

RECEIVED

Jan 06 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AARON MONTEZ DAVIS, JR.

APPELLANT

APPELLATE CASE NO. 2022-000305

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT

1.

The trial judge erred in denying appellant’s request for an instruction on the burden of proof assignment connected to circumstantial and direct evidence after the jury re-charge was given in the case.....4

2.

The trial judge erred in denying appellant’s motion for a directed verdict on the drug offense charged against him in the case.9

CONCLUSION.....10

PETITION TO BE RELIEVED AS COUNSEL11

TABLE OF AUTHORITIES

Cases

State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) 3

Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967) 11

State v. Brandt, 393 S.C. 526, 713 S.E.2d 591 (2011) 3

State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996) 3

State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013) 6, 8

State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011) 3, 9

STATEMENT OF ISSUES ON APPEAL

QUESTION I

The trial judge erred in denying appellant's request for an instruction on the burden of proof assigned to circumstantial and direct evidence after the jury re-charge was given in the case.

QUESTION II

The trial judge erred in denying appellant's motion for a directed verdict on the drug offense charged against him in the case.

STATEMENT OF THE CASE

Appellant Aaron Montez Davis was convicted of trafficking in cocaine (third offense) per jury trial held during the March 2022 term of the York County General Sessions Court before Judge J. Derham Cole, who sentenced him to imprisonment for a period of twenty five years. Frederick C. Davis, Esquire, represented appellant at trial, and Assistant Solicitor Marina B. Hamilton appeared at trial on behalf of the state.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

In reviewing jury charges for error, appellate courts consider the trial court's jury charge as a whole and in light of the evidence and issues presented at trial. State v. Brandt, 393 S.C. 526, 713 S.E.2d 591 (2011). A jury charge is correct if, when read as a whole, the charge adequately covers the law. *Id.* A charge that is substantially correct and covers the law does not require reversal." *Id.* (citing State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996)).

In reviewing a denial of a directed verdict, we must view the evidence in the light most favorable to the state. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). If there is any direct evidence, or if there is substantial circumstantial evidence, that reasonably tends to prove the defendant's guilt, we must find that the trial judge properly submitted the case to the jury. State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011).

QUESTION I

The trial judge erred in denying appellant's request for an instruction on the burden of proof assigned to circumstantial and direct evidence after the jury re-charge was given in the case.

At trial, Officer Daniel Barfield testified that around 11:00 pm on November 29, 2017, he encountered a vehicle being operated without tail lights, and went on to initiate a traffic stop of the vehicle by activating his patrol car blue lights. However, the driver of the vehicle did not stop. As a result, Officer Barfield activated his patrol car siren. The driver of the vehicle, ultimately identified as appellant, kept driving until finally stopping at a residence in a neighborhood. The driver (appellant) exited the vehicle and jumped over a fence for one of the homes in the area until he was apprehended by police shortly thereafter and placed into police custody. R. 77, l. 7 – p. 100, l. 12.

Officer Preston McAtee arrived at the crime scene during the incident and followed the path where appellant fled. Officer McAtee found a clear bag containing a white substance on the ground along that same path. R. 106, l. 17 – p. 120 l. 18. Also, a search of the vehicle appellant drove on that night uncovered a scale located at the center console inside the vehicle. R. 114, lines 16 – 18.

The defense theory in the case was that there was no sufficient evidence to link or tie appellant to the baggie of cocaine found on the ground in the neighborhood on that night because there was a large crowd gathered there, which meant there was no proof that the baggie was in appellant's possession or connected to him. No one saw appellant throw the baggie down to the ground. Any number of people who were present at the time of the event could have thrown down the drugs. R. 224, l.9 - p. 225, l.7. Appellant landed in a fenced-in backyard residence after

jumping therein, which meant that the people who lived there or their guests could have possessed and dropped the baggie containing cocaine. R. 226, lines 6-20. Counsel argued that no one could have known who else was in that backyard then or the owner of the baggie found there. R. 246 – p. 248.

The trial judge's jury charge on direct and circumstantial evidence follows:

The term reasonable doubt should be given its plain and ordinary meaning. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act upon the information provided.

The defendant is entitled any reasonable doubt that arises from the evidence or lack of evidence in the case and if, upon any factual issue essential to a finding of a verdict of guilty, you have some reasonable doubt as to how that issue should be resolved, it would be your duty to resolve that reasonable doubt in favor of the defendant. R. 256-257.

Direct evidence is the testimony of a person who testifies from actual knowledge of that fact. It is testimony by a person who has perceived the existence of some fact by means of his or her senses and then that person comes into court and they testify as to what they have previously seen, heard or felt, for that matter. Direct evidence proves the existence of a fact directly and it does not require any deduction or inference in order to establish that fact.

Circumstantial evidence, on the other hand, is the proof of some other fact or set of facts, which taken either singly or collectively, may prove the existence of a fact in question as a necessary consequence, that is, by a deduction or an inference.

An inference is simply a deduction of fact that may logically and reasonably be drawn from the proof of some other fact or set of facts. It is a fact not proven by the direct testimony of a witness based upon their personal perception, but it is a conclusion which might reasonably be drawn from the proof of other facts.

In other words, you may infer that a particular event occurred or that a particular fact exists based upon the proof of sufficient factual circumstances which would reasonably warrant your arriving at a particular conclusion.

The commission of a crime and any particular element necessary to establish that crime may be proven by direct evidence or

circumstantial evidence or by a combination of both direct and circumstantial evidence.

You are, however, instructed that the law makes no distinction between the weight or value to be given to direct evidence or circumstantial evidence. However, to the extent that the State relies upon circumstantial evidence in order to establish the commission of a crime, the circumstances proven must be consistent with each other and when taken together, point conclusively to the guilt of the accused, beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof is insufficient and it fails. The burden rests with the State to prove the defendant guilty beyond a reasonable doubt regardless of whether the State relies upon direct evidence or circumstantial evidence or some combination of both types of evidence in order to prove the defendant guilty.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty and in criminal cases the law does not require proof that overcomes every possible doubt. If, based upon your consideration of the evidence in this case, you are firmly convinced that the defendant is guilty of the crime for which he stands charged, then you must find him guilty of that crime and if, on the other hand, you think there's a real possibility that the defendant is not guilty of the crime for which he stands charged, then you must find—give him the benefit of that doubt and find him not guilty. R. 257-259.

The above jury charge properly stated the burden of proof instruction with respect to both circumstantial and direct evidence as required and approved of in State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013).

Later, during jury deliberations, the jury reported a request to the trial judge asking him to “clarify the difference between circumstantial and direct evidence.” R. 272.

The trial judge's jury re-charge per the jury request follows:

The Court: Okay; all right. Direct evidence is the testimony of a person who testifies from actual knowledge of that fact. It is testimony by a person who has perceived the existence of some fact by using his or her senses and then that person comes into

court and they testify as to what they have previously seen, heard, felt or otherwise perceived by the use of his or her senses.

Direct evidence proves the existence of a fact directly and it does not require any deduction or inference in order to establish the fact. Circumstantial evidence, on the other hand, is the proof of some other fact or set of facts, which taken either singly or collectively, and that may prove the existence of another fact as a necessary consequence, that is, by way of a deduction or an inference and an inference is simply a deduction of fact that may logically and reasonably be drawn from the proof of some other fact or set of facts. It is a fact not proven by the direct testimony of a witness based upon that person's perception, but it is a conclusion which might reasonably be drawn from the proof of other facts.

In other words, you may infer that a particular event occurred or you may infer the existence of a particular fact based upon the proof of sufficient factual circumstances, which would reasonably warrant you arriving at a particular conclusion based upon a reasonable deduction or inference from proven facts. R. 272-273.

Trial counsel objected to the jury re-charge on the ground that the trial judge did not instruct the jury also on the "burden (of proof) to the basically circumstantial evidence jury charge." R. 274. The trial judge responded in effect that the jury did not ask for the burden of proof charge and that "if they request, if there's a different standard for burden of proof as it relates, then I'll be happy to provide them with that additional instruction." R. 274.

The trial judge erred in clarifying the differences between direct and circumstantial evidence without adding the burden of proof instruction assigned to direct and circumstantial evidence because the definition of circumstantial and direct evidence and the burden of proof attached to both are inextricably linked to the total analysis of the direct and circumstantial evidence and cannot be separated.

In State v. Logan, 405 S.C. 83, 747 S.E.2d 444 (2013), the Court made it very clear that the jury charge on direct and circumstantial evidence must be accompanied by an analysis of

circumstantial evidence with respect to the weight and value of circumstantial evidence and direct evidence; and further stressed that the jury should be charged that the standard for measuring and analyzing both direct and circumstantial evidence would be the same. The Logan Court noted the importance of the “proper means for evaluating circumstantial evidence” and “how the trial court [might] best instruct a jury as to its analytical responsibility” in assessing the burden of proof for both types of evidence. In other words, the burden of proof for both types of evidence would be attached to the explanation of both types of evidence. Clearly, an explanation of direct and circumstantial evidence must be accompanied by an explanation of the analysis [according to Logan] of assessing the evidence, i.e., the burden of proof required for both types of evidence. The Logan Court held further that circumstantial evidence carries the same probative weight as direct evidence, and that the pertinent inquiry is the proper measure for evaluating circumstantial evidence and direct evidence.

Here, the trial judge’s denial of trial counsel’s request for the burden of proof instruction for assessing direct and circumstantial evidence during the jury re-charge constituted trial error. It was error for the trial judge to exclude the burden of proof analysis for both types of evidence in the jury re-charge so that the jury could process the evidence (both direct and circumstantial) as the burden of proof accompanying the same could not be separated.

The trial judge erred in denying appellant’s request for a jury re-charge instruction on the burden of proof assigned to circumstantial and direct evidence in the case.

QUESTION II

The trial judge erred in denying appellant's motion for a directed verdict on the drug offense charged against him in the case.

At the close of the state's case, trial counsel moved for a directed verdict on the trafficking charge because the state presented insufficient evidence of guilt in its case in chief.

Counsel argued that the clear baggie containing cocaine was found in a neighbor's fenced-in yard, and that there was insufficient proof establishing that appellant was in possession of the baggie and that he dropped the baggie in the neighbor's yard when he jumped over that fence into that yard. A crowd had gathered at the time appellant ran from his vehicle, which meant any number of people, including those who lived in the fenced-in residence might have decided to rid themselves of drugs as police began to arrive at the crime scene area. R. 224-226.

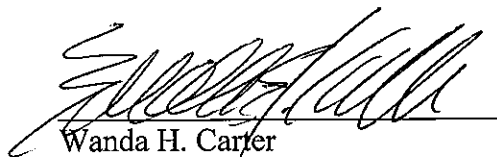
This Court has repeatedly affirmed the principle that when the state fails to produce substantial circumstantial evidence that the defendant committed a particular crime, then the defendant is entitled to a directed verdict. State v. Odems, 395 S.C. 582, 720 S.E.2d 48, (2011). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. State v. Odems, supra. Only if there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused should the case be submitted to the jury.

In the case at bar, there was no substantial circumstantial evidence presented by the state establishing that appellant was in possession of and dropped the clear baggie containing cocaine in the yard of a fenced-in residence at the scene.

The trial judge erred in denying appellant's motion for a directed verdict on the drug offense charged against him in the case.

CONCLUSION

Based on the foregoing arguments, appellant's case should be reversed and remanded, or in the alternate, his conviction and sentence should be vacated.

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of January, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Jan 06 2023
SC Court of Appeals

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AARON MONTEZ DAVIS, JR.

APPELLANT

APPELLATE CASE NO. 2022-000305

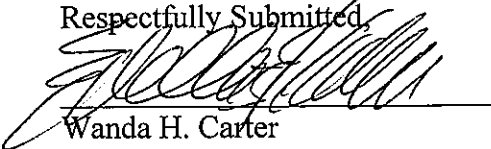
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Aaron Montez Davis states:

1. She is Deputy Chief 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 before Judge J. Derham Cole, which was held on March 8 - 10, 2022, 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, 87 S.Ct. 1396 (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 Aaron Montez Davis.

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of January, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

RECEIVED

Jan 06 2023

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

AARON MONTEZ DAVIS, JR.

APPELLANT

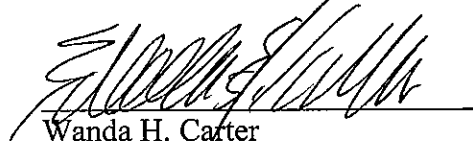
APPELLATE CASE NO. 2022-000305

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire Trial Transcript dated March 8-10, 2022
- (2) Indictment

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



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 6th day of January, 2023.

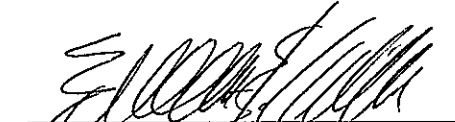
CERTIFICATE OF COUNSEL

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."

RECEIVED

Jan 06 2023

SC Court of Appeals



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 6th day of January, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Jan 06 2023
SC Court of Appeals

Appeal from York County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

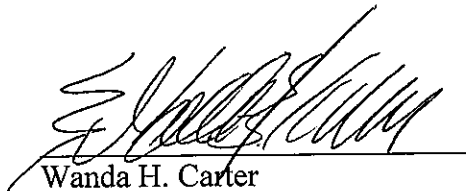
AARON MONTEZ DAVIS, JR.

APPELLANT

APPELLATE CASE NO. 2022-000305

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Aaron Montez Davis, #34548-058, at FCI Butner Medium II, Federal Correctional Institution, P.O. Box 1500, Butner, NC, 27509, this 6th day of January, 2023.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT