

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

V.

MARY N. PATRICK,

**ORIGINAL
RECEIVED**
JAN 11 2019
SC Court of Appeals
RESPONDENT,

APPELLANT

APPELLATE CASE NO 2018-000783

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion for a directed verdict on the drug charge because there was insufficient proof that appellant was in actual or constructive possession of methamphetamine.

STATEMENT OF THE CASE

Appellant Mary N. Patrick was convicted of trafficking in methamphetamine (200- 400 grams) during the April 2018 term of the Anderson County General Sessions Court before Judge R. Lawton McIntosh and sentenced to imprisonment for a period of twenty-five years. William Yarborough represented appellant at trial and Assistant Chelsea Moore appeared on behalf of the state. Appellant appealed. This brief 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, this 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 reasonable 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 judge erred in denying appellant's motion for a directed verdict on the drug charge because there was insufficient proof that appellant was in actual or constructive possession of methamphetamine.

At trial, police officers Matthew McDonald, Alan Hendrix, Andrea Acevedo, and Ronald Wood all testified that they assisted in executing a search warrant on May 11, 2017, at the house where appellant was located and found methamphetamine in the pocket of a pair of women's shorts, and in a Crown Royal bag in a closet, and in a grocery bag in a bedroom. R. 106, l. 9-p. 113, l. 9; R. 116, l. 9-p. 123, l. 15; R. 127, l. 2-p. 138, l. 3; R. 143, l. 10- p. 148, l. 17.

Appellant testified at trial and declared that she had no idea that drugs were in the house and that she told the police that the drugs were hers because she was scared, and her husband was sick, and she didn't want her husband to get locked up; but that it was Derek Green and a man named Bailey (drug dealer) who had been at her home, which meant by inference that the drugs belonged to them or her husband. R. 209, l. 7-p. 214, l. 9; R. 227, l. 22- p. 228, l. 24.

Defense counsel moved for a directed verdict at the close of the case for the state and the case for the defense. R. 235, l. 8-10; R. 194, l. 3-17. The motion was denied.

Actual possession occurs when the drugs are found in the actual physical custody of a defendant and constructive possession arises a defendant has dominion and control or the right to exercise dominion and control over the drugs. State v. Heath, 370 S.C. 326, 635 S.E.2d 181 (2006). In Heath, the Court held that there was insufficient evidence that the defendant was in constructive possession of crack. The crack was found in a car washing mitt in a recycling bin outside near the back of a house owned by the defendant's mother. Here, the state failed to

prove that appellant was in actual or constructive possession of the drugs found in the house; and thus the conclusion is the same as reached in Heath, i.e., that the state “failed to establish an essential element of the crime charged.”

In ruling on a motion for a directed verdict, the trial court must view the evidence in the light most favorable to the state and the case submitted to the jury only if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993). Due process requires the prosecution must prove every element of the offense charged beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979).

Here, appellant’s testimony clearly revealed that the drugs belonged to her husband and/or the drug dealers who appeared to be in and out of her house. Note appellant’s explanation regarding the men’s ownership of the drugs:

Q: Do you know who those drugs might belong to?

A: I know they could belong to – I seen them that night and I told them to take them out of my house. And he left to take them out, but he come back to stay the night.

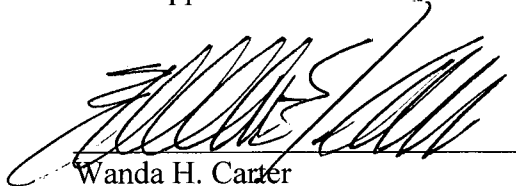
Q: But you didn’t know that they were there?

A: No. R. 211, l. 1-6.

The lower court erred in denying appellant’s directed verdict motion because there was suspicion only and insufficient evidence presented to establish that appellant was in actual or constructive possession of the drugs in question.

CONCLUSION

Based on the above raised argument, counsel for appellant would ask this Court to vacate appellant's conviction and sentence.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of January, 2019.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARY N. PATRICK,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Mary Nimmons Patrick states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Lawton McIntosh, which was held on April 16 - 18, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, She asks the Court to relieve her as counsel for Mary Nimmons Patrick.

Respectfully Submitted,



Wanda H. Carter

Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 11th day of January, 2019.

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Appeal from Anderson County
Honorable R. Lawton McIntosh, Circuit Court Judge

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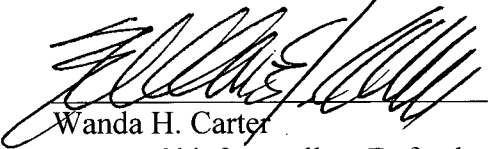
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment and sentencing sheet
- (2) Trial transcript dated April 16-18, 2018

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

January 11, 2019


Wanda H. Carter
Deputy Chief Appellate Defender

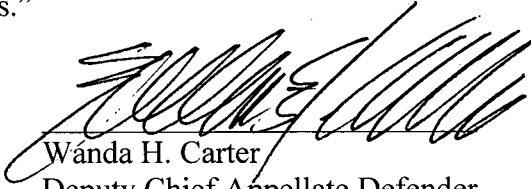
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CERTIFICATE OF COUNSEL

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."

January 11, 2019.



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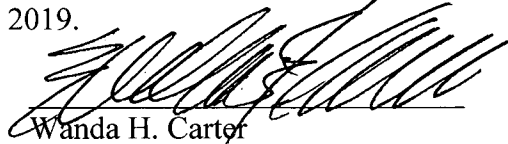
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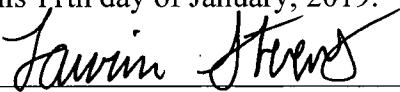
CERTIFICATE OF SERVICE

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 Mary Nimmons Patrick, 340156, at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 11th day of January, 2019.



Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of January, 2019.

 (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.