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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dillon County

Honorable Michael S. Holt, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSHUA DAREK MANNING,

APPELLANT

APPELLATE CASE NO. 2022-000451

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
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 ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 3

ARGUMENT

The trial judge erred by refusing to direct a verdict of acquittal on the offenses murder, armed robbery, conspiracy, petit larceny, and possession of a weapon during the commission of a violent crime when the state failed to present any direct or substantial circumstantial evidence to support the offenses, particularly where the state conceded there was no evidence whatsoever that Appellant was involved in the armed robbery of the convenience store and murder of the owner besides the testimony of William Mason, a self-confessed criminal who was not credible. 4

CONCLUSION 11

PETITION TO BE RELIEVED AS COUNSEL 12

TABLE OF AUTHORITIES

Cases

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) 8, 10

State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916) 8

State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004) 3

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013) 3

State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009) 9

State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) 8, 9

State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) 8

State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001) 8

State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000) 3, 9

State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999) 9

State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012) 9, 10

State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000) 8

State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) 8, 9

State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006) 8

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by refusing to direct a verdict of acquittal on the offenses murder, armed robbery, conspiracy, petit larceny, and possession of a weapon during the commission of a violent crime when the state failed to present any direct or substantial circumstantial evidence to support the offenses, particularly where the state conceded there was no evidence whatsoever that Appellant was involved in the armed robbery of the convenience store and murder of the owner besides the testimony of William Mason, a self-confessed criminal who was not credible?

STATEMENT OF THE CASE

A Dillion County grand jury indicted Appellant on February 13, 2020 for murder, armed robbery, criminal conspiracy, petit larceny, and possession of a weapon during the commission of a violent crime. R. 272-281. His case was called to trial on March 28, 2022 before the Honorable Michael S. Holt, and a jury. R. 1. Assistant Solicitor Shipp Daniel and Deputy Solicitor Kernard Redmond represented the state. R. 1. Linward Edwards represented Appellant. R. 1.

On March 30, 2022, the jury found Appellant guilty as indicted. R. 258, l. 19 – 259, l. 17. He was sentenced to life without parole for murder, thirty years for armed robbery, five years for conspiracy, five years for the weapons offense, and thirty days for petit larceny. R. 270, ll. 1-12.

This appeal follows.

STANDARD OF REVIEW

"In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict." State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 408 (2013) (citing State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004)). On appeal, when reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the state. Id. at 429, 753 S.E.2d at 409 (citing Cherry, 361 S.C. at 593, 606 S.E.2d at 478); See State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). "If the state has presented any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must affirm the trial court's decision to submit the case to the jury." Id. (quoting Cherry, 361 S.C. at 593-94, 606 S.E.2d at 478) (internal quotation marks omitted).

ARGUMENT

The trial judge erred by refusing to direct a verdict of acquittal on the offenses murder, armed robbery, conspiracy, petit larceny, and possession of a weapon during the commission of a violent crime when the state failed to present any direct or substantial circumstantial evidence to support the offenses, particularly where the state conceded there was no evidence whatsoever that Appellant was involved in the armed robbery of the convenience store and murder of the owner besides the testimony of William Mason, a self-confessed criminal who was not credible.

Relevant Facts

On the night of December 12, 2019, two masked men entered J.W. Bailey's convenience store in Dillion with guns drawn. They quickly approached J.W. Bailey, the owner of the store, who was behind the counter. R. 72, ll. 7-23; R. 73, ll. 9-18. As Bailey reached for his gun, which he always carried in a holster on his waist, both of the intruders opened fire striking Bailey multiple times. The men then stole cash, cigars, and Bailey's gun and holster. They were inside for roughly 39 seconds before fleeing out the front door. R. 72, ll. 15-17. Bailey died of his injuries. R. 113, l. 24 – 115, l. 11.

Shortly after the robbery, William Coward saw two Black men wearing dark clothing run "out of the woods" and cross Highway 301 near the convenience store. R. 184, l. 12 – 185, l. 4. Coward "could tell they [were] walking into the trailer park" on the other side of the highway. R. 185, ll. 18-25. He saw police and emergency medical services at J.W. Bailey's store and "kind of put two and two together." R. 187, ll. 7-12. He immediately called the police and told them what he saw. R. 181, ll. 9-13; R. 187, ll. 13-17. Coward did not recognize the men and could not identify them. R. 186, ll. 9-19.

Police suspected the two men Coward saw were involved in the robbery. Accordingly, investigators requested "the bloodhound tracking team" respond to see if the dogs could assist in tracking and locating the two individuals. R. 60, ll. 6-15. The dog team was unsuccessful in locating any suspects. However, it did find some evidence in the field behind Bailey's store, specifically two one dollar bills and a holster later identified as Bailey's. R. 63, ll. 10-15; R. 64, ll. 5-13; R. 65, ll. 12-20; R. 104, l. 14 – 105, l. 19; R. 205, ll. 5-18.

While surveillance cameras captured the armed robbery, law enforcement was unable to identify the intruders partly because they wore masks and gloves during the robbery. R. 72, ll. 7-14; R. 81, l. 22 – 82, l. 11. Additionally, no fingerprints or DNA were discovered at the scene or on the items recovered from the field behind the store. R. 80, l. 25 – 81, l. 9; R. 86, ll. 6-11; R. 96, ll. 9-13. The murder weapons, identified as a 9 mm handgun and a .45 caliber pistol based on cartridge cases recovered from the store, were never located. R. 86, ll. 24-25; R. 98, l. 22 – 99, l. 21. Due to the lack of evidence, law enforcement had no suspects or leads.

Eventually, William "Taco" Mason was arrested by the Dillion Police Department on unrelated charges. While he was being questioned by that agency concerning the unrelated charges, Mason asked to speak with an officer from the Dillion County Sheriff's Department "about the murder of J.W. Bailey." R. 74, l. 3 – 75, l. 6. Investigators with the sheriff's department later interviewed Mason who admitted he was one of the men who robbed J.W. Bailey's store and shot and killed him. Mason claimed Appellant was the other person involved. R. 75, ll. 3-25.

Mason testified against Appellant at trial. Mason admitted to burglarizing two homes in Dillion with Ty'kese Campbell a mere two days before the armed robbery in this case. At the time of Appellant's trial, Mason was facing two first degree burglary charges and a sentence of

life without parole based on this confessed conduct. R. 154, l. 14 – 155, l. 18; R. 156, l. 12 – 157, l. 20. Mason dropped out of high school in 2016 after he was convicted of breaking into motor vehicles. R. 158, ll. 2-20. After being released from incarceration in 2017, Mason was arrested and convicted of burglary. He served two years in prison. R. 158, l. 21 – 159, l. 7. In 2019, Mason was convicted of shoplifting, assault on a police officer, and giving false information to law enforcement. R. 159, ll. 8-16.

In addition to his significant prior record and his two pending first degree burglary charges, at the time of Appellant's trial, Mason was also facing murder, armed robbery, conspiracy, petit larceny, and possession of a weapon during the commission of a violent crime charges related to this case. R. 145, ll. 2-6. He testified that he was "hoping" to receive "a lesser sentence" in exchange for his testimony against Appellant, such as twenty to twenty-five years. However, he did not have a plea deal with the state. R. 146, l. 10 – 147, l. 18; R. 166, ll. 2-14.

Mason claimed that on the evening of December 12, 2019, he walked from his apartment to Appellant's trailer on Walker Court to "chill" and smoke weed. R. 123, l. 2 – 125, l. 9. As he and Appellant were smoking, "conversation came up about robbing." R. 125, ll. 16-17. Mason testified the pair planned to rob stores in Florence, but "the car wouldn't start." R. 125, l. 19 – 126, l. 9. Because they did not have a ride, Mason claimed they decided they would "just do J.W.'s store right there." R. 127, ll. 6-9. They left Appellant's trailer on foot and walked down Highway 301 to J.W. Bailey's store. R. 133, ll. 6-17. According to Bailey, they were both armed. Mason had a nine millimeter handgun and Appellant allegedly had a .45 caliber pistol. R. 131, ll. 7-18. However, Mason claimed the two traded guns because Mason wanted Appellant's nine millimeter since it had a thirty round extended clip. R. 131, l. 25 – 132, l. 22.

When the men arrived outside J.W. Bailey's store, they stopped on the side of the building and put on masks. R. 134, ll. 9-20. Mason entered the store first, followed allegedly by Appellant. R. 134, ll. 21-23. Both men had their guns drawn and pointed at Bailey. Mason told Bailey to "put his hands up." However, Bailey started reaching for his gun. Mason claimed that while he was trying to stop Bailey from getting his gun, he "heard a shot go off." R. 135, ll. 1-24. According to Mason, Appellant fired multiple times. Mason admitted he also shot Bailey. R. 135, l. 21 – 136, l. 6. Once Bailey fell, the two quickly grabbed cash. Mason also took Bailey's gun and holster and Appellant grabbed cigars. R. 136, l. 9 – 137, l. 7. They fled out the front door, ran through the field behind the store, jumped a fence, ran through the woods and across Highway 301 until they eventually reached Appellant's trailer. Once there, they split the money, about four hundred dollars. R. 137, l. 8 – 139, l. 21. Mason allowed Appellant to keep Bailey's gun. R. 140, ll. 3-19. After Appellant's aunt drove Mason home, he never talked to Appellant again. R. 142, l. 3 – 144, l. 11.

At the conclusion of the state's case, Appellant moved for a directed verdict. Defense counsel argued there was no evidence against Appellant except for the statement from William Mason, "a very undesirable witness." R. 207, ll. 3-12. The trial judge denied the motion. R. 207, ll. 19-20.

The lead investigator and the assistant solicitor who tried the case repeatedly admitted that the only evidence against Appellant was the statement and testimony of William Mason. R. 81, ll. 10-12. The solicitor told the jury during his closing argument that the whole case "comes down to" William Mason and acknowledged that Mason's "story" was all the evidence the state had. R. 218, ll. 18-20. He asserted, "[I]f you believe William Mason beyond a reasonable doubt,

then it's over, Joshua Manning's [Appellant is] guilty. If you believe Mason's story, that's it, he's guilty." R. 218, ll. 21-24.

Discussion

The trial judge erred by denying Appellant's motion for a directed verdict when the state failed to present any direct or substantial circumstantial evidence that Appellant was involved in the armed robbery and murder of J.W. Bailey. The assistant solicitor conceded at trial that there was no evidence whatsoever that Appellant was involved in the armed robbery of the convenience store and murder of the owner besides the testimony of William Mason, a self-confessed criminal who was not credible.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant's favor unless there is substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced. State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is appropriate when the evidence produced "merely raises a suspicion the accused is guilty." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322

S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Our courts define suspicion as "a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963). See also State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012) (using the traditional circumstantial evidence jury charge to explain how a trial judge should evaluate circumstantial evidence at the directed verdict stage); State v. Hernandez, 382 S.C. 620, 626 n.2, 677 S.E.2d 603, 606 n.2 (2009) (same).

In State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000), our Supreme Court held the trial court 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 State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001), 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. Id. 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), our Supreme 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.

Here, the only evidence against Appellant was the testimony of William Mason, who was simply not credible. Mason had a significant criminal record along with numerous pending charges, several of which carried a potential sentence of life without parole. The state failed to present sufficient direct and circumstantial evidence of Appellant's guilt to survive a directed verdict. Accordingly, the trial judge erred by denying Appellant's motion at the conclusion of the state's case.

Respectfully, because of the lack of evidence against Appellant, this Court should direct a verdict of acquittal for the offenses of murder, armed robbery, criminal conspiracy, petit larceny, and possession of a weapon during the commission of a violent crime.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court grant a directed verdict of acquittal on all charges.

Respectfully submitted,

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

ATTORNEY FOR APPELLANT

This 10th day of March, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dillon County

Honorable Michael S. Holt, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSHUA DAREK MANNING,

APPELLANT

APPELLATE CASE NO. 2022-000451

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joshua Darek Manning 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 March 28-30, 2022 before the Honorable Michael S. Holt, 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 Joshua Darek Manning.

Respectfully Submitted,

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

ATTORNEY FOR APPELLANT

This 10th day of March, 2023.

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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 March 28-30, 2022;
(2) Indictments;
(3) Sentence Sheets.

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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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

This 10th day of March, 2023.

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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

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

This 10th day of March, 2023.