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Jun 30 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CODRIAN D. SMALLS,

APPELLANT

APPELLATE CASE NO. 2022-000709

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

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

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by refusing to direct a verdict for the offenses of assault with intent to commit first degree criminal sexual conduct, kidnapping, first degree burglary, armed robbery, 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 charges?

STATEMENT OF THE CASE

A Beaufort County grand jury indicted Appellant on September 10, 2020 for kidnapping, armed robbery, first degree burglary, and possession of a weapon during the commission of a violent crime, and on October 7, 2021 for assault with intent to commit first degree criminal sexual conduct (CSC). R. 492-503. His case was called to trial on November 8, 2021 before the Honorable Robert J. Bonds, and a jury. R. 1. Assistant Solicitor Hunter Swanson represented the state. R. 1. Courtney Gibbs and Taylor Diggs represented Appellant. R. 1.

On November 10, 2021, the jury found Appellant guilty as indicted. R. 466, l. 25 – 467, l. 20. He was sentenced to thirty years for assault with intent to commit first degree CSC, fifteen years for kidnapping, ten years for armed robbery, fifteen years for first degree burglary, and two years for the weapons offense. R. 484, l. 2 – 485, l. 9. All sentenced were ordered to be served concurrently. Tr. 485, ll. 7-9.

On November 18, 2021, Appellant filed a motion for a new trial. R. 489. The motion was denied by order filed May 13, 2022. R. 490-491.

This appeal follows.

STANDARD OF REVIEW

“On appeal of the denial of a directed verdict of acquittal,” the reviewing court “must look at the evidence in the light most favorable to the state.” State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 777 (2011); See 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 416, 429 S.E.2d at 409.

ARGUMENT

The trial judge erred by refusing to direct a verdict for the offenses of assault with intent to commit first degree criminal sexual conduct, kidnapping, first degree burglary, armed robbery, 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 charges.

Relevant Facts

Deborah Snelgrove and her husband, Sidney, who lived in Key West, Florida, bought property on St. Helena Island in 2003 to use as a “second home” during the summers. R. 247, l. 14 – 248, l. 9. The property consisted of a larger two story house and a smaller one story guest cottage. While the couple initially stayed in the main house when visiting the property, they eventually began staying in the guest cottage after it became impossible for Sidney to move around the two story house due to his health. R. 248, l. 13 – 249, l. 21. Sidney died in September 2018. R. 249, ll. 22-24.

After Sidney died, Deborah sought to sell the property on St. Helena Island because it had become a financial burden. R. 250, ll. 1-7. She returned to the property from Key West in April 2019 to prepare the property, which was in need of repairs, for sale. R. 250, ll. 1-12. On August 24, 2019, Deborah briefly flew back to Key West to meet with her lawyers in an effort to settle her husband’s estate. R. 250, ll. 13-24. She returned to St. Helena Island on August 29, 2019. R. 250, l. 24 – 251, l. 20.

After picking up her dogs, who she had boarded at a local animal clinic while she was away, Deborah arrived home around 12:30 in the afternoon. R. 251, ll. 11-20. She unloaded her suitcases from her van and put them in her bedroom in the guest cottage. App. 252, ll. 1-7. Because she was exhausted, Deborah decided to lay down on the couch in the living room and

watch a movie she had previously recorded. R. 252, l. 14 – 253, l. 16. Before she laid down, she “rolled a joint” containing marijuana and took a “couple puffs.” R. 253, ll. 11-16. She fell asleep within minutes of turning on the movie. R. 253, ll. 11-20.

Deborah claimed she woke up when a man, who she identified as Appellant, pushed on her shoulder. R. 254, ll. 8-13. According to Deborah, Appellant was standing behind the couch. She did not recognize him, she did not know his name, and she did not invite him into her house. R. 254, ll. 16-22. Deborah leapt up and immediately confronted the man. She demanded to know why he was in her house and ordered him to leave. R. 254, l. 12 – 255, l. 6. She began moving him toward the kitchen and was eventually successful in getting him out onto the porch which led to her driveway. R. 255, l. 7 – 256, l. 1. This is the same door through which Deborah believed the man had entered. R. 256, ll. 9-11. The man walked to a “home painted, bright pink girl’s bicycle” that was laying on the ground next to Deborah’s van. Deborah watched as the man rode the bicycle away. R. 258, l. 12 – 259, l. 2. He rode toward the gate, but she did not see the man actually leave the property. R. 259, ll. 3-8.

Deborah went back inside and sat down on the couch in the living room. She knew something was “wrong,” but instead of calling the police, Deborah decided to go get her gun from her bedroom. R. 259, ll. 12-21. Her bedroom was on the other end of the guest cottage and to get there, she had to walk outside and through a breezeway. As soon as Deborah stepped outside, the man allegedly put a gun to her head. R. 259, l. 22 – 260, l. 1. He continued to point the gun at her and said, “Let’s go get this done.” R. 260, ll. 7-8.

The man led Deborah back into the house, and after some discussion, forced her into the bathroom at gunpoint. R. 262, l. 20 – 263, l. 1. He closed the door and put his gun on the sink. Deborah claimed the man made her “strip down” and turn around. R. 263, ll. 1-4. She recalled

conversing with the man in an effort to “buy time.” R. 263, ll. 6-10. She told him, “I’m an old woman. I’m dry. You don’t want to. It’s going to be awful.” Deborah claimed the man “put his two fingers inside [her] vagina” and told her she “was wet.” R. 263, ll. 15-19. He then picked her up and laid her on the floor. R. 263, ll. 6-23. Deborah said the man, who was naked, got on top of her and “pressed his penis against [her] vagina.” R. 263, ll. 10-24. He then demanded three thousand dollars. R. 263, l. 23 – 264, l. 1. According to Deborah, the man said she could transfer the money to him using her iPhone. Deborah told him she did not know how, but that she would write him a check or take him to the bank. R. 263, l. 1 – 264, l. 8. The man kept saying, “If I just had \$3,000, I could make my life right.” R. 264, ll. 9-11.

According to Deborah, the two eventually stood up and the man allowed her to put her clothes back on. They went out into the living room and continued to discuss how Deborah could transfer him money. The man rifled through Deborah’s purse and took about \$126 in cash. He also “played” with her cellphone. She assumed he was trying to figure out how to use her phone to transfer funds. R. 264, l. 18 – 266, l. 18.

While they were in the living room, the man asked Deborah where she kept her gun. She told him the gun was in her bedroom. The man led Deborah to her bedroom and laid her across the bed on her stomach. He found the gun in her nightstand along with “the case and the clips and the bullets.” R. 266, l. 19 – 267, l. 8. He also found some marijuana in the drawer of her makeup table. R. 269, ll. 7-13. Deborah claimed the man then assaulted her. He licked her back and “tried to put his penis” inside her. R. 269, ll. 14-17. Once this concluded, the man led Deborah back to the living room. R. 269, ll. 19-21.

At some point during their conversations, the man told Deborah that he was one of the neighborhood children who used to play on her property. However, Deborah did not recognize

him. She had not seen any of the children in years and did not watch them grow up. R. 269, l. 22 – 270, l. 5.

Deborah also described a third “assault.” She claimed the man took her back to her bedroom at some point and penetrated her vagina with his penis. She believed he had a condom on because it was very painful. R. 271, ll. 15-22. They eventually returned to the living room. R. 272, ll. 7-9. The man made a “big deal” about Deborah’s gun and was “excited” it had hollow point bullets. R. 268, ll. 15-25; R. 272, ll. 13-20. According to Deborah, “he seemed to have lost sight of the \$3,000.” R. 272, ll. 10-12.

The man eventually packed up his backpack and left on the pink bicycle. R. 274, l. 14 – 276, l. 17. As he was walking out the door, Deborah claimed the man showed her how he was able to enter the house. He said, “Oh, you know, by the way, you ought to do something about this. You see, I was able to slip this hook.” R. 276, ll. 4-9.

As soon as the man left on the pink bicycle, Deborah ran barefooted to a neighbor’s house, who called 911. R. 276, l. 16 – 280, l. 9. Deborah gave a description of the man to the 911 operator, including the fact that he had a large tattoo of angel wings on his chest. She also described the pink bicycle. Deputies responding to the scene stopped a man on a pink bicycle minutes later, but the man did not have a tattoo on his chest and was released. R. 225, l. 2 – 226, l. 10.

After meeting with deputies, Deborah went to Beaufort Memorial Hospital later that evening. R. 280, l. 22 – 282, l. 12. She was seen by a “sexual assault nurse examiner” who collected a “rape kit.” R. 312, l. 18 – 314, l. 25. The nurse collected vaginal swabs and fingernail scrapings as well as Deborah’s clothing. R. 318, l. 8 – 319, l. 19; R. 326, ll. 3-23.

Deborah had no visual injuries or bruising. R. 324, l. 15 – 325, l. 11. Surprisingly, despite being directly asked, Deborah said the man did not lick her. R. 327, ll. 8-14.

The following day, Deborah was shown a six pack photographic lineup. She identified Appellant as the perpetrator in this lineup. R. 333, l. 9 – 335, l. 13.

The forensic DNA analyst could not develop any DNA profile from the vaginal swabs or the fingernail scrapings. R. 354, ll. 9-20. However, he discovered a mixture of two individuals' DNA on Deborah's underwear, bra, shirt, jeans, and belt. Unsurprisingly, Deborah's DNA was found on all her clothing. R. 356, l. 6 – 358, l. 15. The analyst then used "likelihood ratios" to determine if Appellant's DNA was a possible contributor to the DNA mixture found on all five pieces of clothing. Assuming Deborah Snelgrove was a known contributor to the mixture of DNA found on the underwear, a match to Appellant was 1.26 nonillion times more likely than a coincidental match to an unrelated individual. Assuming Deborah Snelgrove was a known contributor to the mixture of DNA found on the bra, a match to Appellant was 1.52 nonillion times more likely than a coincidental match to an unrelated individual. Assuming Deborah Snelgrove was a known contributor to the mixture of DNA found on the shirt, a match to Appellant was 1.54 nonillion times more likely than a coincidental match to an unrelated individual. Assuming Deborah Snelgrove was a known contributor to the mixture of DNA found on the jeans, a match to Appellant was 1.54 nonillion times more likely than a coincidental match to an unrelated individual. Lastly, assuming Deborah Snelgrove was a known contributor to the mixture of DNA found on the belt, a match to Appellant was 54.5 septillion times more likely than a coincidental match to an unrelated individual. R. 358, l. 16 – 361, l. 5.

At the conclusion of the state's presentation of evidence, Appellant moved for a directed verdict. Defense counsel argued that, in the light most favorable to the state, the state had not

met its burden of proof. R. 370, l. 19 – 371, l. 7. The trial judge denied the motion. He found Deborah Snelgrove’s “testimony alone . . . [was] sufficient to allow [the] matter to go to the jury.” R. 372, ll. 6-15.

Discussion

The trial judge erred by refusing to direct a verdict for the offenses of assault with intent to commit first degree criminal sexual conduct, kidnapping, first degree burglary, armed robbery, 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 charges.

“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)).

In State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000), our Supreme Court held the lower court erred in failing to direct a verdict where the only evidence presented against the defendant was his fingerprint at the scene of the burglary. Likewise, the Court in Lollis directed a verdict of acquittal in the defendant’s favor 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 held this evidence was insufficient. Lollis, 343 S.C. at 584-85, 541 S.E.2d at 256-57.

In State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012), the Court held the defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that the defendant was involved in the burglary. Although Odems was in a car with other individuals who admittedly burglarized a home, 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), the 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 victim 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 137-41, 708 S.E.2d at 775-78. The other evidence presented against Bostick was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the victim's home, and DNA from blood on Bostick's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. Id. at 142, 708 S.E.2d at 778.

Appellant was tried for assault with intent to commit first degree criminal sexual conduct, kidnapping, armed robbery, first degree burglary, and possession of a weapon during the commission of a violent crime. Assault with intent to commit first degree CSC is codified in S.C. Code Ann. § 16-3-656. This section references the section codifying first degree CSC, S.C. Code Ann. § 16-3-652, which states in relevant part, “(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven: (a) The actor uses aggravated force to accomplish the battery; (b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, . . . robbery, extortion, burglary, housebreaking, or any other offense or act. . . .”

South Carolina Code Ann. § 16-3-910 defines kidnapping as: “Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away any other person by any means whatsoever without authority of law . . . is guilty of a felony.” “Kidnapping is a continuous offense which ‘commences when one is wrongfully deprived of freedom and continues until freedom is restored.’” State v. East, 353 S.C. 634, 637, 578 S.E.2d 748, 750 (Ct. App. 2003) (quoting State v. Tucker, 334 S.C. 1, 13, 512 S.E.2d 99, 105 (1999)); See State v. Hall, 280 S.C. 74, 310 S.E.2d 429 (1983).

South Carolina Code Ann. § 16-11-330(A) defines armed robbery as: “A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony.”

South Carolina Code Ann. § 16-11-311(A) defines first degree burglary in relevant part as: “A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either: (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: (a) is armed with a deadly weapon or explosive; or (b) causes physical injury to a person who is not a participant in the crime; or (c) uses or threatens the use of a dangerous instrument; or (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm.

Finally, possession of a weapon during the commission of a violent crime is defined in S.C. Code Ann. § 16-23-490 as: “If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years.”

The state failed to present any direct or substantial circumstantial evidence to support these charges. The state’s main evidence was the testimony of Deborah Snelgrove, who was not credible. She claimed the perpetrator was not motivated by sexual gratification and was merely “using his penis as a weapon.” However, she also explained that the man willing left her house without the three thousand dollars he supposedly demanded. Deborah’s account of what occurred made little sense. There simply was not sufficient evidence to submit the case to the

jury. Respectfully, this Court should hold the trial judge erred and direct a verdict of acquittal for all charges.

CONCLUSION

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

Respectfully Submitted

s/ Lara M. Caudy _____

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of June, 2023.

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STATE OF SOUTH CAROLINA
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Appeal from Beaufort County

Honorable Robert J. Bonds, Circuit Court Judge

THE STATE,

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V.

CODRIAN D. SMALLS,

APPELLANT

APPELLATE CASE NO. 2022-000709

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Codrian D. Smalls 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 8-10, 2021 before the Honorable Robert J. Bonds, 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 Codrian D. Smalls.

Respectfully Submitted,

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

ATTORNEY FOR APPELLANT

This 30th day of June, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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THE STATE,

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CODRIAN D. SMALLS,

APPELLANT

APPELLATE CASE NO. 2022-000709

**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 November 8-10, 2021;
- (2) State's Exhibit No. 1 (Photographic Lineup);
- (3) Motion for New Trial filed November 18, 2021;
- (4) Order filed May 13, 2022;
- (5) Indictments;
- (6) 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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PO Box 11589
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ATTORNEY FOR APPELLANT

This 30th day of June, 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.”

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s/ Lara M. Caudy _____
Lara M. Caudy
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CODRIAN D. SMALLS,

APPELLANT

APPELLATE CASE NO. 2022-000709

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case have been served upon William M. Blich, Jr., Esquire, at his primary email address listed in the Attorney Information System (AIS), which is wblitch@scag.gov; and on Codrian D. Smalls, #386493, at Kershaw Correctional Institution, 4848 Gold Mine Highway, Kershaw, SC 29067, this 30th day of June, 2023.

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

ATTORNEY FOR APPELLANT

From: [Bryant, Hannah](#)
To: [SC - BLITCH WILLIAM](#); [SC - COLLINS CAROLINE](#); [Caudy, Lara](#)
Subject: Codrian Smalls Appellate Case No. 2022-000709 Anders Brief of Appellant
Date: Friday, June 30, 2023 3:51:00 PM
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[Codrian Smalls Appellate Case No. 2022-000709 Record Volume I.pdf](#)
[Codrian Smalls Appellate Case No. 2022-000709 Record Volume II.pdf](#)

Dear Mr. Blitch,

Please find attached for service a copy of the Anders Brief of Appellant and Record on Appeal in the above referenced case, which will be filed in the Court of Appeals today.

Hannah Bryant

Administrative Assistant
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