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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable William A. McKinnon, Circuit Court Judge
Appellate Case No. 2019-001538

THE STATE,

Respondent,

vs.

LAGERALD L. DUNHAM,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

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

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

1675-1A York Highway
Moss Justice Center
York, SC 29745
(803) 628-3020

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by denying Appellant's motion for a direct verdict for trafficking methamphetamine when the chemist only tested four of the one-hundred-one pills found in a grocery bag under the passenger seat in the car Appellant was driving since the evidence merely raised a suspicion all one-hundred-one pills contained methamphetamine, particularly when the pills were not commercially made?

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by denying Appellant's directed verdict motion when the evidence and testimony presented during trial, including the evidence and testimony establishing every single one of the pills randomly selected for analysis from a collection of other similar-looking pills was determined to contain methamphetamine, supported a rational and logical conclusion all Appellant's pills—which collectively weighed well more than twenty-eight grams—were methamphetamine and, thus, Appellant was guilty of trafficking in methamphetamine as indicted?

STATEMENT OF THE CASE

In May of 2017, Appellant Lagerald L. Dunham was arrested during the course of a traffic stop, and marijuana and suspicious pills were subsequently located inside the vehicle he was driving—without a driver's license—at the time of the stop. In January of 2018, the York County Grand Jury indicted Appellant for one count of trafficking in methamphetamine along with one count of possession of marijuana with intent to distribute. On September 3, 2019, a jury trial was commenced in the York County Court of General Sessions with the Honorable William A. McKinnon, circuit court judge, presiding. During the course of the three-day trial, the trial judge granted a directed verdict motion on the possession of marijuana with intent to distribute charge. Subsequently, at the conclusion of trial, the jury convicted Appellant of trafficking in methamphetamine. Following the verdict, the trial judge sentenced Appellant to an eighteen-year term of imprisonment. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

Around 7:27 p.m. on the evening of May 26, 2017, Sergeant Shaun Watson, an experienced officer with the Rock Hill Police Department, was on patrol when he observed the driver of a vehicle unlawfully make a turn from one street onto another without using a turn signal. (R. pp. 19-21). Based on that traffic violation, Sergeant Watson activated his patrol vehicle's blue lights to initiate a stop, and the driver "pretty quickly" stopped his vehicle in the roadway in response. (R. p. 20; p. 23; p. 35; p. 40; State's Ex. # 1 (Recording)).

After the vehicle was stopped, Sergeant Watson made contact with Appellant, who was the vehicle's driver but did not have—and, by his own admission, had never had—a driver's license. (R. p. 33; State's Ex. # 1). Upon making contact with Appellant, Sergeant Watson advised him of why he had been stopped and asked him for his license and registration. (State's Ex. # 1). After that, the officer asked Appellant to step out of the vehicle because he detected the odor of marijuana emanating from it. (R. p. 37; p. 80; State's Ex. # 1). Sergeant Watson then conducted a consent-based search of Appellant's pockets and found $1,400 in cash along with a number of plastic baggies inside, which seemed highly suspicious to the officer. (R. pp. 28-29; p. 31; p. 37; State's Ex. # 1).

As the stop continued forward, Appellant was arrested for driving without a license, and Sergeant Watson began searching the vehicle along with Officer Daniel Shealy, another experienced officer from the Rock Hill Police Department who responded to the scene to assist with the stop. (R. p. 32; p. 39; pp. 63-64; State's Ex. # 1; State's Ex. # 7 (Recording)). Almost immediately after the search began, Officer Shealy found a gray plastic bag containing suspicious pills and marijuana hidden underneath the front passenger seat. (R. p. 32; p. 65; pp. 77-78; pp. 81-82; pp. 84-85; State's Ex. # 1; State's Ex. # 7). Likewise, Sergeant Watson found

a digital scale underneath the driver's seat. (R. p. 28; State's Ex. # 1; State's Ex. # 7). Based on those discoveries, Appellant was arrested in connection to the drugs, and Jessica Hamilton, who was the vehicle's passenger, was also placed under arrest. (R. pp. 78-79; State's Ex. # 1; State's Ex. # 7).

Thereafter, the pills that had been discovered were submitted to the South Carolina State Law Enforcement Division ("SLED") for analysis. (R. p. 52; pp. 54-55). Upon receiving the pills, Maribeth McCormack, a forensic scientist at SLED, inventoried them, determined there were one-hundred-one distinct pills that had been divided into two smaller bags, weighed them, separated them into four separate groups with the same colors and markings, and—consistent with SLED's standard policy—tested a representative sample from each of the groups. (R. p. 52; pp. 55-56; pp. 60-62). Through that testing, McCormack concluded the pills were methamphetamine, and, in total, they collectively weighed more than thirty-seven grams. (R. p. 56; pp. 148-150).

After the pills were identified as methamphetamine, Appellant was indicted for trafficking in methamphetamine along with possession of marijuana with intent to distribute, and he elected to proceed forward to trial. (R. pp. 2-4; pp. 153-156). During the course of trial, several of the officers involved in the traffic stop testified about the details of Appellant's arrest along with the discovery of the marijuana, pills, hundreds of dollars in cash, and other items associated with drug dealing that had been found. (R. pp. 19-40; pp. 63-85; pp. 93-97). Likewise, McCormack, who was qualified as an expert in the identification and analysis of controlled substances, testified about the details of her forensic analysis of the pills, identified the pills as methamphetamine weighing well more than twenty-eight grams, and explained she conducted her testing in compliance with SLED's standard policy, which did not mandate every

single pill be tested.[1] (R. pp. 52-62). Furthermore, both McCormack's drug analysis report and the pills were admitted into evidence.[2] (R. p. 58; p. 77).

Following the presentation of that testimony and evidence, the solicitor rested the State's case, and defense counsel promptly moved for a directed verdict on both charges. (R. p. 97; pp. 99-100; pp. 106-108). In seeking a directed verdict on the trafficking in methamphetamine charge, defense counsel asserted the true nature of all but four of the pills recovered during the stop was unknown due to the fact only four of the pills had been tested while contending only the pills tested could be submitted to the jury as a "matter of law." (R. pp. 16-109). However, defense counsel conceded he did not have an argument against the case proceeding forward purely as to the offense of possession. (R. p. 108). In response, the trial judge noted McCormack offered an expert opinion the pills were methamphetamine, which he determined constituted some evidence from which the jury could conclude the pills were, in fact, that particular illegal substance.[3] (R. pp. 108-109). The trial judge further indicated he was unaware of anything requiring the State to test every single pill in cases involving that type of evidence and did not believe the law required such to occur in South Carolina. (R. pp. 110-111). As a result, he denied defense counsel's directed verdict motion as to the trafficking in

[1] More specifically, in identifying the pills as methamphetamine, McCormack responded in the affirmative to a question asking whether she was "able to identify the substances that were contained in [the] bag" that contained all Appellant's pills based on her "testing" and "expertise." (R. p. 56). Then, when asked what was in the bag, McCormack responded: "Methamphetamine was found." (R. p. 56).

[2] When the solicitor sought to introduce the pills into evidence, defense counsel objected on the basis all the pills had not been individually analyzed, but the trial judge overruled that objection. (R. pp. 67-72; p. 77).

[3] In discussing McCormack's testimony with defense counsel, the trial judge asked: "She testified there's 40 plus grams of meth, correct?" (R. p. 108). In response to that question, defense counsel affirmed: "Thirty-seven. Whatever the number is it's a lot." (R. p. 108).

methamphetamine charge.[4] (R. p. 111). However, he invited defense counsel to find some authority to support the position he had advanced.[5] (R. p. 111).

Thereafter, as the trial proceeded forward, the trial judge instructed the jury on the applicable law, and, as part of his jury charge, the trial judge included instructions on the presumption of innocence, the State's burden of proof, the reasonable doubt standard, the elements of trafficking in methamphetamine, the differences between actual possession and constructive possession, and the fact mere presence was not sufficient to establish possession. (R. pp. 113-124). After that, the parties presented their closing arguments to the jury, and, during his closing argument, defense counsel focused heavily on the fact only four pills had been tested while contending the lack of further testing created a reasonable doubt as the nature of the untested pills. (R. pp. 124-138).

Ultimately, at the conclusion of trial, the jury convicted Appellant of trafficking in methamphetamine as indicted. (R. p. 141). Following the verdict, the solicitor recounted Appellant's substantial prior criminal record, and the trial judge sentenced Appellant to an eighteen-year term of imprisonment. (R. pp. 142-143; p. 147).

[4] With assent from the solicitor, the trial judge did grant defense counsel's directed verdict motion as to the possession of marijuana with intent to distribute charge. (R. pp. 105-106).

[5] Perhaps tellingly, defense counsel did not take the trial judge up on that particular invitation, and Appellant has likewise failed to identify any authority in his appellate brief that states or even suggests representative testing would be not be sufficient to reliably determine the identity of a controlled substance in pill form. (App. Br. pp. 1-12).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see Cavazos v. Smith, 565 U.S. 1, 2 (2011) ("[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury."). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see United States v. Ashley, 606 F.3d 135, 138 (4th Cir. 2010) ("Reversal for insufficient evidence is reserved for the rare case where the prosecution's failure is clear." (citation and internal quotations omitted)); see also Crawford v. United States, 375 F.2d 332, 334 (D.C. Cir. 1967) ("It is not the function of appellate judges to weigh the evidence and decide that if they had doubts other reasonable persons were compelled to have the same doubts. If that were the test the jury of twelve would be relegated to the very low grade function of secondary fact finders.").

ARGUMENT

The trial judge properly denied Appellant's directed verdict motion because the evidence and testimony presented during trial, including the evidence and testimony establishing every single one of the pills randomly selected for analysis from a collection of other similar-looking pills was determined to contain methamphetamine, supported a rational and logical conclusion all Appellant's pills—which collectively weighed well more than twenty-eight grams—were methamphetamine and, thus, Appellant was guilty of trafficking in methamphetamine as indicted, which required the trial judge to submit the case to the jury on the indicted charge.

Appellant contends the trial judge reversibly erred by denying his motion for a directed verdict on the trafficking in methamphetamine charge. In support of that contention, Appellant maintains the evidence presented during trial merely raised a suspicion he was guilty of trafficking in methamphetamine because only four of his one-hundred-one pills were confirmed to contain methamphetamine through testing and those pills were neither commercially produced by a pharmaceutical company nor sold by a doctor or pharmacy. Based on that, Appellant asserts the evidence and testimony presented was not sufficient to establish his guilt for trafficking in methamphetamine and, therefore, only the lesser-included offense of possession of methamphetamine should have been submitted to the jury.[6] To the contrary, the evidence and testimony presented during trial, including the evidence and testimony establishing every single one of the pills randomly selected for analysis from a collection of other similar-looking pills

[6] Since Appellant's appellate challenge to the sufficiency of the evidence is entirely focused on the issue of whether the State's evidence was sufficient to support a conclusion all or only some of the pills were methamphetamine, it is entirely unclear why Appellant believes only the lesser-included offense of possession of methamphetamine—and not possession of methamphetamine with intent to distribute—could have properly been submitted to the jury based on the testimony and evidence presented, which unquestionably demonstrated the vehicle Appellant was driving was full of items commonly associated with drug dealing in addition to containing the drugs. See Matthews v. State, 300 S.C. 238, 241, 387 S.E.2d 258, 259-260 (1990) (recognizing possession of a controlled substance with intent to distribute is a lesser-included offense of trafficking in a controlled substance); State v. James, 362 S.C. 557, 561-562, 608 S.E.2d 455, 457 (Ct. App. 2004) ("Possession of any amount of controlled substance coupled with sufficient indicia of intent to distribute will support a conviction for possession with intent to distribute.").

was determined to contain methamphetamine, was sufficient for the jury to logically and rationally conclude the large quantity of pills found in Appellant's possession constituted over twenty-eight grams of methamphetamine. Accordingly, the trial judge correctly denied Appellant's directed verdict motion and submitted the case to the jury as indicted. Appellant's conviction should be affirmed.

When presented with a motion for a directed verdict challenging the sufficiency of the evidence presented, the question before the trial judge is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is *not* permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) ("When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight."); State v. Franklin, 80 S.C. 332, __, 60 S.E. 953, 955 (1908) ("The orderly administration of justice requires that all proper evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict."); see also Bennett, 415 S.C. at 236, 781 S.E.2d at 354 ("[A] court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.").

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, evaluate witness credibility, determine what inferences should be drawn from the facts, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 ("[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); see also State v. Cheeks, 401 S.C. 322, 328, 737 S.E.2d 480, 484 (2013) ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts."); Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-175 (2010) ("[I]t is exclusively within the jury's province to decide how much weight the evidence deserves.").

In South Carolina, it is illegal to traffic in ten grams or more of methamphetamine, and trafficking in twenty-eight grams or more of methamphetamine is considered to be an even more serious version of the offense. See S.C. Code Ann. § 44-53-375(C) (prohibiting trafficking in

methamphetamine). In order to prove a defendant's guilt for trafficking in methamphetamine under a theory of possession, the State must present direct *or* circumstantial evidence establishing the defendant was knowingly in actual or constructive possession of the requisite quantity of methamphetamine. Id.; see State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980) ("[A] conviction for possession of contraband drugs requires proof of actual or constructive possession, coupled with knowledge of the presence of the drugs."); see State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) ("Possession may be inferred from circumstances."); State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) (explaining actual possession occurs "when the drugs are found to be in the actual physical custody of the person" 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 were found"). Significantly, when drugs are found on premises under the control of the defendant, that 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." State v. Hudson, 277 S.C. 200, 203, 284 S.E.2d 773, 775 (1981). Moreover, possession of a controlled substance can be inferred from the circumstances of a particular case and can be imputed to a person with both the power and intent to control the disposition and use of the drugs. State v. Brown, 319 S.C. 400, 404, 461 S.E.2d 828, 830 (Ct. App. 1995); see State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009) ("In drug cases, the element of knowledge is seldom established through direct evidence, but may be proven circumstantially. Knowledge can be proven by evidence of acts, declarations, or conduct of the accused from which the inference may be drawn that the accused knew of the existence of the prohibited substances." (citations omitted)).

In the case sub judice, the evidence and testimony presented during trial established numerous suspicious pills were found concealed together in a vehicle Appellant was driving, which supported a logical conclusion he knew about and was in possession of those pills. See United States v. Ascolani-Gonzalez, 449 F.2d 159, 159-160 (9th Cir. 1971) ("The act of driving a car laden with concealed contraband provides . . . a substantial basis [for inferring knowledge]."); Hudson, 277 S.C. at 203, 284 S.E.2d at 775 (recognizing evidence establishing drugs were found on premises under the control of a particular individual can alone support an inference of knowledge and possession sufficient to warrant submission of the case to the jury). Furthermore, as to the nature of the pills, expert testimony and evidence was presented establishing the pills, which collectively weighed well over twenty-eight grams, were separated into four like groups based on their colors and markings, and one pill randomly selected from each of the four groups was determined to contain methamphetamine upon analysis, which supported a logical and rational conclusion both the tested and similar-looking untested pills were the same substance—methamphetamine. See State v. Perry, 358 S.C. 633, 639, 595 S.E.2d 883, 885 (Ct. App. 2004) (recognizing the results of testing of only a limited portion of seized drugs could fairly and logically support a deduction the untested drugs that appeared to be of the same type as the tested drugs were also the same kind of contraband), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Henson v. State, 915 S.W.2d 186, 193 (Tex. App. 1996) (explaining it is rational for jurors to conclude pills with the same markings, color, and size are the same substance); State v. Caldera, 832 P.2d 139, 140 (Wash. Ct. App. 1992) ("[T]he scientific testing of a random portion of a substance that is consistent in appearance and packaging is reliable and supports a finding that the entire quantity is consistent with the test results of the randomly selected portion."); cf. United States v. Fitzgerald, 89 F.3d

218, 223, n. 5 (5th Cir. 1996) ("Appellant argues that the evidence does not prove that over five grams of cocaine base were possessed because the chemist tested only 5 of the 63 rocks. Random sampling is generally accepted as a method of identifying the entire substance whose quantity has been measured."); Mullins v. State, 639 S.W.2d 514, 515 (Ark. 1982) ("The trial judge could find from the representative sampling and testing of ten tablets that the other ninety were identical."). Beyond that substantial evidence and testimony, the illicit nature of the pills—along with Appellant's possession of them—was further demonstrated by the evidence and testimony establishing Appellant was also in possession of numerous indicators of drug activity at the time of the stop, such as hundreds of dollars in cash, numerous plastic baggies, and a digital scale. See State v. Merrill, 105 So. 3d 264, 270 (La. Ct. App. 2012) (recognizing the presence of drug paraphernalia can constitute circumstantial evidence of the identity of a controlled substance); see also Hernandez, 382 S.C. at 624, 677 S.E.2d at 605 (recognizing knowledge of drugs can be established by the presentation of evidence regarding the acts and conduct of the accused that support an inference the accused knew of the existence of the drugs). Viewing that evidence and testimony in a light most favorable to the State as required, the jury could have logically and rationally found Appellant was in possession of over twenty-eight grams of methamphetamine based on what was presented.

In arguing to the contrary, Appellant contends the evidence and testimony presented was not sufficient to establish his guilt for the indicted offense and, instead, merely raised a suspicion he was in possession of twenty-eight grams or more of methamphetamine due to the fact all the pills were not tested.[7] However, while arguing so, Appellant candidly concedes the

[7] In addition to challenging the sufficiency of the evidence based on the fact every single pill was not individually tested, Appellant also contends the trial judge erred in conducting his directed verdict analysis by purportedly improperly interpreting the expert's testimony as an opinion all

identification of some pills from a group as a particular substance would ordinarily support a logical inference the other pills in the group were made up of the same substance. Nonetheless, Appellant maintains—without identifying any authority to support it—such an admittedly logical inference can *only* appropriately be drawn when dealing with pills that are commercially produced or sold by a doctor or pharmacy. Because the pills involved in his case were not commercially made and were purportedly "not uniform," Appellant claims the jurors were left to speculate as to the nature of all the untested pills and could not validly draw the logical inference that typically flows from the routine type of random testing conducted in his case.

Importantly though, the logicalness of the inference that flows from an analysis of a random pill selected from a larger group of pills does not hinge on the issue of whether the pills were or were not produced commercially, sold by a doctor, or distributed by a pharmacy. See, e.g., Melton v. State, 120 S.W.3d 339, 343 (Tex. Crim. App. 2003) (rejecting an appellate challenge to the sufficiency of the evidence based on the fact only some of the rocks of crack cocaine, which most certainly were *not* commercially produced, were tested). Likewise, contrary to Appellant's claim the pills were "not uniform," McCormack explained she divided the pills into like groups based on their colors and markings and tested one random pill from each of the

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the pills were methamphetamine. (App. Br. pp. 8-9). However, there are two major problems with that particular contention. First, defense counsel did *not* raise it to the trial judge in arguing for a directed verdict. (R. pp. 106-111). Second, defense counsel acknowledged to the trial judge the expert's testimony did, in fact, establish the pills constituted roughly thirty-seven grams of methamphetamine, which—as defense counsel described it—was "a lot." (R. p. 108). Since no argument was raised to the trial judge suggesting the expert's testimony did not establish all the pills were methamphetamine and, instead, the *exact opposite position* was advanced by defense counsel during trial, Appellant's appellate contention based on his current interpretation of the expert's testimony was not properly preserved for appellate review and cannot now properly be considered on appeal. See State v. Bryant, 372 S.C. 305, 315-316, 642 S.E.2d 582, 588 (2007) (recognizing that an issue conceded during trial cannot subsequently be argued on appeal); State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("A party cannot argue one ground for a directed verdict in trial and then an alternative ground on appeal.").

like groups, and, significantly, *every single one* of the tested pills tested positive for methamphetamine.[8] Cf. State v. Lewis, 779 S.E.2d 147, 149 (N.C. Ct. App. 2015) ("[O]ne of the twenty—5% by comparison—was tested. . . . [W]e conclude it was not necessary to test every tablet, and that, upon establishing the chemical composition of a sufficient sample, and visually confirming that the remaining pills were similar, the State's analyst satisfied the evidentiary burden upon the State to determine the quantity of opium derivative in the pills."). As a result, the identification of each of the tested pills as methamphetamine supported a logical and rational conclusion the similar untested pills were made up of the exact same substance. See People v. Kaludis, 497 N.E.2d 360, 365-366 (Ill. App. Ct. 1986) ("[A]n expert's opinion based upon the results of tests conducted on randomly selected tablets exhibiting similar characteristics is adequate, as accepted by the jury, to prove beyond a reasonable doubt that all the tablets in question contain the prescribed controlled substance."); State v. Selph, 625 S.W.2d 285, 286 (Tenn. Crim. App. 1981) (holding the evidence presented during trial was sufficient to establish Selph's guilt for selling over two-hundred grams of methaqualone where it established only five of the five-thousand pills Selph sold were analyzed, the five pills that were analyzed all tested positive for methaqualone, and the collective weight of all the tested and untested pills was nearly four-thousand grams). Under such circumstances, there was an evidentiary foundation upon which the jurors could draw a logical and rational conclusion as to the identity of both the tested and untested pills, and Appellant's contention to the contrary seems to be incorrectly premised upon the idea no inference can be rational or reasonable unless the fact deduced or

[8] Notably, since the pills were admitted into evidence, the jurors were able to personally evaluate the pills to determine whether they were sufficiently uniform to warrant the drawing of an inference as to identity under the circumstances involved. See Melton, 120 S.W.3d at 343 ("[M]ost importantly, the jury viewed the rocks of crack cocaine admitted into evidence. Based on their inspections, the jury could have reasonably concluded that the substance was apparently homogenous.").

inferred has been established to an absolute certainty. See State v. Gerald, 261 S.C. 392, 395, 200 S.E.2d 243, 244 (1973) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury."); State v. Brown, 205 S.C. 514, __, 32 S.E.2d 825, 828 (1945) ("[T]he jury has the right to select between contrary inferences which may be drawn from the evidence."); see also Victor v. Nebraska, 511 U.S. 1, 13 (1994) ("[A]bsolute certainty is unattainable in matters relating to human affairs."); cf. Coleman v. Johnson, 566 U.S. 650, 655-656 (2012) ("Jackson leaves juries broad discretion in deciding what inferences to draw from the evidence presented at trial, requiring only that jurors draw reasonable inferences from basic facts to ultimate facts. . . . The jury in this case was convinced, and the only question under Jackson is whether that finding was so insupportable as to fall below the threshold of bare rationality." (internal quotations omitted)); Ashley, 606 F.3d at 140 ("Ashley's argument seems premised on the view that juries cannot draw reasonable inferences, but that is precisely what juries are empanelled to do. Though a jury may not convict on the basis of 'rank speculation,' it is entitled to deduce and to infer. Our system of lay juries is designed to allow jurors to draw upon common experience and to rely upon reasonable intuitions, and it is not the province of an appellate court to undermine these virtues by picking apart a properly instructed verdict." (citation omitted)).

Accordingly, since the jury could have rationally and logically found Appellant guilty of trafficking in twenty-eight grams or more of methamphetamine based on the testimony and evidence presented, the trial judge was *required* to deny Appellant's directed verdict motion and submit the case to the jury, and he committed no possible error by doing just that. See State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is "required" to submit a case to the jury when substantial evidence is presented reasonably tending

to prove the guilt of the accused or from which the accused's guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015); cf. Perry, 358 S.C. at 639, 595 S.E.2d at 885 (finding a directed verdict motion was properly denied even though only thirty-four marijuana plants were analyzed out of the four-hundred-fifty-six plants seized from Perry's property); Henson, 915 S.W.2d at 192 (concluding any rational trier of fact could have validly found Henson guilty of possession of more than four-hundred grams of flunitrazepam in light of the fact the prosecution demonstrated one pill was randomly selected from each of Henson's five envelopes of pills, each of those five pills was determined to contain flunitrazepam upon analysis, the pills were visually determined to be identical, and the total weight of all the pills was determined to be nearly five-hundred grams). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: _____
Mark R. Farthing
S.C. Bar Number 76901

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
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Appeal from York County
Honorable William A. McKinnon, Circuit Court Judge
Appellate Case No. 2019-001538

THE STATE,

Respondent,

vs.

LAGERALD L. DUNHAM,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Respondent 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."

ALAN WILSON
Attorney General

MARK R. FARTHING
Senior Assistant Attorney General

KEVIN S. BRACKETT
Solicitor, Sixteenth Judicial Circuit

BY: _____
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

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