STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN DASHON HELLAMS,

APPELLANT

APPELLATE CASE NO 2018-000940

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for a directed verdict on a heroin trafficking charge, where the drugs were located on another individual who took sole ownership of them?

STATEMENT OF THE CASE

Appellant was indicted by a Greenville County grand jury in February 2017 for trafficking heroin and possession of contraband in a county prison. R. 162. He pleaded guilty to the latter charge then proceeded to trial on the trafficking charge before the Honorable Donald B. Hocker and a jury on May 8, 2018. R. 5, ll. 8 – 11. Ryan Holloway served as the assistant solicitor, and Randy Chambers represented Appellant.

The jury found Appellant guilty on the trafficking charge. R. 156, ll. 3 – 5. Judge Hocker sentenced him to twenty-five years' incarcération and a $100,000 fine. R. 160, ll. 10 – 13. Appellant was sentenced to five years, concurrent, on the contraband charge. R. 160, ll. 14 – 17.

This appeal follows.

STANDARD OF REVIEW

"A case should be submitted to the jury when the evidence is circumstantial '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.'" State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). "Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt." Id. "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." Id. at 139, 708 S.E.2d at 776-777. On appeal of the denial of a directed verdict of acquittal, an appellate court must look at the evidence in the light most favorable to the state. Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. Hepburn, 406 S.C. at 416, 429 S.E.2d at 409.

ARGUMENT

The trial court erred in denying Appellant's motion for a directed verdict on a heroin trafficking charge, where the drugs were located on another individual who took sole ownership of them.

Relevant facts

After Roy Ponder was arrested for a heroin-related charge, law enforcement asked him to work for them. R. 68, l. 4 – R. 69, l. 11. At Appellant's trial, Ponder could not recall how much heroin he had initially sold to get arrested, because he has "sold so much." R. 73, ll. 2 – 10. Ponder readily admitted that "the whole reason [he] started working with the police was because [he] was arrested for distribution of heroin." R. 74, l. 24 – R. 75, l. 2. He conceded that if he did not "complete what [he] set out to do, [he] could end up going to prison for a while." R. 75, ll. 13 – 25.

Ponder provided officers with the name "J" as a potential target and then identified Appellant as "J" at trial. R. 69, l. 20 – R. 70, l. 10. In order to set up a heroin purchase, Ponder made multiple calls to "J" in the presence of law enforcement. R. 70, l. 11 – R. 71, l. 25. Officers never independently identified the telephone number as Appellant's. R. 64, ll. 8 – 10; R. 65, ll. 7 – 17. Ponder also made several other calls to different people while in the course of trying to set up a purchase with "J." R. 76, l. 23 – R. 77, l. 4. Officers promised Ponder that if he cooperated, his charges would be dropped. R. 72, l. 20 – R. 73, l. 1.

Ponder also picked Appellant out of a photo line-up with Joey Gault, an investigator with the Greenville Police Department. R. 72, ll. 1 – 19. Gault conducted the initial interview with Ponder wherein Ponder allegedly suggested that "J" was his source for the heroin. R. 52, ll. 15 –

25. Gault obtained a phone number and address for "J" from Ponder. R. 53, l. 1 – R. 54, l. 5. Gault testified that he used a program called Accurate in order to check "various utility records and public service records" against the address provided by Ponder. Id. Gault claimed that Appellant was identified this way. Id. Following the alleged identification by law enforcement, Ponder was shown a six-person photo lineup on November 12, 2015. R. 54, ll. 9 – 23. Ponder selected the photograph of Appellant thereby suggesting that Appellant was "J." Id.

After Appellant was supposedly identified, Gault "allowed Mr. Ponder the opportunity to conduct some recorded phone calls ... in an effort to set up a direct transaction with [Appellant]." R. 57, ll. 16 – 21. Following multiple telephone calls, according to Gault "there was an agreement made that [Appellant] could assist Mr. Ponder in obtaining fourteen (14) grams of heroin." R. 57, l. 24 – R. 58, l. 10.

The location of the transaction was a Burger King in Greenville. R. 60, ll. 1 – 6. Law enforcement observed a silver Lexus and a Dodge Durango pull into the parking lot. R. 82, ll. 6 – 11. Five people were in the Durango. R. 82, ll. 12 – 17. Two men got out of the cars and walked inside the Burger King. R. 82, l. 18 – R. 83, l. 8. When the men left the restaurant, the driver of the Lexus walked up the rear driver-side door on the Durango and began talking to Appellant. Id. At that point, law enforcement moved in. R. 83, ll. 14 – 18.

Notably, no heroin was found on Appellant. R. 60, ll. 18 – 22; R. 84, ll. 14 – 20. Willis Weir had the heroin as well as a large amount of cash. Id.; R. 89, l. 25 – R. 90, l. 5. Weir, in a very adamant fashion, took ownership of the heroin. R. 61, l. 18 – R. 62, l. 8. Nonetheless Appellant was also charged. According to law enforcement, Appellant's charge "was based on the entire investigation, through the phone calls." R. 90, ll. 13 – 17.

At the conclusion of the State's case-in-chief, counsel for Appellant moved for a directed verdict. R. 115, l. 25 – R. 116, l. 8. Without asking for argument or hearing from the State, the trial court denied the motion. R. 116, ll. 9 – 12.

Discussion

A defendant is entitled to a directed verdict when the State fails to present evidence of the offense charged. State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Williams, 303 S.C. 274, 400 S.E.2d 131 (1991); State v. Green, 327 S.C. 581, 491 S.E.2d 263 (Ct.App.1997). On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Rowell, 326 S.C. 313, 487 S.E.2d 185 (1997); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Huggins, 325 S.C. 103, 481 S.E.2d 114 (1997).

When a case is built wholly on circumstantial evidence, if the State fails to produce substantial circumstantial evidence the defendant committed a particular crime, he is entitled to a directed verdict. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). "The trial court should grant a directed verdict motion when the evidence presented merely raises a suspicion of guilt." State v. Bostick, 392 S.C. 134, 142, 708 S.E.2d 774, 779 (2011). The State has the burden of proving "the accused was at the scene of the crime when it happened and that he committed the criminal act". State v. Schrock, 283 S.C. 129, 133, 322 S.E.2d 450, 452 (1984). "The [trial] court should not refuse to grant the motion where the evidence merely raises a

suspicion that the accused is guilty." State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000).

Appellant was charged with trafficking heroin under S.C. Code Ann. § 44-53-370. Under that provision,

> Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:
>
> > (3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as "trafficking in illegal drugs" and, upon conviction, must be punished as follows if the quantity involved is:
> >
> > (a)four grams or more, but less than fourteen grams:
> >
> > ...
> >
> > 2. for a second or subsequent offense, a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars.

S.C. Code Ann. § 44-53-370(e)(3).

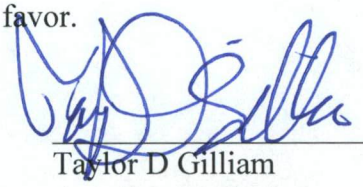
Appellant was convicted largely based upon Ponder's testimony. The State's theory of the case was that Appellant "brokered the deal" with Ponder. R. 124, ll. 20 – 22. However, the State never confirmed that Appellant lived at the home which Ponder alleged "J" lived. There were no utility bills or public service records which officers found to link Appellant to the house. Law enforcement never determined that the phone number which Ponder called to set up the transaction belonged to Appellant. The State linked pieces of circumstantial evidence to one another without enough corroboration and supporting evidence to satisfy the burden at the

directed verdict stage. No drug transaction was observed by law enforcement at the Burger King.

As noted by counsel for Appellant, "[p]robability is not enough. To think somebody might be guilty or is probably guilty is not enough." R. 142, ll. 9 – 11. The evidence offered at Appellant's trial was insufficient to allow a jury to find him guilty, and the trial court should have directed a verdict in his favor.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction based upon the trial court's error in failing to direct a verdict in his favor.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of February, 2019.

STATE OF SOUTH CAROLINA

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Appeal from Greenville County

Honorable Donald B. Hocker, Circuit Court Judge

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jonathan Dashon Hellams states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Donald B. Hocker, which was held on May 8 - 9, 2018, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, He asks the Court to relieve him as counsel for Jonathan Dashon Hellams.

Respectfully Submitted,

Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

This 13th day of February, 2019.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment(s);
(2) Entire trial transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

February 13, 2019

Taylor D Gilliam
Appellate Defender

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ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

February 13, 2019.

Taylor D Gilliam
Appellate Defender

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders 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 Anders Brief of Appellant and Designation of Matter have been served on Jonathan Dashon Hellams, 376251, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 13th day of February, 2019.

Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of February, 2019.

(L.S)
Notary Public for South Carolina
My Commission Expires: May 12, 2027.