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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of General Sessions
The Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2019-000469

THE STATE,RESPONDENT,

v.

JUSTIN GORDON HUNTER,APPELLANT.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge properly denied Appellant's motion for a directed verdict because direct and substantial circumstantial evidence supported the charge.

STATEMENT OF THE CASE

On April 13, 2016, a State Grand Jury indicted Appellant for conspiracy to traffic heroin, twenty-eight grams or more; trafficking heroin, four to fourteen grams; trafficking heroin, fourteen to twenty eight grams; two counts of distribution of heroin, and distribution of methamphetamine, second offense. On July 24-28, 2017, Appellant was tried, in his absence, jointly with codefendant Emory Roberts in a jury trial before the Honorable Deadra Jefferson. Assistant Attorney Generals Joshua Underwood, Esquire, and David Fernandez, Esquire, represented the State; Theresa Johns, Esquire, represented Appellant and Timothy Griffith, Esquire, represented Roberts. Appellant was found guilty as charged and the offenses were enhanced based on Appellant's prior convictions. His sentences were sealed until he could be located.

On July 18, 2018, Appellant appeared before the trial court for sentencing, represented by Adam Owensby, Esquire. Appellant was sentenced to concurrent sentences of thirty-five years' incarceration for conspiracy to traffic heroin, twenty-eight grams or more; twenty-five years' incarceration and one hundred thousand dollars, suspended to twenty-five years for trafficking heroin, four to fourteen grams, second offense; twenty-five years' incarceration and two hundred thousand dollars, suspended to twenty-five years, for trafficking heroin, fourteen to twenty-eight grams; twenty-five years' incarceration and fifty thousand dollars, suspended to twenty-five years for distribution of heroin, second offense; twenty-five years' incarceration and fifty thousand dollars, suspended to twenty-five years, for distribution of heroin, second offense; and twenty-five years' incarceration and fifty thousand dollars, suspended to twenty-five years for distribution of methamphetamine, second offense.

On March 11, 2019, Appellant appeared before the trial court for a motion to reconsider sentencing on his conspiracy to commit trafficking heroin charge, at which time he was resented to twenty-five years' incarceration and two hundred thousand dollars, suspended to twenty-five years.

Appellant timely filed a notice of appeal was filed and South Carolina Commission on Indigent Defense, Division of Appellate Defense filed an Anders¹ brief on behalf of Appellant on July 23, 2020. On September 3, 2020, Tommy A. Thomas, Esquire, filed a motion to be substituted as counsel and file merits brief on the Anders issue. The motion was granted and this Brief of Respondent follows.

¹ Anders v. California, 386 U.S. 738 (1967)

STATEMENT OF FACTS

Trial Evidence

In 2015, then-officer² Daniel Lundberg worked as a criminal investigator in the narcotics unit of the Dorchester county Sheriff's Office. During the early months of that year, he became aware of a drug trafficking organization operating in the counties Dorchester, Berkeley, and Charleston. Lundberg, working a separate case in which he gathered evidence of heroin distribution by Thomas Sekula, approached him about aiding the sheriff's office in an investigation; Sekula was a middleman and Lundberg wanted to build a case against the group providing Sekula with the heroin. Sekula agreed and became a confidential informant. (Tr.p.315, line 14–Tr.p.319, line 5)

Sekula informed officers about the group, including its members and the house it used. Sekula agreed to wear a wire when meeting with members of the group and to allow officers to record his phone calls with them. Appellant eventually performed six controlled purchases of drugs for the Dorchester County Sheriff's Office. Eventually, SLED got involved and additional purchases were performed. During the course of the investigation, Lundberg was able to identify Appellant as an individual referred to as "Mo" by Sekula and other people within the group. Lundberg also observed Appellant during several of the drug transactions, a fact confirmed by video recordings collected by law enforcement. As to evidence pertaining to Appellant working in a group with others, Lundberg witnessed several other members of the group contact Sekula or sell drugs to him directly, including Appellant's codefendant Emory Roberts. (Tr.p.323, line 8–Tr.p.336, line 21; Tr.p.353, line 17–Tr.p.356, line 4)

² In December 2016, Lundberg left the Dorchester County Sheriff's Office for a position with Homeland Security. (Tr.p.316, lines 5–10, 14–17)

After Appellant's arrest, Lundberg interviewed Hunter, at which time the latter admitted that he was involved in trafficking heroin to South Carolina. Additionally, Lundberg was able to confirm Appellant was the same person he had heard speaking with Sekula in numerous recordings due to his voice and strong "New York" accent. (Tr.p.389, line 15–Tr.p.391, line 17)

Sekula testified about his participation in the investigation and his history with the group who he knew as, "The Boys." In his four years of interacting with the group, eleven different individuals were members in some capacity during that period. Sekula was first introduced to the group in June 2013 through several people from whom he bought heroin; those individuals had themselves used The Boys as their supplier. Eventually, Sekula obtained Appellant's phone number and began contacting him directly because he understood Appellant was the head of the organization. (Tr.p.457, line 4–Tr.p.465, line 24; Tr.p.469, line 5–Tr.p.470, line 19)

Sekula, described the process of obtaining drugs from The Boys. He would call them and confirm they had the requested amount of drugs in their supply and if they did, members of the group would arrange a meeting. Sekula often dealt directly with Appellant, especially during the initial period he obtained heroin from the group. However, as business grew and Appellant brought additional people into the organization, Sekula would buy drugs from various members of The Boys. (Tr.p.465, line 25–Tr.p.469, line 4; Tr.p.470, line 20–Tr.p.472, line 25)

When purchasing drugs, Sekula used three separate phone numbers. In Addition to using Appellant's number, he also would call a second member's phone as well as a "hub phone" that anyone in the group might have at that time. Sekula understood himself to be in a position of privilege with the group because many people did not have Appellant's personal phone number. (Tr.p.478, line 7–Tr.p.479, line, 9)

When discussing his history as a confidential informant, Sekula testified about the single transaction in which he purchased methamphetamine from the criminal organization. During that testimony, the following exchange occurred between Sekula and an attorney representing the State:

State: Tell me this. Was there ever an occasion where you did one of the controlled purchase[s] where you were unsuccessful in getting heroin?

Sekula: Yeah. There was a time when I bought ice from someone instead, from Cici.

....

State: You just mentioned one occasion with a different drug, what drug was that?

Sekula: Meth, ice.

State: How did that operation take place?

Sekula: I believe that they contacted me saying that she had it. And it was a spur-of-the-moment thing. I let [law enforcement] know. . . .

State: Let's clarify. Who is "they"?

....

Sekula: The Boys. The Boys's [sic] number contacted me, or Mo may have contacted me from the Boys's [sic] number, or one of the numbers from the individuals involved in the group that I got the heroin from let me know that they had some ice at the time.

State: Was it normal for you to buy ice?

Sekula: It was something that happened on occasion, yes.

....

State: Did you participate in a transaction as a result of that?

Sekula: Yes.

State: Who set the deal up with you?

Sekula: Set the deal up to the deal?

State: Yes.

Sekula: [Appellant] did.

State: How?

Sekula: Through his number, contacted and told me that Cici would meet me at a certain place in the shop center off of Main Street near Target and Kohl's.

....

State: How did he contact you with the phone?

Sekula: Text message.

State: Did you go to that location?

Sekula: I did.

State: Was that under the supervision of law enforcement?

Sekula: Yes.

State: What happened when you got there?

Sekula: I waited on the side of the building at the picnic table by Kohl's for some time until I received – I can't remember if it was a phone call or text from Appellant with directions to sit on the bench in front of Kohl's, kind of by the PetSmart side, in which I would meet Cici there.

....

State: What happened when she met you there?

Sekula: I talked to her about her broken cell phone. Gave her some money and got, I believe it was a half gram of ice. . . .

(Tr.p.521, line 9–Tr.p.523, line 25)

William Brown, a former member of The Boys and one of the codefendants in the case, testified at trial after entering into a plea agreement with the State. He confirmed Appellant was, in fact, the “head leader” of the group who collected all the money and supplied the drugs sold by the members. While the group specialized in heroin, it would sometimes sell other drugs such as methamphetamine. (Tr.p.645, line 19–Tr.p.650, line 20; Tr.p.657, line 1–Tr.p.658, line 15)

Special Agent Justin Wingo, a SLED agent who worked on the investigation, testified about his participation in the controlled purchases of drugs from The Boys. He recalled that the controlled purchase of methamphetamine included directly texting Appellant who directed Sekula to “go to Main Street.” However, he confirmed it was not Appellant who actually met with Sekula but Rosemarie Quezada, who Sekula knew as “Cici.” When Appellant was arrested, he was in possession of multiple cellular phones. The numbers to those phones, which he volunteered to investigators, were the same numbers used during the controlled purchases of drugs by Sekula. (Tr.p.880, line 15–Tr.p.882, line 21; Tr.p.912, line 13–Tr.p.914, line 19; Tr.p.922, line 2–Tr.p.926, line 6)

Directed Verdict

At the conclusion of the State’s case, Appellant’s counsel moved for a directed verdict on his distribution of methamphetamine charge because Cici/Quezada was the person who gave the drugs to Sekula and Appellant was “nowhere near” the location of controlled purchase when it occurred, meaning he “could not have been in constructive or actual possession of those drugs.”

In response, the State argued the trial evidence indicated that while Appellant was not at the physical exchange of the drugs, it did provide evidence that he committed the offense “by aiding, abetting, attempting or conspiring to distribute, dispense or deliver methamphetamine” because Appellant, through his phone, arranged the drug deal. The trial judge, finding there was evidence Appellant was guilty of “aiding and abetting” in the transaction because Sekula testified he spoke with Appellant when setting it up, denied the motion. (Tr.p.984, line 1– Tr.p.987, line 7)

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). 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. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements of the crime beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). The task of the trial court is to simply determine “whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt.” State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). “[I]f there is **any direct** or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury.” State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (emphasis added). 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.” See State v. Pearson, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016); also State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) (“When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.”).

ARGUMENT

The trial judge properly denied Appellant's motion for a directed verdict because direct and substantial circumstantial evidence supported the charge.

Appellant argues the trial judge erred in denying his motion for a directed verdict on his charge for possession of methamphetamine charge. The State disagrees with this allegation of error. The State provided both direct and substantial circumstantial evidence of the offense, making dismissal of the charge improper.

Analysis

Appellant was charged with distribution of methamphetamine pursuant to S.C. Code Ann. § 44-53-375(B), which provides, in relevant part:

A person who manufactures, distributes, dispenses, delivers, purchases, or **otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver**, or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine . . . is guilty of a felony

(emphasis added). Appellant argues the State failed to provide evidence that Appellant arranged the sale of the methamphetamine to Sekula or provided it to Quezada. However, Appellant's argument ignores both the facts presented at trial and the standard for granting a directed verdict motion. As established under our law, it is inappropriate to grant a motion for a directed verdict if there is any direct evidence or substantial circumstantial evidence supporting guilt for the charge. See, e.g., Odems, 395 S.C. at 586, 720 S.E.2d at 50.

While Appellant challenges the State's evidence of the methamphetamine charge based on Sekula's inability to remember the specifics of whether Appellant contacted him via text message or phone call, his argument actually goes to the weight of Sekula's testimony. A trial judge considering a motion for a directed verdict is not concerned with the weight of evidence, merely its existence. See Curtis, 356 S.C. at 633, 591 S.E.2d at 605. Although he had trouble

recalling the specifics of the drug deal, Sekula was clear that Appellant personally contacted him and arranged it. Further, Appellant's brief ignores that the State provided a second witness confirming Sekula's testimony: Special Agent Wingo, who monitored the exchange, testified Appellant arranged the drug deal over the phone. Appellant's role as the facilitator of the drug transaction, as established by their testimonies, is direct evidence of his participation in the crime. See S.C. Code Ann. § 44-53-375(B) (stating it is illegal to distribute methamphetamine, to aid or abet such efforts, or to conspire to distribute such drugs).

Further, the State provided substantial circumstantial evidence which further supported Appellant's guilt of the charge. Wingo himself collected Appellant's phones after the arrest and confirmed his personal numbers were used in the deals in which Sekula directly contacted Appellant. Brown, a former member of The Boys, not only testified Appellant was the ring leader of the group but also explained Appellant was the source for all the drugs distributed by its members. Even with the direct evidence of Appellant's guilt, this substantial circumstantial evidence demonstrated Appellant conspired with Quezada to deliver the methamphetamine to Sekula. See State v. James, 321 S.C. 75, 79, 472 S.E.2d 38, 42 (Ct. App. 1996) (finding the trial court properly denied the defendant's motion for a directed verdict because State submitted sufficient evidence of the defendant's guilt of trafficking in crack cocaine under S.C. Code Ann. § 44-53-375(C) because it presented several witnesses claiming the defendant was the supplier of the drugs to a second person from whom witnesses actually bought the drugs).

Based on the existence of both direct and substantial circumstantial evidence of Appellant's guilt, the trial judge did not err in denying Appellant's motion for a directed verdict because the State's evidence demonstrated Appellant conspired with and aided Quezada to deliver the methamphetamine to Sekula, making him guilty of the charged offense.

CONCLUSION

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

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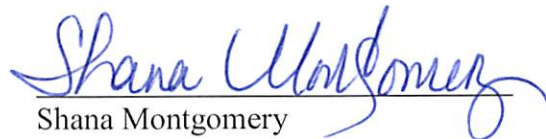
JUSTIN GORDON HUNTER,APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by email to the address listed in AIS and with a copy of the same to follow in the United States mail, postage prepaid, addressed to:

Tommy A. Thomas, Esquire
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I further certify that all parties required by Rule to be served have been served this 22nd day of March, 2021.



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Good Afternoon,

Attached please find a copy of the Initial Brief of Respondent and Designation of Matter along with the proof of service for State v. Justin Hunter (2019-000469). Please confirm receipt. This Initial Brief will be submitted to the South Carolina Court of Appeals today via the AIS One Drive System. In addition to the email, a hard copy will be placed in today's mail. Please don't hesitate to contact our office should you have any questions or concerns.

Thank You.

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