condition, the home constituted a dwelling because the owners intended to return to the home. The Court noted the family visited the home about once every two weeks or month, the utilities were on in the home, and the home was ready to be lived in. Id. at 426, 656 S.E.2d at 784.

However, our case law is clear that it must be the occupant's intent to return to the home. See State v. Glenn, 297 S.C. 29, 374 S.E.2d 671 (1988) ("[T]he test of whether a building is a dwelling house turns on whether the occupant has left with the intention to return.") (emphasis added). The record indicates it was the intent of the occupant's children for the occupant to return to the house. Indeed, the occupant's children testified to the same. (R. p. 80, lines 13-21). However, the State failed to present any evidence of the occupant's intention of returning to the home. Indeed, the occupant never returned to the residence and the house was subsequently sold. (R. p. 102, lines 14-24).

However, because the house was unoccupied at the time of the alleged burglary, the State failed to prove all essential elements of burglary. Accordingly, the Circuit Court erred in denying Appellant's Motion for a Directed Verdict as to Appellant's burglary charge.

CONCLUSION

For the reasons stated within the argument of Appellant's Brief and Reply Brief, Appellant respectfully requests this Court reverse her convictions.

Respectfully submitted,

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