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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable G.D. Morgan, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES RICKEY MORRIS,

APPELLANT

APPELLATE CASE NO. 2021-001300

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by refusing to direct a verdict for possession with intent to distribute (PWID) methamphetamine when the state failed to present any direct or substantial circumstantial evidence that Appellant constructively possessed or intended to distribute the methamphetamine that was found in the vehicle he was driving, rather the evidence established that the drugs belonged to Appellant's girlfriend who was a passenger in the car and had already pled guilty to PWID methamphetamine?

STATEMENT OF THE CASE

A Pickens County Grand Jury indicted Appellant on September 22, 2020 for possession with intent to distribute (PWID) methamphetamine. R. 149-150. His case was called to trial on October 28, 2021 before the Honorable G.D. Morgan, Jr., and a jury. R. 1. Assistant Solicitors T. Blaine Pleming and P. Cleburne Fant represented the state. R. 1. Ashaley Boatwright and Caitlin Kannan represented Appellant. R. 1. At the conclusion of the trial, the jury found Appellant guilty as indicted. R. 142, ll. 1-9. He was sentenced to seven years imprisonment. R. 147, ll. 1-5.

This appeal follows.

STANDARD OF REVIEW

"The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (citing State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)). "However, if 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." Id. (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)) (emphasis in original).

"On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016) (quoting State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)) (internal quotation marks omitted). "The Court's review is limited to considering the existence or nonexistence of evidence, not its weight." Id. (citing State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478-479 (2004)). "When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof." Id. at 236, 781 S.E.2d at 353 (citing State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013)).

ARGUMENT

The trial judge erred by refusing to direct a verdict for possession with intent to distribute (PWID) methamphetamine when the state failed to present any direct or substantial circumstantial evidence that Appellant constructively possessed or intended to distribute the methamphetamine that was found in the vehicle he was driving, rather the evidence established that the drugs belonged to Appellant's girlfriend who was a passenger in the car and had already pled guilty to PWID methamphetamine.

Relevant Facts

On May 20, 2020, Officer Tyler Chapman with the Clemson Police Department arrested Appellant and his then girlfriend, Wendy Ayers, for trafficking methamphetamine. R. 42, ll. 13-16. Around seven o'clock that evening, which was the start of his shift, Chapman was walking into Ingles, a local grocery store, to buy a sub from the deli. R. 42, l. 24 – 43, l. 3. As he was walking into the store, Chapman noticed Appellant and Ayers walking out carrying groceries. R. 43, ll. 4-7. The pair looked at Chapman "like they had seen a deer in headlights." They appeared "very nervous, very odd." R. 43, ll. 7-9.

Chapman did not "think much of it" and continued to walk to the deli. However, the deli was closed so he "walked back out to his car to find something else to eat before the beginning of his shift." R. 43, ll. 11-17. As he was walking to his car, Chapman saw a silver Toyota Yaris drive by. Appellant and Ayers were inside. Both stared at Chapman again "like they had seen a deer in the headlights." R. 43, ll. 18-21. Because of what Chapman perceived as "abnormal behavior," he ran the tag on the vehicle and "it [came] back as stolen out of Pickens County on a Ford F-150." R. 43, l. 22 – 44, l. 2. Chapman "sprinted to [his] patrol vehicle" and "conducted a lawful traffic stop" on the car. R. 44, ll. 2-4.

The car pulled into the driveway of a house about a thousand yards from Ingles. R. 44, ll. 5-15. It was already parked when Chapman pulled in behind it. R. 44, ll. 20-22. Appellant was driving the car and Ayers was in the front passenger seat. R. 44, l. 23 – 45, l. 2. Appellant met Chapman at the back of the Yaris. However, Ayers was "digging around in the vehicle. She was getting groceries, doing . . . something of that nature, continuously digging in the passenger side of the vehicle." R. 45, ll. 11-17.

Chapman claimed Appellant was even "more nervous, very fidgety . . . moving around a lot." R. 45, ll. 18-22. He told Appellant he had stopped the car "because the plates on the vehicle were stolen." R. 45, ll. 23-25. Appellant said he "didn't know anything about it." R. 46, ll. 6-11. As Chapman was talking to Appellant, Ayers continued to "dig around" in the car. He "repeatedly told her over and over to stay out of the vehicle." R. 63, ll. 18-21.

Chapman told Appellant the car would be impounded because of the stolen tag. R. 46, ll. 16-21. He asked Appellant if there was anything illegal in the car. Appellant admitted there was marijuana in the center console. R. 46, l. 22 – 47, l. 15; R. 63, ll. 10-11. He also gave Chapman a pocketknife that was on his person. R. 63, ll. 12-13.

While searching the vehicle, Chapman found suspected marijuana in the center console as Appellant stated. R. 47, ll. 16-18. He also found two tablets wrapped in a plastic bag and a "clear crystal like substance" in a glass jar. Both of these items were in the center console with the suspected marijuana. R. 47, l. 19 – 48, l. 10. Additionally, Chapman found digital scales, two glass pipes with a "clear crystal like substance" inside, and two syringes in the car. R. 48, ll. 2-4. The tablets and the "clear crystal like substance" in the glass jar field tested positive for methamphetamine. R. 47, l. 25 – 48, l. 13.

Upon finding the suspected illegal narcotics, Chapman arrested Appellant and Ayers and read them their *Miranda* rights. R. 48, ll. 14-19. Both were searched incident to arrest. Appellant had a wallet on his person that contained $1,330 in cash. R. 49, ll. 4-13. Appellant and Ayers were placed in handcuffs and put in the back of separate patrol cars. R. 49, ll. 4-10. Ayers subsequently escaped from the patrol car and fled. It took law enforcement roughly forty-five minutes to find her. She was hiding under the deck of a nearby house. R. 52, ll. 1-25. Appellant was transported to jail. R. 51, ll. 22-25. Chapman acknowledged that while Appellant was compliant throughout their encounter, Ayers was not. R. 66, ll. 23-25.

Later at the police department, Chapman weighed the tablets and the "crystal like substance" together and found the total weight to be 26.17 grams. R. 49, l. 14 – 50, l. 5. Based on this preliminary weight, Chapman charged Appellant and Ayers with trafficking methamphetamine. R. 50, ll. 6-9. Chapman visited Appellant at the jail to inform him of the charges and "advise him of the warrants that . . . would be coming." R. 53, ll. 1-9. He also told Appellant he was seizing the cash that was found in Appellant's wallet due to the weight of the alleged methamphetamine. R. 53, ll. 10-14.

Chapman claimed that while he was talking to Appellant at the jail, Appellant admitted the methamphetamine found in the glass jar belonged to him. However, Appellant allegedly disagreed with the weight and maintained he only had two to three grams. R. 53, l. 18 – 54, l. 1. Appellant also "stated he did not traffic methamphetamine, that he just used it. He used it on a daily basis." R. 54, ll. 2-7.

The suspected narcotics were sent to the Greenville County Department of Public Safety to be tested. R. 61, ll. 21-22; R. 70, ll. 23-25. A forensic chemist determined the "clear crystal like substance" found in the glass jar was methamphetamine with a total weight of 6.84 grams.

R. 62, ll. 1-2; R. 76, l. 22 – 77, l. 6; R. 78, ll. 6-11; R. 79, ll. 16-20. The tablets on the other hand were found to contain "methylenedioxymethamphetamine, which is known as MDMA." R. 61, ll. 24-25; R. 77, ll. 1-8. Consequently, despite originally being charged with trafficking methamphetamine, Appellant was indicted and tried for the lesser included offense of PWID methamphetamine. R. 149-150.

At the conclusion of the state's presentation of evidence, Appellant moved for a directed verdict. Defense counsel argued the state failed to present any direct or substantial circumstantial evidence of Appellant's guilt. Specifically, counsel asserted there was "no evidence of an intent to make any type of distribution or disbursement of the methamphetamine that was found." R. 81, ll. 2-6. The judge denied the motion. He found there was "sufficient evidence" to "support the indictment." R. 81, ll. 7-11.

Appellant presented the testimony of Wendy Ayers. She recalled grocery shopping with Appellant on May 20, 2020. R. 86, l. 25 – 87, l. 18. As the couple was pulling out of the grocery store parking lot, they were "blue lighted." R. 87, ll. 19-25. Ayers testified that Appellant stopped the car in a friend's driveway. R. 87, l. 22 – 88, l. 1. Appellant then got out of the car to talk to law enforcement. R. 88, ll. 2-17. However, Ayers remained inside. She "was trying to get her groceries together" and was "hiding [her] dope." She admitted she "had methamphetamine." R. 88, ll. 14-20. The methamphetamine law enforcement found in the "middle console" was hers. R. 89, ll. 9-23. She put it there. R. 89, ll. 22-23. Ayers denied sharing this methamphetamine with Appellant. R. 100, l. 24 – 101, l. 2.

After the officers found the methamphetamine, Appellant and Ayers were arrested. Ayers was placed in the back of a patrol car. R. 89, l. 24 – 90, l. 7. The door locks on the car "kept, like, locking and unlocking, and locking and unlocking." R. 90, ll. 11-14. Ayers took

advantage of this and ran from the car. R. 90, ll. 14-16. She admitted she ran because she "was being arrested for drugs. And I knew it - - they were my drugs. So I was just trying to get away." R. 90, ll. 17-20.

Ayers was charged with an open container, possession of marijuana, trafficking methamphetamine, and escape. R. 91, ll. 5-9. The open container and marijuana charges were still pending at the time of Appellant's trial. However, two months prior, Ayers had pled guilty to possession with intent to distribute methamphetamine and escape related to this case. R. 91, ll. 10-22. She admitted during her plea hearing that the methamphetamine found in the car was hers. R. 96, ll. 11-13. She was sentenced to three years of probation and released from custody. R. 91, ll. 16-17. Mere weeks later, about a week before Appellant's trial, Ayers was arrested again in Pickens County. R. 91, l. 23 – 92, l. 4; R. 96, l. 25 – 97, l. 4. She was again charged with trafficking methamphetamine. R. 92, ll. 3-4. Ayers admitted she was an addict and had been addicted to methamphetamine for over ten years. R. 98, ll. 7-22.

The judge charged the jury on PWID methamphetamine and the lesser included offense of possession of methamphetamine. R. 130, l. 3 – 132, l. 9. During its deliberations, the jury asked for "a definition of possession with intent to distribute methamphetamine." R. 138, ll. 4-7. Consequently, the judge recharged the jury on PWID methamphetamine without objection. R. 138, l. 8 – 141, l. 9. The jury ultimately found Appellant guilty as indicted. R. 142, ll. 1-9.

Discussion

The trial judge erred by refusing to direct a verdict for possession with intent to distribute methamphetamine since the state failed to present any direct or substantial circumstantial evidence that Appellant constructively possessed the methamphetamine found in the car he was driving or that he intended to distribute this methamphetamine. Instead, the evidence established

that the methamphetamine belonged to Wendy Ayers. Ayers admitted the drugs were hers and she had already pled guilty to possessing the drugs that day.

"The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (citing State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)). "However, if 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." Id. (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)) (emphasis in original).

"A [trial] judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." Id. (citing State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984)). "Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-405 (2001) (citing State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001)). "When ruling on a motion for a directed verdict, the trial [judge] is concerned with the existence or nonexistence of evidence, not its weight." State v. Shands, 424 S.C. 106, 135, 817 S.E.2d 524, 539 (Ct. App. 2018) (citing State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)).

"It is a fundamental concept of criminal law that the State must prove beyond a reasonable doubt all the elements of the offense charged against the defendant." State v. Cain, 419 S.C. 24, 30, 795 S.E.2d 846, 849 (2017) (quoting State v. Brown, 360 S.C. 581, 590, 602 S.E.2d 392, 397 (2004)) (internal quotation marks omitted). "The State may not obtain a conviction when its proof as to any one element requires the jury to speculate or guess whether the defendant engaged in the conduct the legislature sought to criminalize." Id. (citing State v.

Brown, 267 S.C. 311, 316, 227 S.E.2d 674, 677 (1976) (stating "the motion for a directed verdict should be granted where evidence . . . is such as to permit the jury to merely conjecture or to speculate")); see also Hanahan v. Simpson, 326 S.C. 140, 149, 485 S.E.2d 903, 908 (1997) (stating "verdicts may not be permitted to rest upon surmise, conjecture, or speculation"); State v. Hyder, 242 S.C. 372, 379, 131 S.E.2d 96, 100 (1963) ("We have held that suspicion, however strong, does not suffice to sustain a conviction.").

Appellant was indicted for possession with intent to distribute methamphetamine in violation of S.C. Code Ann. § 44-53-375(B), which states 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 *possesses with intent to distribute, dispense, or deliver methamphetamine* . . . is guilty of a felony." S.C. Code Ann. § 44-53-375(B) (emphasis added). "Possession of one or more grams of methamphetamine . . . is prima facie evidence of a violation of this subsection." S.C. Code Ann. § 44-53-375(B).

The state conceded at trial that Appellant was not in actual possession of the methamphetamine found in the vehicle he was driving. R. 32, l. 19 – 33, l. 7. Accordingly, the state had to prove Appellant was knowingly in constructive possession of the methamphetamine.

"Mere presence is insufficient to prove constructive possession." State v. Heath, 370 S.C. 326, 329, 635 S.E.2d 18, 19 (2006) (citing State v. Tabory, 260 S.C. 355, 364, 196 S.E.2d 111, 113 (1973)). In order to prove constructive possession, the state must show a defendant had dominion and control, or the right to exercise dominion and control over the illegal substance. Id. (citing State v. Halyard, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980)). The state may establish constructive possession by either direct or circumstantial evidence. Id. "The defendant's knowledge and possession may be inferred if the substance was found on premises

under his *control*." Id. at 329-330, 635 S.E.2d at 19 (citing State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987)) (emphasis in original).

In Heath, our Supreme Court held the evidence presented was insufficient to establish Heath was in constructive possession of crack cocaine and consequently directed a verdict of acquittal in his favor. Heath, 370 S.C. at 328, 635 S.E.2d at 18. Heath lived in a house with his mother and a young child. His mother owned the house. Id. at 328, 635 S.E.2d at 18. Law enforcement obtained a warrant to search in and around the house for crack cocaine. Id. When officers arrived to execute the search warrant, Heath and his brother were outside in front of the house. It appeared Heath had just finished washing his car. Id. Upon the officers' arrival, Heath's brother ran inside the house and locked himself in a bathroom. Id. at 328, 635 S.E.2d at 19. Officers ultimately found crack cocaine, numerous plastic baggies (allegedly the type used by crack dealers), scales, and twenty five hundred dollars in cash inside the home. Id. Additionally, a police dog discovered a car washing mitt in a recycling bin near the back door of the house containing 43.48 grams of crack cocaine. Id. at 329, 635 S.E.2d at 19.

The Supreme Court held the state presented no direct or substantial circumstantial evidence linking Heath to the crack cocaine. Id. at 330, 635 S.E.2d at 19. The Court further held the state failed to present evidence Heath could exercise dominion and control over the area where the crack was found. Id. In so holding, the Court noted that, while Heath lived in the home where the crack was found, the home was owned by his mother. Id. As a result, the Court concluded, "[I]t was arguable that [Heath] *merely had a right to access the area where the crack was found, not actual dominion and control of the property*." Id. (emphasis added).

The state failed to present any evidence that Appellant was *knowingly* in constructive possession of the methamphetamine found in the center console of the car he was driving. There

was no evidence Appellant knew the methamphetamine was in the car. When Chapman asked Appellant, who Chapman acknowledged was very compliant, whether there was anything illegal in the car before he searched it, Appellant admitted there was marijuana in the center console. However, Appellant did not mention methamphetamine because arguably he did not know it was there. Ayers admitted during trial that the methamphetamine found in the glass jar belonged to her and that she had put the drugs in the "middle console" when she was rummaging around in the car after the couple had been pulled over and Appellant had gotten out to speak with Chapman. In fact, Ayers had previously pled guilty to PWID methamphetamine related to this case.

Even if this Court finds there was evidence Appellant was knowingly in constructive possession of the methamphetamine, there was no evidence Appellant intended to distribute the methamphetamine, a required element of PWID. See S.C. Code Ann. § 44-53-375(B). The evidence suggested that Appellant and Ayers were addicts who used methamphetamine on a daily basis. There was no evidence Appellant intended to distribute or sell the methamphetamine to others.

Respectfully, this Court should direct a verdict of acquittal for possession with intent to distribute methamphetamine.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal for possession with intent to distribute methamphetamine.

Respectfully submitted,

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of June, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

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APPELLATE CASE NO. 2021-001300

PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Rickey Morris states:

1. She is an 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, which was held on October 28, 2021 before the Honorable G.D. Morgan, Jr., 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 (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 James Rickey Morris.

Respectfully Submitted,

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

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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) Complete Trial Transcript Dated October 28, 2021;
(2) Indictment;
(3) Sentence Sheet.

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

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

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ATTORNEY FOR APPELLANT

This 1st day of June, 2022.

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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."

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

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