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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2021-000689

THE STATE,

Respondent,

v.

JIOVAANI ARANZA GALLEGOS,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge correctly denied Appellant's motion for directed verdict because the State provided sufficient evidence demonstrating Appellant was doing an act forbidden by law by failing to maintain a safe distance from a bicycle.

STATEMENT OF THE CASE

Jiovaani Aranza Gallegos (“Appellant”) was indicted by a Beaufort County Grand Jury in March 2019 for being a habitual traffic offender with death resulting and in April 2019 for hit and run with death resulting, respectively. Appellant proceeded to trial before the Honorable Carmen T. Mullen and a jury from October 19–21, 2020. Claire Schulmeister, Esq. represented Appellant at trial. The jury convicted Appellant of both counts. Judge Mullen subsequently sentenced Appellant to two years imprisonment for hit and run with death resulting and twenty years for habitual traffic offender with death resulting, to be served concurrently.

On October 30, 2020, Appellant filed a motion for directed verdict or, alternatively, a new trial. On November 2, 2020, Appellant filed a motion for reconsideration of sentence. On May 25, 2021, Appellant filed an amended motion for reconsideration of sentence. On that same day, Judge Mullen held a hearing on the directed verdict/new trial motion and the reconsideration of sentence motion. On June 16, 2021, Judge Mullen issued a written order denying the motion for a new trial but did not address the motion for reconsideration of sentence. A timely notice of appeal was served on June 25, 2021.

On February 24, 2022, Appellant filed a motion to hold the appeal in abeyance and remand for a ruling on the pending motion to reconsider sentence. On April 4, 2022, this Court granted the remand motion and on November 28, 2022, Judge Mullen denied the motion to reconsider sentence. Appellant then filed a timely notice of appeal and a motion to take the case out of abeyance December 1, 2022.

This appeal follows.

STATEMENT OF FACTS

In the early morning of September 1, 2018, Julie Washington was driving to work on New Orleans Road on Hilton Head Island when she saw the body of a man lying down on the side of the road, whereafter she called 911. (Tr. 160—Tr. 161). When emergency personnel responded around five in the morning, the Victim was pronounced dead at the scene.¹ (Tr. 167, ll. 24-25). While there, responders observed Victim’s bicycle near him and his personal effects “scattered throughout the scene” in a “20-yard radius.” (Tr. 168). Victim was identified as Luis Lorenzано by his wallet. (Tr. 171). Earlier that morning, around four, Appellant’s next-door neighbor John Ross was at his computer when he saw the light from Appellant’s van pulling up. A few hours later, after sunrise, Ross looked out his window again and “noticed that the windshield was all crushed in and the hood was all banged.” (Tr. 194—Tr. 195). An hour later, Ross “noticed [Appellant] outside wiping down the hood and the windshield, and that is when [he] said that something is not right there.” (Tr. 195, ll. 12-17). Shortly thereafter, Ross called the police. (Tr. 198).

Police obtained a search warrant for the van and began processing it on scene parked near Appellant’s home at 18 Outlaw Road.² (Tr. 213; Tr. 231—Tr. 232). Along with photographing the damage that Ross described, investigators also photographed “streaks of something” on the left side of the car “consistent with blood,” “hair follicles” on the windshield, “black streaks” on a headlight cover consistent with an impact with a bicycle, and “streaking on portions of the

¹ Responders observed “crashing head injuries,” “gray matter [. . .] pooling around,” “road rash,” “facial deformity, fa[c]ial injuries.” (Tr. 168).

² Officer testimony would later indicate that Appellant’s home was between 8 to 10 miles from the scene of the accident. (Tr. 220).

vehicle consistent with wiping it down.” Responding officers also detected a “cleaning solution smell” coming from the front of the van.³ (Tr. 214—Tr. 216; Tr. 223; Tr. 234—Tr. 236).

Trooper Jessea James, an expert in accident reconstruction from the Highway Patrol’s MAIT unit (Multi-disciplinary Accident Investigation Team), took the stand to testify. (Tr. 263).

While looking at photos of the front of the car, Trooper James testified as follows:

[W]e’ll start down at the bumper, right below the Honda symbol [. . .] This is an indicator of when the vehicle struck the bicycle. So, the rim will cause that damage in that metal, I’m sorry, in that plastic bumper.

Further up on the hood, you’ll see it crumpled and crinkled in. That is caused by the body of bicyclist just after it was struck. The velocity of the car was still traveling faster than the bicyclist and he had pushed – he gets driven basically into the hood. So his body comes down and makes an impression on the hood.

(Tr. 271, ll. 2-12). Regarding State’s Exhibit #22, a picture of the windshield looking into the van, Trooper James stated “[t]his is the hair of the victim in this case. It appears that the hole [in the windshield] was caused by his head and actually left hair on the entertainment center on the center dashboard of the car.” (Tr. 273). Regarding the collision itself, Trooper James testified that the collision “occurred in the roadway [. . .] more on the like, right middle” and the vehicle was estimated to be traveling “33 to 41 miles an hour.” (Tr. 279). Regarding the bicycle and Victim’s body, James testified:

A. [T]he bike was actually pushed forward from the car. There’s no indication that it was ever ran over or went under the undercarriage, any kind of damage that would support that. It appears that it was pushed forward of the van and traveled across the asphalt until it reached the final resting point.

Q. Did you draw a conclusion as to how far the deceased’s body traveled from the point of impact to final rest?

A. That was measured in the CAD [Computer Assisted Diagram] approximately 80 feet.

³ Cleaning supplies were also observed “right outside the house.” (Tr. 251).

Q. Were you able to form an opinion or do you have an opinion as to how the deceased's body traveled that 80 feet? [. . .]

A. [. . .] [S]o with the evidence that we had available to us and looking at impact damage on the van, it appears, in my opinion, that the bicyclist made contact with the van and was actually in – his head was actually on the dashboard until a point that the van applied brakes, and then it came off, the pedestrian came off.

(Tr. 287, ll. 4-24). Trooper James observed significant damage to the rear of the bicycle and indicated that it was hit from behind. (Tr. 300; Tr. 309). Regarding the black streaks on the headlight cover, Trooper James stated that the marks were likely made by the bicycle's rear tire as it was "pushed out by the force of the vehicle." (Tr. 301—Tr. 302).

The State's next witness, Master Trooper John Conley, testified about collecting samples from the vehicle for DNA testing and a statement Appellant gave to him during the investigation from which Conley related the following:

He said he had gone to the store. He was on his way home. He heard a loud banging, and he stopped and got out of his vehicle. He looked around and didn't see anything. He looked forward and behind the vehicle as well. He looked at the windshield. Then he got back in his van and drove home. [. . .] Then I asked him if he thought he was safe to continue driving with the windshield smashed like that. He said, yes. He said he had to be careful.

(Tr. 329, ll. 8-17). Conley also stated that Appellant indicated that he thought he hit a deer. (Tr. 340; Tr. 344). Appellant also admitted to drinking that night. (Tr. 342; Tr. 349).

Following the close of the State's case-in-chief, Defense Counsel moved for a directed verdict. (Tr. 382). As to the habitual traffic offender charge specifically, Defense Counsel argued that there was a lack of evidence as to the third and fifth elements; driving on a public highway and doing an act forbidden by law while driving, respectively.⁴ (Tr. 385—Tr. 386). The State

⁴ With respect to the fifth element, as Appellant replicates in his brief, Defense Counsel argued that the State failed to prove that Appellant failed to maintain a safe distance (the underlying offense of doing an act forbidden by law) because the State offered "no evidence that Mr. Gallegos saw Mr. Lorenzano on a bicycle." (Tr. 386).

responded by stating there was “plenty of testimony about New Orleans Road” being a public highway. Further, there was plenty of evidence that Appellant did an act forbidden by law, failing to maintain a safe distance. This was based on Trooper James’ expert opinion that Appellant hit Victim on his bicycle from behind with the front of his van: “[t]hat testimony if believed certainly establishes that the defendant failed to maintain a safe distance from the bicyclist.” (Tr. 387). The trial court denied the motion as to the habitual traffic offender charge, stating that “[a]ll of that is evidence that it is a public highway” and that, regarding the act in violation of law, the testimony of Trooper James regarding the bicycle being in the roadway and being hit from behind was “enough” and that “it’s a jury issue.” (Tr. 388—Tr. 389). Defense also made an argument as to directing a verdict of acquittal for the hit and run causing death charge based on the element of failing to render aid. But the trial court denied it, stating “I do think there is substantial evidence where this jury could believe that the defendant did not stop and render aid. As a result, I think it’s a jury issue in this case, I really do, as to what they believe happened.” (Tr. 390—Tr. 391).

STANDARD OF REVIEW

“In criminal cases an appellate court sits to review errors of law only.” State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). In an appeal of a ruling involving a challenge to the sufficiency of the evidence in a criminal case, the appellate court must necessarily apply the same standard that should have been applied by the trial judge and view the evidence and all reasonable inferences in the light most favorable to the state. State v. Gracely, 399 S.C. 363, 371-372, 731 S.E.2d 880, 884 (2012). “In reviewing a refusal to grant a directed verdict, we must view the evidence in the light most favorable to the State and determine whether there is any direct or substantial circumstantial evidence that reasonably tends to prove the defendant’s guilt or from which his guilt may be logically deduced.” State v. Pinckney, 339 S.C. 346, 348, 529 S.E.2d 526, 527 (2000). On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If the State presents any evidence which reasonably tends to prove the defendant’s guilt, or from which the defendant’s guilt could be fairly and logically deduced, the case must go to a jury. Id. The appellate court may only reverse the trial judge’s denial of a directed verdict motion if there is no evidence supporting the trial judge’s ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008).

ARGUMENT

The trial judge correctly denied Appellant's motion for directed verdict because the State provided sufficient evidence demonstrating Appellant was doing an act forbidden by law by failing to maintain a safe distance from a bicycle.

Appellant contends that the trial court erred by failing to direct a verdict for the charge of habitual traffic offender with death resulting based on a lack of evidence showing that Appellant was doing an act forbidden by law while driving. Specifically, Appellant argues that the State failed to prove that Appellant failed to maintain a safe distance from Victim's bicycle. Appellant contends that the State failed to prove that Appellant actually saw the Victim on his bicycle, presumptively due to a lack of lighting on Victim's part⁵, thereby failing to demonstrate an essential element of failing to maintain a safe distance. (Initial Brief of Appellant at 7, 8). He contends that because of this lack of proof, the trial court should have granted the motion for directed verdict. For the foregoing reasons, these arguments are without merit and this Court should affirm the rulings and convictions from below.

In the present case, there was sufficient evidence in the record demonstrating that Appellant failed to maintain a safe distance from Victim, thereby committing an act in violation of law or neglecting a duty imposed by law while driving. Appellant argues that in order to prove that he failed to maintain a safe operating distance, the State had to prove that Appellant saw Victim on the bike, however S.C. Code Ann. § 56-5-3435 states that "[a] driver of a motor vehicle must at all times maintain a safe operating distance between the motor vehicle and a

⁵ Appellant argues that the State failed to prove that the bicycle operated by the deceased was equipped with a front lamp and rear red reflector required by law, however it is worth noting that there is evidence in the record about a bike light being at the scene of the accident near Victim and his bike. (Tr. 274; Tr. 304).

bicycle.” Nothing in the statute suggests that the State must prove that the driver saw the cyclist before hitting them.

Accordingly, based on the standard for directed verdict, any evidence tending to show that Appellant failed to maintain a safe distance shows that Appellant committed an act forbidden by law while driving. As indicated previously, there was ample evidence in the record demonstrating that Appellant in fact hit Victim’s bicycle from behind with the front of his van, thereby failing to maintain a safe distance as required by law. First, the front of the van was smashed up. (Tr. 271). There was a hole in the windshield indicating that Victim’s body or head actually went through it.⁶ (Tr. 273). Second, the damage on Victim’s bicycle was almost entirely focused on the rear tire and one of the van’s front headlights had black streaks consistent with rubber from the bicycle’s rear tire. (Tr. 235—Tr. 236; Tr. 300—Tr. 302; Tr. 309). Third, investigator testimony regarding the crash scene indicated that Victim was traveling on the right side of the road and was hit from behind, causing him to be propelled approximately 80 feet from the point of impact along with his bike. (Tr. 279; Tr. 287; State’s Exhibit #17).

Accordingly, there was sufficient evidence tending to show that Appellant committed an act in violation of law while driving by failing to maintain a safe distance from Victim and his bicycle. The trial court only looks at the existence of evidence and not its weight, and therefore it was proper for the trial court to deny Appellant’s motion for directed verdict and submit the case to the jury. This Court should affirm.

⁶ There was hair found on the dashboard and on the entertainment console near the hole in the windshield. (Tr. 273).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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