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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT

V.

SHEDRICK A. SAVAGE,

APPELLANT.

APPELLATE CASE NO. 2021-001556

ANDERS BRIEF OF APPELLANT PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by refusing to direct a verdict for the offense of murder when the state failed to present any direct or substantial circumstantial evidence to support the charge, namely there was no evidence Appellant acted with malice rather the evidence showed Appellant shot the decedent in the sudden heat of passion after the decedent threw a beer bottle at Appellant's truck as the pair was arguing, which immediately followed a physical altercation inside a nightclub?

STATEMENT OF THE CASE

A Spartanburg County Grand Jury indicted Appellant on March 12, 2015 for the offense of murder. App. 488-489. His case was called to trial on November 28, 2016 before the Honorable Roger L. Couch, and a jury. App. 1. Deputy Solicitor Derrick Bulsa represented the state. App. 1. Theo Mitchell represented Appellant. App. 1. On November 29, 2016, the jury found Appellant guilty as indicted. App. 291, ll. 6-13. He was sentenced to thirty years imprisonment. App. 300, l. 25 – 301, l. 3.

On December 8, 2016, Candice K. Lapham filed a notice of appeal on Appellant's behalf. App. 303-304. By order filed May 15, 2017, the Court of Appeals dismissed the appeal for failure to update the court on the status of the transcript. App. 305.

On March 20, 2018, Appellant filed an application for post-conviction relief (PCR) seeking, *inter alia*, a belated direct appeal. App. 307-313. The state filed a return to this application on August 3, 2018. App. 315-320. With the assistance of counsel, Appellant filed an amended application on July 26, 2021. App. 321-324. An evidentiary hearing was held on August 4, 2021 before the Honorable H. Steven DeBerry. App. 325. Assistant Attorney General William Ray represented the state. App. 325. Susannah Ross represented Appellant. App. 325.

By order filed December 23, 2021, the PCR judge granted Appellant a belated direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). App. 459-484.

This brief of appellant follows.

STATEMENT OF FACTS

During the early morning hours of November 23, 2014, a fight broke out inside Universal Events, an afterhours nightclub in Spartanburg that was only open one night a week. App. 56, l. 10 – 57, l. 3; App. 75, ll. 15-20; App. 76, ll. 19-22. On any given Saturday, there would be anywhere from five hundred to twelve hundred people at the club. App. 56, ll. 21-25; App. 75, ll. 20-21; App. 97, ll. 18-20.

The decedent, Marty Jackson, was one of the patrons involved in the fight. App. 81, l. 14 – 82, l. 1. Security removed Jackson, and the other patrons who were fighting, from the club. App. 82, ll. 1-3. When Jackson came outside, he was still fighting with several men. App. 82, ll. 4-5. Security grabbed Jackson and told him to leave. App. 82, ll. 4-8. They held the other patrons inside for a few minutes to give Jackson time to leave the premises. App. 82, ll. 7-8. Jackson started walking up the long sloped driveway. App. 82, l. 9.

After security thought Jackson had left, they allowed the other patrons, who were being held inside, to leave. App. 82, ll. 9-13. Appellant was one of these patrons. He was "extremely mad" when he came outside and allegedly threatened to kill an unspecified person. App. 82, ll. 13-16. John Mitchell, the owner of the club who was outside at the time, watched Appellant and at least one other person get into a blue truck. App. 82, ll. 16-18; App. 105, ll. 10-21. Mitchell said he thought there was a third person who got into the truck with Appellant but he was not certain. App. 82, ll. 16-19; App. 85, ll. 12-16. Appellant supposedly got into the driver's seat. App. 82, ll. 17-18; App. 98, ll. 22-23. Errol Graham, a doorman at the club, claimed that before Appellant began driving away, he pointed toward the hill where the decedent was later found. App. 98, l. 22 – 99, l. 1.

The truck began slowly moving up the driveway. App. 82, ll. 19-20. Mitchell "got on the radio" and warned security at the gate of Appellant's alleged threat and told them to "keep an eye out for the blue truck." App. 82, ll. 24-25. Mitchell remained out front talking to Brad James, a patrol deputy with Spartanburg County Sheriff's Office who was responsible for patrolling the parking lot at the club. App. 55, l. 21 – 56, l. 10; App. 83, ll. 1-3. Mitchell watched the blue truck travel up the driveway. He looked away "for split second, and saw, out of the corner of [his] eye, a flash from the truck's window." App. 83, ll. 3-6. At the same time he saw the flash, Mitchell heard a gunshot. App. 83, ll. 7-9. He claimed the flash came from the front seat of the truck. App. 86, ll. 5-16. After the gunshot, the truck "gunned it up the driveway." App. 89, ll.4-10.

Mitchell "jumped on the golf cart to ride down through there." App. 83, l. 11. He "radioed up to . . . security at the top of the hill to either stop the truck or get a description or the tag." App. 83, ll. 14-16. Security responded that the truck had a "Morgan's Used Cars" tag. App. 83, ll. 16-18. Meanwhile, Deputy James, who heard the gunshot but did not see where it came from, attempted to pursue the truck in his patrol car. App. 59, l. 2 – 60, l. 8. However, by the time he maneuvered around the foot and vehicle traffic in the roadway, the truck was gone. App. 59, l. 22 – 60, l. 11; App. 61, ll. 5-21.

As Mitchell drove his golf cart up the driveway, he heard people yell, "He's been shot. He's been shot." App. 84, ll. 2-4. That is when Mitchell saw Jackson on the ground. He told everyone to back up so he could check on Jackson. Mitchell said it was "obvious he [Jackson] was already gone." App. 83, l. 19 – 84, l. 8. Mitchell called 911, but dispatch had already received other calls and law enforcement quickly began arriving. App. 84, ll. 9-12.

Around six o'clock that morning, law enforcement in Gaffney located the blue truck. App. 138, l. 8 – 139, l. 19. There were two occupants. App. 140, ll. 23-24. Appellant was identified as the driver and Rashawn Miller was the passenger. App. 140, l. 25 – 141, l. 18. They were both detained and transported to the Spartanburg County Sheriff's Office for questioning. App. 141, l. 19 – 142, l. 19. Appellant admitted to being at Universal Events that morning. However, he denied driving the truck that was supposedly involved in the shooting. App. 188, l. 15 – 189, l. 19.

Jackson suffered a single "through and through" gunshot wound to the chest. App. 132, ll. 8-17; App. 181, l. 16 – 183, l. 13. No spent shell casings, fired projectiles, or a firearm connected to the shooting were ever located. App. 128, l. 20 – 130, l. 20.

Six weeks after the shooting, Cedrick Jones, who dated Jackson's sister, came forward and claimed he saw Appellant shoot Jackson. App. 107, l. 22 – 108, l. 2; App. 120, l. 16 – 121, l. 18. Jones testified that, while he did not go to the club with Jackson that morning, he saw Jackson get into a fight inside the club. App. 108, ll. 3-24. Jackson was escorted out by security. App. 108, ll. 19-22. Jones followed Jackson outside and greeted him. App. 109, ll. 1-7. There was a lot of commotion out front so Jones walked up the hill, stood off to the side, and "just watched everything." App. 109, ll. 14-19. As Jones was standing there, he saw Jackson walk by him. App. 109, ll. 20-21. Jones began walking with Jackson toward the car. App. 109, ll. 21-23. He claimed as they were walking, Appellant pulled up next to them and stopped. App. 109, l. 23 – 110, l. 15. Appellant was driving a blue truck. App. 110, ll. 6-11. Appellant told Jackson to "meet me at the store." App. 109, l. 23 – 110, l. 3. Jackson said, "Nah, get out now." App. 110, ll. 19-22. The two continued this exchange for several minutes until Jackson, who was upset, threw a beer bottle at Appellant's truck. App. 110, ll. 22-25. Jones claimed Appellant

then shot Jackson. Jones saw the flash. App. 111, ll. 1-6; App. 113, l. 22 – 114, l. 17. Jackson and Jones ran. Jones heard Jackson call his name "like to let me know he shot." App. 111, ll. 6-8; App. 114, ll. 14-18. Jones turned around and grabbed Jackson. He laid Jackson down on the ground near a fence. App. 111, ll. 8-10; App. 114, ll. 18-21.

Jones called 911 to report the shooting. App. 114, ll. 21-22; App. 118, ll. 21-25. He admitted he gave the operator a false name. App. 119, ll. 20-22; App. 120, ll. 10-12. He also told the operator that he did not know who shot Jackson. App. 119, ll. 3-10. After calling 911, Jones left. App. 114, l. 23 – 115, l. 3. He did not talk to the police that night. App. 115, ll. 4-13. He claimed he only came forward after Jackson's family said "they needed me to stand up if I was there and testify." App. 115, ll. 14-18. Jones was later impeached with his prior record, including his convictions for burglary, manufacturing drugs, leaving the scene of an accident, and possession of drugs. App. 116, l. 17 – 117, l. 5.

During his opening statement, the deputy solicitor maintained "this case is about who did it and why it happened." App. 52, ll. 8-9. He contended that the "real issue will be is it murder or is it manslaughter." App. 52, ll. 11-13. Later during his closing argument, the solicitor made similar assertions. He claimed the state "got the right guy" but the "issue is is it murder or is it manslaughter." App. 260, ll. 18-22. The solicitor admitted that Appellant may have been acting in the sudden heat of passion after he and Jackson fought inside the club and that Jackson later provoked Appellant by throwing a beer bottle at his car, the noise of which Appellant may have perceived to be a gunshot. App. 258, ll. 15-20; App. 260, l. 21 – 261, l. 5.

The trial judge charged the jury on murder and the lesser included offense of voluntary manslaughter. App. 277, l. 4 – 280, l. 4. The jury convicted Appellant of murder. App. 291, ll. 6-13.

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 must view the evidence in the light most favorable to the State." Id. (citing State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001)).

"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 Lollis, 343 S.C. at 584, 541 S.E.2d at 256). "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)).

ARGUMENT

The trial judge erred by refusing to direct a verdict for the offense of murder when the state failed to present any direct or substantial circumstantial evidence to support the charge, namely there was no evidence Appellant acted with malice rather the evidence showed Appellant shot the decedent in the sudden heat of passion after the decedent threw a beer bottle at Appellant's truck as the pair was arguing, which followed a physical altercation inside a nightclub.

Relevant Facts

After the state rested, Appellant moved for a directed verdict. Defense counsel argued the state had not "met their prima facie case" and the case should not be submitted to the jury. App. 227, ll. 3-7. The deputy solicitor asserted their was eyewitness testimony identifying Appellant as the shooter as well as circumstantial evidence placing Appellant in the truck involved in the shooting. App. 227, ll. 10-13. He concluded, "It's clearly a jury question." App. 227, ll. 13-14.

The trial judge denied the motion. He found there was sufficient evidence to submit the case to the jury. App. 227, ll. 15-17. Appellant later properly renewed his motion. App. 247, ll. 1-13.

Discussion

The trial judge erred by refusing to direct a verdict for the offense of murder when the state failed to present any direct or substantial circumstantial evidence Appellant acted with malice. Rather, the evidence showed Appellant shot Jackson in the sudden heat of passion upon sufficient legal provocation after Jackson threw a beer bottle at Appellant's truck as the pair was arguing. This event followed a physical altercation inside Universal Events where both

Appellant and Jackson were removed from the club. Appellant was "very mad" and "irate" upon leaving and did not have sufficient time to cool off before encountering Jackson again as Appellant attempted to leave the premises. Consequently, only the lesser included offense of voluntary manslaughter should have been submitted to the jury.

"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) (State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001)).

In State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), this Court held the trial judge erred in failing to direct a verdict where the only evidence presented against Mitchell was his fingerprint at the scene of the burglary. Likewise, in Lollis, the Court directed a verdict of acquittal where the state presented no direct evidence that Lollis was involved in setting fire to his home. The circumstantial evidence against Lollis was that his wife admitted to the arson, he had placed valuables in storage prior to the fire, he possessed a key to the storage unit, and he allegedly had financial troubles. The Court found this evidence insufficient. Lollis, 343 S.C. at 584-585, 541 S.E.2d at 256-257.

In State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012), the Court held Odems was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that Odems was involved in the burglary. Although Odems was in a car with other individuals who admittedly burglarized a home, the Court concluded that the state failed to provide substantial circumstantial evidence that Odems was present during the home invasion. The witness who saw individuals at the home claimed she saw two, not three as were found in the car. Fingerprints collected from the stolen goods did not match Odems, but matched the other individuals in the car. One of the individuals who admitted his involvement claimed Odems was picked up after the burglary at a gas station. Id. at 588, 720 S.E.2d at 51.

In State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), this Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt. Rather, the state's evidence was capable of producing only a suspicion of Bostick's guilt. Id. Although the police found items belonging to the decedent in a burn pile behind the home of Bostick's mother, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. Id. at 137-141, 708 S.E.2d at 775-778. The other evidence presented against Bostick was that (1) he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the decedent's home, and (2) DNA from blood on Bostick's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the decedent. Id. at 142, 708 S.E.2d at 778.

Like in Mitchell, Lollis, Odems, and Bostick, the trial judge should have directed a verdict for the offense of murder as there was no direct or substantial circumstantial evidence to support the charge. Murder "is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10. Voluntary manslaughter, on the other hand, "is the

unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation." State v. Starnes, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010) (citing State v. Wharton, 381 S.C. 209, 214, 672 S.E.2d. 786, 788 (2009)). "Both heat of passion and sufficient legal provocation must be present at the time of the killing." State v. Sims, 426 S.C. 115, 131, 825 S.E.2d 731, 739 (Ct. App. 2019) (quoting State v. Sams, 410 S.C. 303, 309, 764 S.E.2d 511, 514 (2014)) (internal quotation marks omitted). Voluntary manslaughter is a lesser included offense of murder. Id. "In determining whether the act [that] caused death was impelled by heat of passion or by malice, all the surrounding circumstances and conditions are to be taken into consideration, including previous relations and conditions connected with the tragedy, as well as those existing at the time of the killing." State v. Smith, 391 S.C. 408, 413, 706 S.E.2d 12, 15 (2011).

There was no evidence presented that Appellant shot the decedent with malice, an essential element of murder. Rather, the evidence show Appellant shot the decedent in the sudden heat of passion upon sufficient legal provocation. A physical altercation occurred inside the nightclub. It was undisputed that Appellant and Jackson were involved in the fight. Jackson was removed from the club first followed by Appellant a mere minutes later. When Appellant came outside, he was "very mad" and "irate" demonstrating he was still acting under the sudden heat of passion and did not have sufficient time to cool off. As Appellant was attempting to leave the premises in his truck, he encountered Jackson again. The two argued for several minutes until Jackson threw a beer bottle at Appellant's truck thereby provoking Appellant. The deputy solicitor conceded that Appellant may have mistook the sound of the bottle hitting the truck as a gunshot and returned fire.

Consequently, the evidence presented only supported the lesser included offense of voluntary manslaughter. As there was no evidence of malice, an essential element of murder, the trial judge erred by refusing to direct a verdict. Respectfully, this Court should direct a verdict of acquittal for murder and remand for a new trial on voluntary manslaughter.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal for the offense of murder and remand for a new trial on the lesser included offense of voluntary manslaughter.

Respectfully submitted,

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

ATTORNEY FOR APPELLANT

This 8th day of August, 2022.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shedrick A. Savage 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 November 28-29, 2016 before the Honorable Roger L. Couch, 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 Shedrick A. Savage.

Respectfully Submitted,

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

ATTORNEY FOR APPELLANT

This 8th day of August, 2022.

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S.C. SUPREME COURT

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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This 8th day of August, 2022.