

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County

Honorable J. Derham Cole, Circuit Court Judge

RECEIVED

Jul 27 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

RONNIE LeSHANON BONNER,

APPELLANT

APPELLATE CASE NO 2019-001024

ANDERS BRIEF OF APPELLANT

TAYLOR D. GILLIAM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT4

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL9

TABLE OF AUTHORITIES

Cases

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) 6

State v. Green, 327 S.C. 581, 491 S.E.2d 263 (Ct.App.1997)..... 6

State v. Huggins, 325 S.C. 103, 481 S.E.2d 114 (1997)..... 6

State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998) 6

State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000)..... 6

State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011)..... 6

State v. Rowell, 326 S.C. 313, 487 S.E.2d 185 (1997)..... 6

State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) 6

State v. Williams, 303 S.C. 274, 400 S.E.2d 131 (1991)..... 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to direct a verdict in Appellant's favor on the charge of trafficking methamphetamine where the state presented no direct or substantial circumstantial evidence that Appellant possessed drugs following a traffic stop with two other people in the car?

STATEMENT OF THE CASE

A Cherokee County grand jury indicted Appellant for trafficking methamphetamine. The state alleged Appellant had two prior convictions for serious offenses and therefore would be subject to a life sentence without the possibility of parole. Appellant proceeded to a three-day trial before the Honorable J. Derham Cole and a jury on April 16, 2019. R 10, 1. 6 – 7, 1. 8. Chris Thompson represented Appellant; Matt Kendall and Kim Leskanic appeared on behalf of the state. The jury found Appellant guilty as indicted. R. 378, ll. 12 – 16. Judge Cole sentenced Appellant to life without the possibility of parole. R. 382, 1. 20 – 102, 1. 8.

Appellant filed a motion to reconsider the sentence. On June 3, 2019, a hearing on the motion was held before the Honorable J. Derham Cole. Hearing Transcript 1. The motion was denied.

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, 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 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 failing to direct a verdict in Appellant's favor on the charge of trafficking methamphetamine where the state presented no direct or substantial circumstantial evidence that Appellant possessed drugs following a traffic stop with two other people in the car.

Relevant facts

On March 16, 2018, Tim Tate, an officer with the Cherokee County Sheriff's Department, pulled over a black Mountaineer for failure to have an illuminated tag light. R. 52, l. 14 – 53, l. 23. There were three people in the car: Brian Parker, Angela Upchurch, and Appellant. R. 54, ll. 10 – 21. Parker and Upchurch were in the front seats; Appellant was in the back. Id. According to Tate, Parker provided consent to search the car. R. 55, l. 25 – 56, l. 17. Two bags of methamphetamine were found in the car. R. 57, ll. 5 – 17. According to SLED, the weight of the drugs was 47.45 grams. R. 197, ll. 3 – 15. None of the three individuals claimed the drugs. R. 64, ll. 9 – 13.

Another officer, David Owens, testified that he knew of Appellant. R. 74, ll. 12 – 20. Owens alleged that Appellant was sweating even though it was chilly that evening. R. 74, ll. 8 – 25. According to Owens, Appellant asked to get out of the car. R. 75, ll. 1 – 9. After Appellant and Upchurch got out, Owens searched the car and found the drugs. R. 76, l. 18 – 78, l. 18. All three individuals were arrested. Id.

Upchurch and Parker both testified on behalf of the state. She denied ownership of the drugs. R. 105, ll. 7 – 14. Parker was unaware of where the drugs were found; he testified that he

never saw them in the car. R. 141, ll. 15 – 18. He claimed Appellant attempted to hand Upchurch something after law enforcement began pulling the car over. R. 142, ll. 1 – 4.

At the conclusion of the state's case-in-chief, Appellant moved for a directed verdict. R. 200, ll. 5 – 25. Because Appellant had neither constructive nor actual possession of the drugs in the car, a directed verdict should be granted, argued Appellant. The trial judge denied the motion. R. 202, ll. 2 – 3.

Appellant then testified in his defense. He advised the jury that the drugs belonged to Upchurch and that she had placed them in the back seat. R. 238, ll. 18 – 24. He clarified that although he uses methamphetamine, he does not sell it. R. 247, ll. 20 – 23. After the defense rested, Appellant renewed his directed verdict motion. R. 300 l, 25 – 301, l. 4. The trial judge again denied the motion. Id.

Discussion

In the prosecution of a crime for possession of narcotics, possession may be actual or constructive; actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession, while constructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs are found. State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 (Ct. App. 1996).

A conviction for possession requires proof of possession, either actual or constructive, coupled with knowledge of its presence. State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Where contraband materials are found on premises under the control of the accused, this fact in and of itself gives rise to an inference of knowledge and possession which may be

sufficient to carry the case to the jury. Id. To prove “constructive possession,” the state must show a defendant had dominion and control, or the right to exercise dominion and control. Id.

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).

There was no video footage of the arrest. R. 63, ll. 9 – 10; R. 91, ll. 8 – 12. Appellant was in a car that was pulled over; he was unable to control what entered the car or what was already inside of it when he asked for a ride. R. 235, ll. 7 – 20. He did not have control over the Mountaineer. As such, the trial judge should have directed a verdict in his favor.

CONCLUSION

Based upon the foregoing, Appellant respectfully requests that this Court reverse his conviction.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of July, 2020.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ronnie LeShanon Bonner 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 J. Derham Cole, which was held on , 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 Ronnie LeShanon Bonner.

Respectfully Submitted,

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

This 27th day of July, 2020.

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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) Trial transcripts from April 16-18, 2019;
- (3) Motion to Reconsider Sentence;
- (4) Hearing transcript dated June 3, 2019; and
- (5) Order denying motion to reconsider.

I certify that this designation contains no matter which is irrelevant to this appeal.
July 27, 2020

s/Taylor D. Gilliam
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.”

July 27, 2020.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter has been served upon opposing counsel this 27th day of July, 2020 by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS); and a copy of the Anders Brief of Appellant and Designation of Matter have been served on Ronnie LeShanon Bonner, 213069, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669.

s/Taylor D. Gillam
Taylor D. Gillam
Appellate Defender
ATTORNEY FOR APPELLANT