

STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAR 29 2018

SC Court of Appeals

APPEAL FROM OCONEE COUNTY
R. LAWTON McINTOSH, Circuit Court Judge

Appellate Case No. 2015-000981

THE STATERESPONDENT

v.

TERESA ANNETTE DAVISAPPELLANT.

RETURN TO PETITION FOR REHEARING

On February 7, 2018, this Court issued an opinion which affirmed the convictions of Davis for burglary and possession with intent to distribute (PIWD) methamphetamine, second offense. *State v. Davis*, Op. No. 5534 (Ct. App. filed February 7, 2018). On March 9, 2018, Davis served a Petition for Rehearing, and by letter dated March 22, 2018, this Court requested that the State submit a Return within 10 days of the date of the letter. The State respectfully submits this Return in opposition to the Petition for Rehearing and in addition craves reference to the State's previous arguments in brief and at oral argument.

FACTS/PROCEDURAL BACKGROUND

On Monday, February 10, 2014, Douglas Paul (Paul) drove by his mother's home. His mother had dementia, and for the past six months she stayed at a skilled nursing facility. She and her family hoped her health would improve at the facility and that she could move back home.

All of her possessions remained in the home, including her bed, furniture, and other items from her 37 years in the home. (R. 78-80)

Paul saw a strange car in the driveway. (R. 82) He noticed a door to the house left open that should be shut. (R. 83) He thought something was wrong, so he called his wife and asked her to bring the key to the house as well as his handgun. She did so. (R. 82-83) He decided to go in the house through the front door. Upon doing so, he heard noise upstairs, and he left the house and called the police. (R. 84-85)

The Oconee County Sheriff's Office responded. Officer George Mayer, IV, (Mayer) was the first officer to arrive. More officers arrived. Paul and his wife went inside the house with the officers, and they noticed a number of items were moved or out of place. (R. 88-89, 133)

Officer William M. Freestate, II, (Freestate) of the Oconee County Sheriff's Department was called to the scene. (R. 119-120) Freestate called a wrecker service to remove the vehicle in the driveway. (R. 123-124) While completing an inventory of the vehicle, Freestate found a small plaid bag that was next to a purse on the front passenger seat. Inside the plaid bag were two bags with a crystal-like substance. There was also a spoon, money, several baggies, a digital scale, and a lot of tissue paper. (R. 126-127)

Once the purse and other items were discovered in the vehicle, the officers believed that someone else either was or had been present on the scene. (R. 134) Officers examined the roof and realized someone was on the roof, crouching near the chimney. (R. 135, 164)

The officers used a ladder and were able to get Teresa Davis (Davis) down from the roof. While Davis came down, a glass pipe came sliding down the roof. (R. 135) She was placed in investigative detention and read her *Miranda* rights. Davis said she was scared and afraid, and

that is why she remained on the roof. Freestate pointed out that he and the other officers were in police clothing and easily identifiable as law enforcement who were there to help. (R. 136-137, 143-144)

When Freestate asked her about the narcotics and the crystal-like substance found in the vehicle, she admitted, “That’s mine. My brother doesn’t do that.” Freestate placed her under arrest for possession with intent to distribute methamphetamine. She retracted, stating, “No, those aren’t mine.” (R. 137)

Meredith Lanford, a forensic chemist, examined the substance from the vehicle found on the scene. One bag contained 4.61 grams of methamphetamine, and the other bag contained 2.63 grams of methamphetamine. (R. 151-152)

Davis was indicted by the Oconee County Grand Jury for first degree burglary and possession with intent to distribute methamphetamine, second offense. (R. 9) Following a trial by jury, Davis was found guilty on both charges. (R. 229) She was sentenced to an aggregate eighteen years imprisonment. (R. 234) Davis appealed, and this Court affirmed her conviction. *State v. Davis*, Op. No. 5534 (Ct. App. Filed February 7, 2018). Davis filed a Petition for Rehearing, and this Return follows.

ARGUMENT

I. The Court properly found the Circuit Court did not abuse its discretion in denying Davis' Motion to Sever her Charges.

Prior to trial, Davis moved to sever the charges. (R. 9-10) This Court correctly found that the Circuit Court properly denied her Motion. Davis contends that this Court ignored that the charges of burglary and PWID methamphetamine did not require proof by the same evidence or the same witnesses. To the contrary, the Court correctly found that these charges require proof by the same evidence and the same witnesses.

Criminal charges may be tried together when they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996).

Paul provided background evidence about the home and the unknown vehicle in the driveway, and this was relevant to both charges. (R. 79-82) Freestate testified about locating Davis on the roof, the missing items, and Davis' statements, as well as the inventory of the vehicle. (R. 120, 124-126, 137) While some individual evidence is specific to each crime, much of the evidence produced at trial pertained to both the charges. In *State v. Caldwell*, 378 S.C. 268, 662 S.E.2d 474 (Ct. Ap. 2008), the Court explained that even some additional evidence from separate witnesses is not fatal to the joinder of charges. In *Caldwell*, as in the present case, the charges arose out of a single chain of circumstances, occurred on the same afternoon, during the same event, and at the same place.

Without evidence of both charges, the jury would not receive an accurate portrayal of the events and circumstances that occurred. The evidence of methamphetamine in the vehicle was

necessary for a full presentation of the case without fragmentation. *See State v. Rice*, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006) (“One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary to a full presentation of the case . . .”).

II. The Court properly affirmed the Trial Court’s denial of Davis’ Motions for Directed Verdict.

At the conclusion of the evidence, Davis moved for a directed verdict on both of her charges. The Trial Court denied the Motions as to both charges, and this Court properly affirmed the denial. (R. 171-172, 182)

A. The Court properly found that the Trial Court did not abuse its discretion in denying Davis’ Motion for Directed Verdict on the Possession with Intent to Distribute Charge.

Evidence supports the Trial Court’s denial of a directed verdict on the possession with intent to distribute charge, and the Court did not err in affirming the Trial Court. Davis contends that contrary to the Court’s holding, the State failed to present direct or circumstantial evidence tending to prove Davis either actually or constructively possessed the methamphetamine found in the vehicle. However, the Court correctly ruled that there is sufficient evidence to support the trial Court’s ruling.

Davis admitted to Officer Freestate the drugs were hers, stating the following: “That’s mine. My brother doesn’t do that.” (R. 137) In addition to her statements, the drugs were found in a bag right next to her purse, along with her South Carolina driver’s license, lip balm, paperwork, and personal items. (R. 135) Also, the forensic chemist testified that the plaid bag contained a bag holding 4.61 grams of methamphetamine and another with 2.63 grams of

methamphetamine. (R. 152) McCreary, a narcotics officer, testified that these materials indicated the drugs were for distribution rather than personal use. (R. 166)

Because the State presented sufficient evidence of Davis' guilt, this Court properly affirmed the Trial Court's denial of the directed verdict motion on the burglary charge. See *State v. Pearson*, 415 S.C. 463, 783 S.E.2d 802 (2016) (The reviewing Court should affirm if in viewing the evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty.").

B. The Court properly found the Trial Court did not abuse its discretion in denying Davis' Motion for Directed Verdict on the burglary charge.

Evidence supports the Trial Court's denial of a directed verdict on the burglary charge, and the Court did not err in affirming the Trial Court. S.C. Code Ann. § 16-11-311(A)(2) explains that "A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both[.]" The parties stipulated Davis had two prior convictions for burglary, so she met this element. (R. 168-170) As the Court stated, the pivotal question in this case is whether the burglarized home was being utilized as a dwelling at the time of the alleged offense.

In *State v. Evans*, 376 S.C. 421, 656 S.E.2d 782 (Ct. App. 2008), the Court cited William Shepard McAninch & W. Gaston Fairey, *The Criminal Law of South Carolina* 445 (4th ed. 2002) which states "[A] person could have more than a single dwelling house, any of which might be the object of a burglary despite the occupant's absence for extended periods of time, so long as he had an intention to return." In the present case, the owner was away due to her

medical situation, but her possessions remained in the home and there is no evidence she abandoned her intent to return home. In addition, family members continued to check on the residence on a regular basis. Paul explained that as his mother's attorney in fact, he placed the home on the market because of the uncertain real estate market although the family hoped she would return. (R. 80) The Court properly noted Paul was entitled to protect and enforce his mother's rights as to the home pursuant to S.C. Code Ann. § 62-8-204(A).

The Court properly found that other jurisdictions with similar cases have found the structure to be a dwelling, although South Carolina courts have not addressed a first degree burglary case with these facts. For example, in *Mains v. State*, 375 So.2d 1299 (Ala. App. 1979), the Court affirmed a conviction of second-degree burglary, pursuant to a statute defining that crime as including entering "any uninhabited dwelling house," holding that the jury could reasonably conclude that the victim's premises constituted a dwelling house within the meaning of the statute where the victim had been in a nursing home for some two years but intended to return to her house and reside therein when her condition improved.

Because there was sufficient evidence to create a factual question as to what type of structure the home was, the Court properly affirmed the trial Court's denial of the directed verdict motion. *See State v. Stanley*, 365 S.C. 24, 615 S.E.2d 455 (Ct. App. 2005) ("If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury.").

CONCLUSION

Based on the foregoing arguments and the arguments raised in the Final Brief of Respondent and at oral argument, the State respectfully requests that this Court deny the Petition for Rehearing.

Respectfully submitted,

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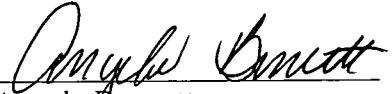
PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Return to Petition for Rehearing*, dated March ____, 2018 on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 29th day of March 2018.


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March 29, 2018

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Re: The State v. Teresa Annette Davis
Appellate Case No. 2015-000981

Dear Counsel:

I am enclosing a copy of the Return to Petition for Rehearing in the above-referenced case.

Sincerely,

Mary Frances Jowers
Assistant Deputy Attorney General
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MFJ/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Services