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SC Court of Appeals

ll. Brothers claimed that she was inside her trailer with the decedent and his brother. R. 160 1, 11-165, 1.8. Appellant allegedly arrived at the trailer and knocked on the door. Id. He entered the trailer and told the decedent that he had a gun to sell. Id. The decedent went outside with Appellant to potentially buy the gun. Id. She claimed that the decedent did not bring a gun outside with him, that no one else came inside the house, and that she did not see anyone else outside the house. R. 165, 1.8. ~~Appellant allegedly arrived at the trailer and knocked on the door. Id. He entered~~ Brothers then went to take a shower and "not even five minutes" later she heard a single gunshot and got out of the shower. R. 166, 11.3-8. She stated by the time she got out of the shower she heard "tires spinning out the yard." Id. She admitted she did not go outside immediately but started to get a "bad feeling" and eventually went outside. R. 167, 11.2-14. She testified that she saw the decedent laying on the ground. Id. Brothers went back inside and told Rashii, decedent's brother, to call 9-1-1. R. 168, 11.2-4. However, Brothers admitted that she did not see what happened outside. R. 168, 1.22-169, 1.4. She further admitted that there were no cameras outside that caught the incident. Id. Brothers confessed neither she nor Rashii went outside immediately after hearing the gunshot. R. 169, 1.10-170, 1.22. She also acknowledged that she did not look out the window to see who fired the gunshot. Id. Yakima Ray, the decedent's cousin, testified that she

witnessed the incident from a neighbor's yard. R. 178, 1. 12-182, 1. 23. Yakima Ray stated that she saw Appellant knock on the door to the trailer and the decedent come outside. Id. Appellant allegedly showed the decedent "something" then "it turned into a scramble" and "they were tussling." Id. Then she heard the gunshot. Id. After the truck "ran down the road" she ran across the street and saw Rashii running to where the decedent layed on the ground. The forensic evidence show's her testimony was made up, Officer Green testimony show's her testimony was false, if she didn't get seen by Officer Green how could she have been on scene?

Rashii Brisbon, the decedent's brother, testified at Appellant's as well. R. 191, 11. 9-13. Brisbon explained what he saw happen on the night of the incident. R. 191, 1. 16-196, 1. 10. Brisbon and the decedent were inside the trailer playing a game when Appellant allegedly knocked on the door. Id. Appellant said he had a gun to sell to the decedent and the decedent followed him outside. Id. Importantly, Brisbon stayed inside and did not see what transpired after the decedent left the trailer. Id.; R. 204, 11. 3-16. Shortly after the decedent went outside, Brisbon said he heard one gunshot. R. 191, 1. 16-196, 1. 10. At first Brisbon did not pay any attention to the noise. Id. Only after Brisbon heard a truck driving away and seeing the decedent's cell phone inside the trailer did he become alarmed. R. 197, 11. 4-17. Brisbon opened the door and saw the decedent on the ground. R. 197, 11. 18-25. Brisbon then called 9-1-1, after calling his mother first. R. 194, 11. 1-7. The state then retried its case and

defense counsel moved for a directed verdict. R. 205, 11. 5-10; R. 205, 1. 14-207, 1. 3. Defense counsel explained that since there was no forensic evidence pointing to Appellant as the shooter and no one actually saw the evidence, or who fired the gun, this was a case where "the evidence submitted raises a mere suspicion of guilt." R. 205, 1. 14-207, 1. 3. Accordingly, a directed verdict for the charge of murder should be granted in favor of Appellant. Id. The trial court first questioned the attorneys for both sides as to whether there should be a charge on voluntary manslaughter. R. 207, 1. 21-213, 1. 1. Based on the evidence presented, especially in light of Yakima Nays testimony of the "scuffle", the trial court felt "compelled" to give a jury charge for voluntary manslaughter. R. 213, 11. 4-7. After that discussion, the trial court denied the motion for a directed verdict for murder and voluntary manslaughter. R. 216, 11. 18-21. As a result, Appellant's trial continued and Appellant was convicted of voluntary manslaughter. R. 269, 11. 3-10; R. 279, 11. 1-19.

Discussion

The South Carolina Supreme Court "has repeatedly affirmed the principle that when the state fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict" *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011). In *Odems*, this Court cited *State v. Bostick*, 392 S.C. 134, 709 S.E.2d 774 (2011), and *State v. Lolis*, 343 S.C. 580, 541 S.E.2d 254 (2001), as "jurisprudence... instructive in explaining the proof required in cases built wholly on circumstantial evidence." Id. Specifically, the trial court "should grant a directed verdict motion when the evidence merely raises a suspicion that the

accused is guilty." Adams, 345 S.C. at 586, 720 S.E.2d at 50 (citation omitted). "Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." See State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2002) (internal quotation omitted). Murder is "the killing of any person with malice aforethought, either express or implied" S.C. Code Ann. § 16-3-10. Voluntary manslaughter is the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation. See State v. Smith 363 S.C. 122, 609 S.E.2d 528 (Ct. App. 2005). In this case, the state only presented circumstantial evidence that "merely raised a suspicion" of Appellant's guilt. See Bostick, 392 S.C. 134, 708 S.E.2d 774. Specifically, the state failed to show that Appellant was the shooter of the decedent. R. 206, 22.8-11. Law enforcement conducted a cursory investigation taking the decedent's family members' word for who shot the decedent. R. 145, 2.19-146, 2.12. Those "witnesses" actually did not witness Appellant shoot the decedent. R. 168, 22.22-23; R. 145, 2.15-146, 2.10. Both Brothers and Brisbane only saw the decedent leave the triaker with Appellant. R. 168, 22.22-23; R. 145, 2.15-146. While Ray alleged she saw the incident, she did not see Appellant shoot the decedent, she only heard the gun go off. R. 181, 2.14-182, 2.23. Additionally, Appellant never admitted guilt. There was no fingerprint evidence discovered. R. 149, 22.21-24. There was no DNA evidence discovered. R. 146, 22.10-13. The firearm was never located. R. 140, 22.21-22. The police did not investigate Appellant's cell phone and the cell site location information did not garner any incriminatory evidence. R. 104, 2.10-105, 2.15. R.

146, 11.6-7. The police also did not search Appellant's car. R. 146, 11.4-5. The entirety of law enforcement's investigation of Appellant's cell phone and the cell site location information did not garner any inculpatory evidence. R. 104, 1.10-105, 1.15; R. 146, 11.6-7. The police also did not search Appellant's Car, R. 146, 11.4-5. The entirety of law enforcement investigation consisted of getting statements from the witnesses at the scene, two of whom did not see what happened outside and the third could not definitively state that Appellant shot the decedent. Evidence shows that the testimony Appellant got found guilty on is a false made up story. R. 168, 11.22-23; R. 145, 1.15-146, 1.10; R. 181, 1.14-182, 1.23. Accordingly, the trial court erred by refusing to grant Appellant's directed verdict motion because the state failed to present substantial circumstantial evidence that Appellant was guilty. See *Odems*, 345 S.C. at 586, 720 S.E. 2d at 50

CONCLUSION

By reason of the foregoing arguments, Appellant respectfully requests that this Court vacate his conviction and remand his case to the Harry County Court of General Sessions.

This 20th day of June, 2022

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