STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JIOVAANI ARANZA GALLEGOS,

APPELLANT.

APPELLATE CASE NO. 2021-000689

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Did the trial judge err in refusing to direct a verdict of acquittal for habitual traffic offender with death resulting when the State failed to prove that Appellant committed an act forbidden by law while driving or neglected a duty imposed by law while driving, an element of the offense, when Appellant told law enforcement that he thought he hit a deer, stopped, did not see anything, and drove home?

STATEMENT OF THE CASE

In March of 2019, the Beaufort County Grand Jury indicted Appellant, Jiovaani Aranza Gallegos, for being a habitual traffic offender with death resulting, indictment #2108-GS-07-1487. (R. p. ** habitual traffic offender indictment). In April of 2019, the Beaufort County Grand Jury indicted Appellant for hit and run with death resulting, indictment #2018-GS-07-1486. (R. p. *, hit and run indictment). On October 19, 2020, Appellant proceeded to jury trial before the Honorable Carmen T. Mullen. Claire Schulmeister represented Appellant at trial. Jared Shedd prosecuted the case. The jury returned verdicts of guilty as charged. Judge Mullen sentenced Appellant to twenty (20) years concurrent for each charge. (R. pp. **, sentencing sheets)

On October 30, 2020, counsel for Appellant filed a motion for directed verdict or, alternatively, a new trial. (R. p. **). On November 2, 2020, counsel for Appellant filed a motion for reconsideration of sentence. (R. p. **). On May 25, 2021, counsel for Appellant filed an amended motion for reconsideration of sentence. (R. p. **). On that same day, May 25, 2021, Judge Mullen held a hearing on both the motion for directed verdict or, alternatively, a new trial and the motion for reconsideration of sentence. On June 16, 2021, Judge Mullen issued a written order denying the motion for new trial. (R. p. **). The motion to reconsider sentence was not addressed in the order denying the motion for new trial. A timely notice of intent to appeal was served on June 25, 2021.

On February 24, 2022, appellate counsel filed a motion to hold the appeal in abeyance and remand for a ruling on the pending motion to reconsider sentence. (R. pp. **). On April 4, 2022, this Court granted the remand motion. (R. p. **). On November 28, 2022, Judge Mullen denied the motion to reconsider sentence. (R. p. **). A timely amended notice of intent to appeal and a

motion to take the case out of abeyance was filed on December 1, 2022. (R. p. **). This appeal follows.

STANDARD OF REVIEW

"A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused 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) (quoting State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)). "Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt." Id. "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." Id. at 139, 708 S.E.2d at 776-777. "On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the state." Id. at 139, 708 S.E.2d at 777; see also State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). If the state failed to present any direct evidence or any substantial circumstantial evidence reasonably tending to prove guilt of the accused, the appellate court must reverse the lower court's denial of the directed verdict motion. Hepburn, 406 S.C. at 429, 753 S.E.2d at 409.

ARGUMENT

The trial judge erred in refusing to direct a verdict of acquittal for habitual traffic offender with death resulting when the State failed to prove that Appellant committed an act forbidden by law while driving or neglected a duty imposed by law while driving, an element of the offense, when Appellant told law enforcement that he thought he hit a deer, stopped, did not see anything, and drove home.

On September 1, 2018, at approximately 5:00 AM Hilton Head Island Fire and Rescue responded to a 911 call in reference to a body in the road. (Tr. pp. 165-167). The person in the road was pronounced dead. (Tr. pp. 167-168). The paramedic who responded testified that he also observed a bicycle and other personal belongings near the body. (Tr. p. 168, lines 20-25). The deceased was identified as Luis Lorenzano. (Tr. p. 171, lines 5-12).

At trial Appellant's next door neighbor on Outlaw Road, John Ross, testified that he saw headlights from his neighbor's van at 4:00 AM on September 1, 2018. (Tr. p. 194, lines 3-9). Between 7:15 AM and 7:30 AM Ross looked out and noticed that the windshield and hood of the van was damaged. (Tr. p. 195, lines 5-7). Ross called his brother, who also lived close by, and said, "I think that they hit a deer or something." (Tr. p. 195, lies 7-9). Ross testified that at 8:00 AM he saw Appellant wiping the van down. (Tr. p. 195, line12 – p. 196, 197, lines 1-18). Ross became suspicious and called the police. (Tr. p. 198, lines 14-25).

Officers arrived at Outlaw Rd. and saw the van with damage. (Tr. pp. 231-232). Daniel Garland Cox, formerly with the South Carolina Highway Patrol testified that he obtained search warrants for the residence, curtilage and the vehicle as well as an arrest warrant. (Tr. p. 183, lines 8-24). Appellant was arrested and transported to the detention center. (Tr. p. 184, lines 5-8). Sergeant Seth Reynells with the Beaufort County Sheriff's Department testified that he waited on a search warrant and then processed the van. (Tr. p. 213, line 1 – p. 214, lines 1-11). The van was towed to a secure facility and a few days later processed by Corporal Jessea James with the

Multidisciplinary Accident Investigation Team [MAIT] of the South Carolina Highway Patrol. (Tr. p. 248, lines 1-9; p. 267, line 9 – p. 268, lines 1-11). Corporal James was qualified, over objection, as an expert in in the field of accident reconstruction. (Tr. p. 266, lines 18-23). Corporal James testified that in his opinion the van struck the back of the bicycle. (Tr. p. 308, line 1 – p. 309, lines 1-12). State's exhibit #17, introduced over objection, is a CAD drawing showing a van striking the back of a bicycle in the middle of the road. (Tr. p. 285, line 14 – p. 286, lines 1-12; R. p. **, State's exhibit #17). Corporal James testified that the collision occurred in the right middle of the roadway. (Tr. p. 279, lines 2-5). DNA from a swab from the windshield of the van matched the DNA profile of the deceased. (Tr. p. 364, lines 3-8).

Appellant was interviewed by Master Trooper John Conley. The interview was recorded and admitted in evidence as State's exhibit #25. (Tr p. 330, lines 1-18). Appellant told the officer that he thought he hit a deer. (Tr. p. 340, lines 23-24). Appellant told the officer that he stopped, looked around and did not see anything so he drove home. (Tr. p. 340, line 14 – p. 341, lines 1-10). Corporal James testified that he when he went to the scene of the accident three days later he found a flashlight. (Tr. p. 274, lines 13-14). In later testimony it was referred to as a bike light. (Tr. p. 304, lines 22-25). Corporal James admitted that he did not recall any bike mounts on the bike where a light could be attached. (Tr. p. 305, lines 4-9). The State presented no evidence that the bike had rear red reflectors. The State presented no evidence that at the time of the accident that the deceased was wearing a helmet or any reflective clothing.

The jury found Appellant guilty of hit and run with death resulting in violation of S.C. Code §56-5-1210(A)(3) and §56-5-1230 and habitual traffic offender [HTO] when death results in violation of §56-1-1105(B)(2). The HTO indictment alleges that while being a habitual offender Appellant drove while his license was suspended and "failed to maintain a safe operating distance

between the motor vehicle and a bicycle, pursuant to Section 56-5-3435, all in violation of Section 56-1-1105(B)(2), et al. of the Code of Laws of South Carolina." (R. p. **, back of indictment for HTO). At the close of the State's case, Appellant moved for directed verdicts. With regard to the HTO charge counsel argued that the State had to prove six elements. (Tr. p. 385, lines 8-11). Counsel argued that the State failed to prove the third element, the driving took place on a public highway. (Tr. p. 385, lines 13-25). Counsel additionally argued that the State failed to prove the fifth element, that the defendant did an act forbidden by law. (Tr. p. 386, lines 1-4). Counsel argued, "In this case it would be maintaining a safe distance from a bicycle pursuant to the Traffic Code Section 56-5-3435. There was no evidence in this case that Mr. Gallegos saw Mr. Lorenzano on a bicycle." (Tr. p. 386, lines 4-7).

As to the third element, the judge found the State presented evidence the accident took place on a public highway. (Tr. p. 388, lines 4-20). As to the fifth element, the judge stated:

> Also, your argument that there was not evidence that he maintained a safe distance from the bicycle. It would be a violation of the law that needs to be shown. I do think there was certainly evidence from Jessea James, the MAIT investigator, as well as others that striking a bike – with his testimony – stating that the bicycle was in the roadway. I know you can say it wasn't. I think that is an argument. I think his testimony alone is enough. Certainly, if he considers it substantial evidence then a jury can deduce that your client was in violation of that specific law. I think all of the other elements are met, either by stipulation – there was evidence showing that a jury could determine that they were met. I think it's a jury issue.

The trial judge erred in refusing to direct a verdict of acquittal when the State failed to prove that Appellant failed to maintain a safe operating distance between the motor vehicle and a bicycle, pursuant to Section 56-5-3435. In order to prove that Appellant failed to maintain a safe operating distance, the State had to prove that Appellant saw the deceased on the bicycle. Under the facts of this case where the deceased was riding a bicycle in the middle of the road in the dark with no reflective clothing the State failed to prove that Appellant saw the deceased on the bicycle so that

he could maintain a safe distance as required by law. The State failed to prove this violation of law, as alleged in the indictment. A violation of law is an element of the HTO offense.

S.C. Code Ann. §56-5-3470 provides:

> A bicycle when in use at nighttime must be equipped with a lamp on the front which must emit a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear that must be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of the lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

The State failed to prove that the bicycle operated by the deceased was equipped with a front lamp and rear red reflector as required by law. As a result, this was an accident, not a violation of law on the part of Appellant.

In State v. Brown, 360 S.C. 581, 586–87, 602 S.E.2d 392, 395 (2004), the South Carolina Supreme Court wrote:

> When a motion for a directed verdict of acquittal is made in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Morgan, 282 S.C. 409, 319 S.E.2d 335 (1984). The accused is entitled to a directed verdict when the evidence merely raises a suspicion of guilt. State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984); State v. Brownlee, 318 S.C. 34, 455 S.E.2d 704 (Ct.App.1995). The accused also is entitled to a directed verdict when the State fails to present evidence on a material element of the offense charged. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001); State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. Gore, 318 S.C. 157, 456 S.E.2d 419 (Ct.App.1995). However, if the State presents any evidence which reasonably tends to prove the defendants guilt, or from which the defendants guilt can be fairly and logically deduced, the case must go to the jury. On appeal from the denial of a motion for directed verdict, this Court must view the evidence in a light most favorable to the State. State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (1989); Schrock, 283 S.C. at 132, 322 S.E.2d at 452.

In the present case, viewing the evidence in the light most favorable to the State, the State failed to present evidence that Appellant violated the law by failing to maintain a safe distance, a material

element of HTO. Appellant was entitled to a directed verdict of acquittal. The trial judge erred in refusing to direct a verdict of acquittal.

CONCLUSION

Based on the above argument, this Court should reverse the conviction for HTO and remand for a directed verdict of acquittal.

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ATTORNEY FOR APPELLANT

This 5th day of April, 2023.