STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
The Honorable William H. Seals, Circuit Court Judge
Appellate Case No. 2016-001954

The State,

Respondent,

v.

Myron A. Cannon,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

Edgar L. Clements
Solicitor, Twelfth Judicial Circuit

180 N. Irby St., MSQ-Q
Room 1101
Florence, SC 29501
(843) 665-3091

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

STATEMENT OF ISSUES ON APPEAL

I. There was ample direct and circumstantial evidence in the record from which the jury could find Appellant guilty of the trafficking and possession charges, and the circuit court properly denied Appellant's motion for a directed verdict.

II. The circuit court did not abuse its discretion in allowing Officer Nida to testify regarding the street value of the drugs found in Appellant's rental car because the testimony was directly relevant to the trafficking charge, and its probative value outweighed the prejudice to Appellant.

STATEMENT OF THE CASE

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

STATEMENT OF FACTS

On March 10, 2016, the Florence County Grand Jury indicted Appellant Myron A. Cannon on one count of trafficking cocaine base, one count of possession with intent to distribute cocaine, one count of failure to stop for a blue light, and one count of resisting arrest. The matter was called for a jury trial on September 6, 2016, before the Honorable William H. Seals, Circuit Court Judge.

Prior to trial, Appellant moved to suppress evidence seized from the car he was driving at the time of his arrest. After hearing testimony from the police officers involved in Appellant's arrest and seizure of the evidence, the circuit court denied Appellant's motion. (Trial Transcript [TT], pp. 17-27; Record on Appeal [R.], pp. _____).

Appellant then moved to exclude testimony from the State's proposed expert regarding the street value of cocaine and crack, arguing the testimony was irrelevant because dollar value was not an element of the offenses charged, and it was more prejudicial than probative. The State argued the testimony was relevant to the issue of whether the drugs found in the car was just for personal use. The court denied the motion to exclude, finding the proposed testimony was relevant because the car Appellant was driving was a rental car, and the issue of whether someone other than Appellant left the drugs in the car could arise. (TT, pp. 27-29; R., pp. _____).

During his opening statement, Appellant contended he ran from law enforcement on the night in question because he was driving while intoxicated, and the drugs found in the car were "somebody else's drugs in somebody else's car." He further contended there was no evidence linking him to "somebody else's drugs in somebody else's car . . because [Appellant] isn't the real owner of the drugs" and he "had no idea that the drugs were there." (TT, pp. 38-39; R., pp. _____).

Tony Drummond testified he was a sergeant with the Florence County Sheriff's Office on September 12, 2015, and while on patrol that night he attempted to stop a car traveling at a very high rate of speed. Rather than stopping after Drummond activated his blue lights, the driver, subsequently identified as Appellant, continued driving at a high rate of speed with Drummond in pursuit. During the pursuit, Drummond observed Appellant run stop signs and driving erratically. Finally, after Appellant almost caused wrecks with other cars, Drummond struck the rear of Appellant's car, which caused it to run off the road, through a ditch and into a bean field. (TT, pp. 40-45; R., pp. _____).

After the car came to a stop in the bean field, Drummond saw Appellant open the driver's door, jump out and run away. Drummond determined no one else was inside the car, and then pursued Appellant on foot. Appellant refused to stop when Drummond repeatedly ordered him to do so, and Drummond ultimately used a taser to subdue Appellant and get him into custody. When Drummond took Appellant back to his car, another officer told Drummond drugs had been found inside the car, which was determined to be an Enterprise rental car. (TT, pp. 46-49; R., pp. _____).

Corporal Brooks Urqhart of the Florence County Sheriff's Office testified he was the first officer on the scene after Drummond started chasing Appellant on foot. When he walked up to the car in the bean field, he observed the driver's side door was open, and there were two bags of what appeared to be narcotics in plain view inside, one on the driver's seat and one on the driver's side floorboard. Urqhart did not touch anything in the car, but secured the scene until other officers could arrive to seize the drugs. (TT, pp. 58-60; R., pp. _____).

Corporal Jason Bazen of the Florence County Sheriff's Office testified he worked narcotics interdictions with an inter-county community team of officers. He was working the

night of September 12, 2016, and responded to a call for assistance involving Drummond's pursuit of Appellant. He assisted Drummond in securing Appellant, and walked with them back to the car in the bean field, where he also saw the bags of drugs in plain view inside the car. He secured the drugs and placed them in evidence bags. He also seized a set of digital scales, several cell phones, and two thumb drives from inside the car. He testified digital scales are used to weigh drugs in the drug business. (TT, pp. 63-70; R., pp. _____).

Detective Mitch Hansen of the Florence County Sheriff's Office testified he is the forensic drug chemist for the Office, which includes testing, weighing and re-packaging seized narcotics. He analyzed the drugs seized from Appellant's rental car, and determined one bag contained 6.92 grams of cocaine powder. The other bag contained 38.19 grams of crack (cocaine base). (TT, pp. 77-81; R., pp. _____).

Sergeant William Nida of the Florence Police Department testified he had worked with the Department Narcotics Unit for twelve years, which handles anything pertaining to drugs, including controlled purchases of illegal narcotics. He stated his unit averages 480 drug cases annually, and as a result of his involvement in controlled purchases and general experience working drug cases, he was familiar with the street value of narcotics in Florence County. Over Appellant's relevancy and 403 objection, the circuit court qualified Nida as an expert in the field of retail value of cocaine and crack cocaine in the Florence area, finding the information was beyond the knowledge of an ordinary jury, Sergeant Nida had the requisite knowledge and skill, and his testimony was reliable. (TT, pp. 84-87; R., pp. _____).

Sergeant Nida testified one gram of crack or cocaine powder sold for $100. The amount of cocaine powder and crack found in Appellant's rental vehicle was 45.11 grams, with a street value of $4,511. (TT, pp. 87-91; R., pp. _____).

Appellant moved for a directed verdict at the close of the State's case, arguing the State presented no evidence Appellant had dominion and control over the drugs found in the car he was driving. The circuit court denied the motion, finding there was evidence Appellant was in the car, he got out of the car and ran, the drugs were inside the car, and no one else was inside the car. (TT, p. 92; R., p. ____).

During closing argument, the solicitor stated it was "nonsense," not common sense, to believe Enterprise Rental Car failed to clean the rental car from a prior renter, and then either put the narcotics inside the car, or rented the car to Appellant with $4500 of narcotics inside. The solicitor then stated it was nonsense because the narcotics represented money, which is why people traffick drugs, and no one would just leave $4500 worth of narcotics, along with digital scales used to weigh the drugs, in a car. He further argued the location of the drugs, on the driver's seat and the driver's side floorboard, showed Appellant was not merely present, but he was in possession and control of the car, he knew the drugs were inside the car, and he ran from the police because he knew the drugs were there. (TT, pp.102-109; R., pp. _____).

Appellant argued in closing the State had "maybe proven that [Appellant] was in the car," and "could probably prove that he was - - maybe prove that he ran from the police." He further argued the State failed to prove he "had dominion and control over the drugs," he "didn't know the drugs were [in the car]," and there was no evidence "that ties the drugs to him." (TT, pp. 110-116; R., pp. _____).

The jury convicted Appellant of all charges, and the circuit court sentenced him to an aggregate of twenty-five years incarceration. (TT, pp. 131-135; R., pp. _____). This appeal followed.

ARGUMENT

I. There was ample direct and circumstantial evidence in the record from which the jury could find Appellant guilty of the trafficking and possession charges, and the circuit court properly denied Appellant's motion for a directed verdict.

Appellant contends the trial court erred in denying his motion for directed verdict as to the trafficking and possession with intent charges because the State failed to present sufficient evidence he exercised, or had the right to exercise, dominion and control over the cocaine and crack found in the rental car he was driving. In support of this contention, Appellant focuses on investigative measures law enforcement did not undertake, while ignoring the actual evidence presented at trial.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight, and the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. State v. Thompson, 420 S.C. 386, 803 S.E.2d 44, 52 (Ct. App. 2017). "'An appellate court reviews the denial of a directed verdict by viewing the evidence and all reasonable inferences to be drawn therefrom in the light most favorable to the State.'" *Id.* (*quoting* State v. Gilliland, 402 S.C. 389, 397, 741 S.E.2d 521, 525 [Ct. App. 2012]).

In order to prove constructive possession, the "'State must show a defendant had dominion and control, or the *right to exercise dominion and control* over the [illegal substance].'" State v. Heath, 370 S.C. 326, 635 S.E.2d 18, 19 (2006) (*quoting* State v. Halyard, 274 S.C. 397, 264 S.E.2d 841, 842 (1980) [emphasis in original]). Further, the State may establish constructive possession by circumstantial or direct evidence, and knowledge and possession may be inferred if the substance was found on premises under the defendant's control. *Id.*

In this case, it is undisputed Appellant was driving the rental car when Drummond attempted to stop him for speeding, leading to a high speed car chase that ended when Appellant wrecked the rental car in the bean field. It is also undisputed Appellant was the only person inside the car during the chase and wreck, and he jumped out of the car after the wreck. Drummond confirmed no one else was in the car before he started chasing Appellant on foot, and the first responding officer (Urqhart) immediately observed the drugs in plain view inside the car, with one bag on the driver's seat and the other bag on the driver's side floorboard. (TT, pp. 40-46, 58-60; R., pp. _____).

In light of those undisputed facts, there was both direct and substantial circumstantial evidence Appellant had dominion and control, or at a minimum, the right to exercise dominion and control over the cocaine and crack inside the car. Further, the substance was found in premises (the car) under Appellant's control. For evidentiary purposes, the issues of who rented the car prior to Appellant, who owned the digital scales and other items found in the car, and the lack of fingerprints or touch DNA evidence from the drugs, were issues Appellant was free to, and did, exploit, but the evidence presented at trial linking Appellant to the car and the drugs was sufficient to make the ultimate determination one for the jury. Accordingly, the circuit court properly denied Appellant's directed verdict motion.

II. The circuit court did not abuse its discretion in allowing Officer Nida to testify regarding the street value of the drugs found in Appellant's rental car because the testimony was directly relevant to the trafficking charge, and its probative value outweighed the prejudice to Appellant.

Appellant maintains the circuit court erred by allowing Officer Nida to testify about the street value of cocaine and crack, arguing the testimony was irrelevant and unduly prejudicial as improper character evidence. He further argues the evidence constituted inadmissible drug courier and criminal profiling evidence.

"The qualification of a witness as an expert and the admissibility of his or her testimony are matters left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of that discretion and prejudice to the opposing party." State v. Jamison, 372 S.C. 649, 643 S.E.2d 700, 701 (Ct. App. 2007) (*citing* Nelson v. Taylor, 347 S.C. 210, 553 S.E.2d 488, 490 [Ct.App.2001]). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *Id.*

As a threshold matter, Appellant did not assert at trial that the testimony was improper character evidence, or inadmissible profiling evidence. Pre-trial, he objected on the ground the proposed testimony was irrelevant because it did not go to an element of the offense. When Officer Nida testified, Appellant objected "to relevance, and also on Rule 403," with no specificity on the Rule 403 ground. (TT, pp. 27-29, 86-87; R., pp. _____). Therefore, those issues are not preserved for appellate review. *See* State v. Daise, 421 S.C. 442, 807 S.E.2d 710, 714 (Ct. App. 2017) (an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review with sufficient specificity to bring into focus the precise nature of the alleged error so it can be reasonably understood by the court).

A. Relevance

The Jamison case is virtually on point with the instant case. At trial, the State presented expert testimony regarding the street value of cocaine and crack cocaine. The defendant objected, arguing the proposed testimony was irrelevant and prejudicial. The trial court limited the expert's testimony to the wholesale and retail values of cocaine and crack cocaine for the general area, finding jurors typically do not have knowledge about the illegal drug industry. The expert testified the drugs found in the defendant's truck had a street value of between $2,750.00 and $9,319.00. 643 S.E.2d at 701-702.

The defendant claimed the drugs belonged to someone else, possibly one of his employees who also had access to the truck. In affirming admission of the testimony, the Supreme Court found the drugs' value "allowed the jury to better determine whether a person would reasonably leave expensive narcotics unguarded and disguised as trash in a truck allegedly used by numerous people," and if the jury did not believe "an unknown individual left thousands of dollars worth of drugs where other people had access to the drugs and might even throw them away," "it reinforced the State's case that Jamison was knowingly in actual or constructive possession of the drugs at the time of his arrest, a key element of the trafficking charges." *Id.* at 702.

As in Jamison, Appellant repeatedly claimed the drugs found in the car belonged "to somebody else," and he did not know the drugs were there. (TT, pp. 38-39, 83, 92, 110-116; R., pp. _____). According to Officer Nida's testimony, the drugs had a street value of $4511. (TT, pp. 87-89; R., pp. _____). Given the high monetary value and Appellant's claim someone else left the drugs in the car, the drugs' value was directly relevant to the jury's consideration of whether "somebody else" would "leave thousands of dollars worth of drugs" in a rental car

where any number of people could access them, and whether Appellant "was knowingly in actual or constructive possession of the drugs at the time of his arrest, a key element of the trafficking charges."

B. Rule 403, SCRE

Relevant evidence may be excluded if the danger of unfair prejudice substantially outweighs the evidence's probative value. Rule 403, SCRE. The trial court's decision regarding the comparative probative value and prejudicial effect of evidence under Rule 403, SCRE, is reviewed pursuant to the abuse of discretion standard, and the appellate court is obligated to give great deference to the trial court's judgment. State v. Huckabee, 419 S.C. 414, 798 S.E.2d 584, 589 (Ct. App. 2017).

For the same reasons discussed above, Officer Nida's testimony was more probative than prejudicial. Appellant's claim that the drugs belonged to "somebody else" made evidence of the drugs' street value directly probative on the issue of Appellant's actual or constructive possession of the drugs at the time of his arrest, which was "a **key** element of the trafficking charges." Jamison, 643 S.E.2d at 702 (emphasis added).

As the solicitor argued in closing, the drugs represented money, and as in Jamison, the jury had to determine whether "somebody else" would simply leave drugs worth $4511, digital scales and multiple cell phones, inside a rental car under the control of whoever happened to clean out or rent the car later. Therefore, the circuit court properly denied Appellant's nonspecific Rule 403 objection to Officer Nida's testimony.

CONCLUSION

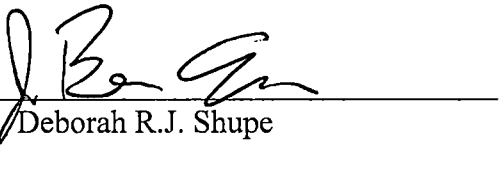
Based on the foregoing, Respondent respectfully submits the circuit court's judgment and Appellant's conviction should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

Edgar L. Clements
Solicitor, Twelfth Judicial Circuit

BY: 
for Deborah R.J. Shupe

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 1, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
FEB 01 2018
SC Court of Appeals

Appeal from Florence County
The Honorable William H. Seals, Circuit Court Judge
Appellate Case No. 2016-001954

The State,

Respondent,

v.

Myron A. Cannon,

Appellant.

PROOF OF SERVICE

I, Sally Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

Elizabeth A. Franklin-Best, Esquire
Blume Franklin-Best & Young, LLC
900 Elmwood Avenue, Suite 200
Columbia, SC 29201

I further certify that all parties required by Rule to be served have been served.

This 1st day of February, 2018.

Sally Ellison

SALLY ELLISON
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ALAN WILSON
ATTORNEY GENERAL

February 1, 2018

Elizabeth A. Franklin-Best, Esquire
Blume Franklin-Best & Young, LLC
900 Elmwood Avenue, Suite 200
Columbia, SC 29201

RE: State v. Myron A. Cannon
Appellate Case No. 2016-001954

Dear Ms. Franklin-Best:

Enclosed are two copies of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

for Deborah R.J. Shupe
Senior Assistant Deputy Attorney General

Enclosures

cc: The Honorable Jenny A. Kitchings (original and one enclosed)
Victim Advocacy Division