ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
The Honorable Deadra L. Jefferson, Circuit Court Judge
Appellate Case No. 2016-001267

The State,

Respondent,

v.

Ronald David Ratliff,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court's denial of Appellant's motion for a directed verdict is amply supported by the record.

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

On March 2, 2015, the Charleston County Grand Jury indicted Appellant Ronald David Ratliff on one count of possession with intent to distribute marijuana, and one count of possession of contraband in a county jail. The case was called for a jury trial on June 6, 2016, before the Honorable Deadra L. Jefferson, Circuit Court Judge.

Officer Ernest Lewis, a transport officer for the City of Charleston, testified he and another officer transported Appellant from the jail to magistrate's court on December 18, 2014. He stated the transport vans are routinely searched at the beginning and end of each shift, as well as after each transport run. (Trial Transcript [TT], pp. 61-65, 76-78; Record on Appeal [R.], pp. 10-14, 25-27).

Officer Lewis further testified the van used to transport Appellant had a slight odor of marijuana in it because inmates hid contraband, including marijuana, under the seats. The van had been thoroughly searched, including completely taking the seats apart, but the residue penetrated the metal so it was impossible to completely eradicate the odor. (TT, pp. 65-69, 75-76, 83-84; R., pp. 14-18, 24-25, 32-33).

When the officers returned Appellant to the jail, he was taken to the intake area, where the inmates are patted down before they are returned to their cells. There were several other inmates in the intake area, so the officers had to wait until jail personnel could pat Appellant down. Officer Lewis testified Appellant did not say anything to the officers, or ask to speak to a jail supervisor, during that time. (TT, pp. 69-71; R., pp. 18-20).

When the jail officer came to pat down Appellant, he told Officer Lewis he smelled marijuana on Appellant, so Appellant would have to be strip searched. They took Appellant to the strip search room, but Appellant initially refused to comply. A jail supervisor told Appellant

he had to comply with the search, and Appellant said he wanted to see the captain. Eventually, Appellant reached into the front of his pants, removed a white bag with marijuana in it, and gave the bag to the jail officer. Officer Lewis testified that was the first time he saw the bag of marijuana. (TT, pp. 72-74; R., pp. 21-23).

Officer Daniel Gibbs testified he worked for the City of Charleston as a transport officer, and he and Officer Lewis transported Appellant to court on December 18, 2014. He stated they searched the transport van at the beginning of their shift, and all inmates being transported are patted down before they enter the van at the jail. The day before December 18th, the van they used was thoroughly cleaned and searched by the city garage, and a drug K-9 went through it, and no contraband was inside it. (TT, pp. 86-91, 95; R., pp. 35-40, 44).

During the ride from the jail to the courthouse, Appellant stated he smelled marijuana, and asked Officer Gibbs if they wanted him to find the marijuana for them. Officer Gibbs told him to remain in his seat and seat belt because they did not want him moving around in the van, and the van had already been searched. When they returned Appellant to the jail, he did not mention finding any marijuana in the van, and after the jail officer told Appellant he was going to be strip searched because the officer smelled marijuana on him, Appellant asked to speak to a higher jail official. (TT, pp. 91-95; R., pp. 40-45).

Officer Donald Salters of the Charleston County jail testified he was the intake officer on duty on December 18, 2014, when the transport officers brought Appellant back from court. The intake procedure for all incoming inmates begins with a pat down search while the inmate is still in handcuffs, and a second pat down after the handcuffs are removed, to ensure no contraband, including drugs, cell phones and weapons, get inside the jail. (TT, pp. 102-105; R., pp. 51-54).

During the first pat down of Appellant, Officer Salter detected a strong odor of marijuana when he was patting down Appellant's left leg. Officer Salter told Officer Lewis to remove Appellant's handcuffs, took Appellant toward a search room and informed him he needed to be strip searched. Appellant asked to speak to a captain or lieutenant, but refused to tell Officer Salter why he wanted to speak to a higher jail official. (TT, pp. 106-115; R., pp. 55-64).

When Officer Salter and Appellant entered the strip search room, Appellant "turned around, unsnapped the front of his jumper, reached inside and pulled out a plastic bag." The bag contained other plastic baggies with a green leafy substance in them. Appellant told Officer Salter he "wanted to use that as information with the captain and lieutenant." Officer Salter testified marijuana is like currency in the jail, and inmates use it to get money put in their canteen account, barter for other drugs from other inmates, or have other inmates get canteen items for them. (TT, pp. 115-120, 127-128; R., pp. 64-69, 76-77).

Investigator Erin Meyer of the Charleston County Sheriff's Office's forensic unit testified she tested the green leafy contents of the plastic bag seized from Appellant. She determined it was 7.28 grams of marijuana, with the individual bags containing marijuana weighing between .72 grams and .93 grams. (TT, pp. 149-150,173-175; R., pp. 98-99, 122-124).

Investigator Christopher Goode of the Mount Pleasant Police Department was qualified as an expert in the field of narcotics investigations. He testified the way illegal drugs are packaged can indicate intent to distribute the drugs rather than possession for personal use. Dealers usually package their drugs for individual sales by putting them in small bags of approximately equal weight, which allows for quick sales. (TT, pp. 187-193; R., pp. 136-142).

After the State rested, Appellant moved for a directed verdict, arguing the only logical conclusion from the evidence was he found the marijuana in the back of the transport van, and he

intended to turn it over to a jail supervisor. The circuit court denied the motion, finding there was direct and substantial circumstantial evidence from which the jury could reasonably find Appellant guilty. (TT, pp. 207-212; R., pp. 156-161).

Appellant testified he found the marijuana behind his seat in the transport van, and he intended to turn it into a supervisor. He stated he did not trust the transport officers because he believed they lied to him about the drugs after he asked about the marijuana smell in the van, and he thought they were setting him up. (TT, pp. 219-262; R., pp. 168-195).

The jury found Appellant guilty of simple possession of marijuana on the possession with intent to distribute charge, and guilty of possession of contraband in the county jail. The court sentenced him to one year, suspended to time served of 149 days, on the possession of marijuana conviction, and five years, suspended to two years incarceration and 3 years probation, on the possession of contraband conviction. (TT, pp. 341, 375-376; R., pp. 269, 272-273). This appeal followed.

ARGUMENT

The circuit court's denial of Appellant's motion for a directed verdict is amply supported by the record.

Appellant contends the trial court erred in denying his directed verdict motion because the State failed to present any evidence he ever had dominion and control or actual possession of the marijuana. He further asserts directed verdict was appropriate because he was a temporary passenger with no ownership or possessory interests or rights in the state owned and operated vehicle. Part of his argument is not preserved for appellate review, and the evidence fully supports the denial of his motion for a directed verdict.[1]

A. Preservation

South Carolina law requires a party to raise an issue and obtain a ruling from the trial judge to preserve an issue for appellate review. State v. Cain, 419 S.C. 24, 795 S.E.2d 846, 851 (2017); *see also* Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). A party may not argue one ground at trial and another ground on appeal. *Id.*

At trial, the only ground Appellant asserted in support of his directed verdict motion was there was no evidence he intended to distribute the marijuana, or do anything other than turn it into a supervisor at the jail. (TT, pp. 207-209; R., pp. 156-210). He did not assert the motion should be granted because he was a temporary passenger with no ownership or possessory interests or rights in the state owned and operated vehicle, and as such could not possess the

[1]Appellant also contends the circuit court erred in denying his motion for a new trial, but the record indicates Appellant did not move for a new trial. (TT, pp. 347-348; R., pp. 270-271).

marijuana. Therefore, that part of Appellant's argument on appeal is not preserved for appellate review.

B. Directed Verdict

In reviewing a motion for directed verdict, the trial court is concerned with the existence of evidence, not with its weight. State v. Phillips, 416 S.C. 184, 785 S.E.2d 448, 452 (2016). The trial court must submit the case to the jury if there is any substantial evidence reasonably tending to prove the defendant's guilt, or from which his guilt may be fairly and logically deduced. *Id.*

"'[T]he lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury.'" *Id.* (*quoting* State v. Bennett, 415 S.C. 232, 781 S.E.2d 352, 354 [2016]). "The jury's focus is on determining whether every circumstance relied on by the State is proven beyond a reasonable doubt, and that all of the circumstances be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis," while "the trial court must view the evidence in the light most favorable to the State when ruling on a motion for directed verdict, and must submit the case to the jury if there is "'any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced.'" *Id.* (*quoting* State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 [1955]). The trial court "'must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt.'" *Id.* (*quoting* Bennett, 781 S.E.2d at 354).

In this case, there is ample direct and circumstantial evidence from which the jury could reasonably infer Appellant's guilt. It is undisputed Appellant had the marijuana on his person when he got back to the jail, which is direct evidence of possession.

The only disputed issues were how he obtained the marijuana, and what he intended to do with it. As to how Appellant obtained the marijuana, the evidence indicated the transport officers searched both the van and Appellant before putting Appellant inside the van at the jail, and Appellant did not have the drugs on his person at that time. Appellant was not searched when he re-entered the van at the courthouse, and said nothing to the transport officers about finding marijuana behind his seat.

When the jail officer stopped doing the initial pat-down, Appellant realized he was going to be more thoroughly searched at the jail, and handed the marijuana to the jail officer. While he did ask to speak with a captain or lieutenant, Appellant did not tell any of the officers present he found the marijuana in the van, and refused to even give a reason for his request. (TT, pp. 71-74, 94-95, 114-116, 127-128; R., pp. 20-23, 43-44, 63-65, 76-77). This was substantial circumstantial evidence indicating Appellant somehow obtained the marijuana at the courthouse.

As to what Appellant intended to do with the marijuana, the State presented expert testimony indicating drug dealers generally package their drugs for individual sales by pre-weighing the drugs (generally in fractions of an ounce), and putting the pre-weighed drugs in individual plastic bags. The marijuana in Appellant's possession was packaged in nine small plastic bags, with the weight per bag ranging from .72 grams to .93 grams. (TT, pp. 174-175, 187-193; R., pp. 123-124, 136-142). Thus, there was substantial circumstantial evidence from which the jury could find Appellant intended to distribute the marijuana in the jail.[2]

The circuit court cited the evidence outlined above in denying Appellant's directed verdict motion. (TT, pp. 210-212; R., pp. 159-161). The record amply supports the circuit court's findings, and the court's ruling should be affirmed.

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[2]The jury ultimately convicted Appellant on the lesser included offense of simple possession, which is indisputably supported by the evidence.

CONCLUSION

Based on the foregoing reasons, the State respectfully submits Appellant's convictions should be affirmed.

Respectfully submitted,

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July 12, 2017

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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.

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