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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NARKEVIOUS M. REID,

APPELLANT

APPELLATE CASE NO. 2022-001384

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred denying appellant's motion for directed verdict as to criminal conspiracy and attempted murder where there was no direct evidence and insubstantial circumstantial evidence of guilt presented by the state?

STATEMENT OF THE CASE

On April 9, 2021, a Greenwood County grand jury indicted appellant for criminal conspiracy, murder, attempted murder, and possession of a weapon during the commission of a violent crime. Tr. 246, ll. 3-10; R*. Appellant's case was called to trial on August 15, 2022, before the Honorable Frank. R. Addy, Jr., and a jury. Tr. 1. Carson Henderson represented appellant.¹ Tr. 1.

Appellant was tried jointly with co-defendants Xayvion Hill and Dashawn Hurley. Tr. 1. Mr. Hill was represented by R. Jamison Tinsley. Tr. 1. Mr. Hurley was represented by Charles Grose. Tr. 1. David Stumbo an Elizabeth Taylor appeared on behalf of the state. Tr. 1.

On August 24, 2022, the jury found appellant was not guilty of murder and possession of a weapon during the commission of a violent crime but found appellant guilty of criminal conspiracy and attempted murder. Tr. 1171, ll. 1-13. Judge Addy sentenced appellant to concurrent terms of eighteen years' imprisonment for attempted murder and five years' imprisonment for criminal conspiracy.² Tr. 1199, ll. 10-15.

This appeal follows.

¹ The first page of the trial transcript incorrectly lists Charles Grose as appellant's trial counsel and Carson Henderson as Dashawn Hurley's counsel.

² Mr. Hill was convicted of attempted murder, possession of a weapon during the commission of a violent crime, and criminal conspiracy and was sentenced to an aggregate term of ten years' imprisonment. Tr. 1197, l. 23-1198, l. 4. Mr. Hurley was convicted of attempted murder and criminal conspiracy and sentenced to an aggregate term of ten years' imprisonment. Tr. 1198, ll. 20-24.

STANDARD OF REVIEW

“[W]hen the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict.” *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011); *see Hepburn*, 406 S.C. at 429, 753 S.E.2d at 408 (“In cases where the State has failed to present evidence of the offense charged, a criminal defendant is entitled to a directed verdict.”). Further, when the State relies exclusively on circumstantial evidence and a motion for a directed verdict is made, the trial judge is concerned with the existence or non-existence of evidence, not with its weight. *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). The trial judge “should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty.” *Id.* “‘Suspicion’ implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *Id.* “However, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.” *State v. Ballenger*, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996). “On appeal from the denial of a directed verdict, [the] Court views the evidence and all reasonable inferences in the light most favorable to the State.” *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014).

ARGUMENT

The trial court erred denying appellant's motion for directed verdict as to criminal conspiracy and attempted murder where there was no direct evidence and insubstantial circumstantial evidence of guilt presented by the state.

Relevant facts

On April 8, 2020, a shooting occurred at an apartment complex in Greenwood County. As a result of the shooting Gabriel Goode, Justin Parks, and Xayvion Hill were injured. Tr. 384, l. 9-385, l. 16; 433, ll. 1-10; 452, l. 20-453, l. 7. Trivoriaye Alston died as a result of gunshot wounds. Tr. 838, ll. 11-17. During opening statements, the solicitor laid out the state's theory of the case, that Trivoriaye Alston, Xavion Hill, Dashawn Hurley, and appellant planned to go and kill Gabriel Goode and Justin Parks in retaliation for the murder of their friend, Jakevius Parker. Tr. 302-03. The solicitor alleged Mr. Hurley drove the car and the other three got out and ambushed Parks and Goode while they sat outside Goode's apartment. Tr. 302, l. 9-303, l. 5. The solicitor contended Hill "didn't have very good trigger discipline" and accidentally shot Alston and then while holstering his gun shot himself. Tr. 303, ll. 16-22.

The state's first witness was Jill Boland the operations manager for 911. Tr. 317, ll. 23-26. During her testimony state's exhibit 1, recording of 911 calls, was entered in evidence and played for the jury.³ There were seven 911 recorded calls regarding the shooting at the complex.

Jameel Wilson was one of the individuals that called 911 that day. Tr. 337, l. 23-25. Wilson was working as a maintenance person for an apartment complex right beside the complex where the shooting occurred. Tr. 331, l. 12-333, l. 7. On the day of the incident Wilson noticed a black Toyota Camry riding around. Tr. 335, ll. 3-11. He said the windows of the car were

³ State's exhibit 1 is on file with the Court.

tinted but he could see that there were two people in the backseat and a driver. Tr. 335, ll. 10-11; 338, l. 13-339, l. 12. Wilson testified he could not see “actual faces” but could tell some features and he described the two persons in the back of the car as having “twists in the hair.” Tr. 338, l. 18-339, l. 2. A few minutes after he saw the car, he heard gunshots and immediately called 911. Tr. 337, ll. 16-25. Wilson testified there were “quite a [] few shots.” Tr. 337, ll. 24-25.

Apartment resident Laurel Bollinger testified that she lived at the apartment complex at the time of the incident. Tr. 365, ll. 6-10. Bollinger was home that day with her son and her mother. Tr. 365, ll. 13-21. She testified that she heard “what sounded like fireworks,” and so she pulled back the curtain and saw “two people crouched down behind a big tree bush” outside. Tr. 368, ll. 3-12. Bollinger did not see anyone fire a gun. Tr. 374, ll. 3-4; 378, ll. 17-19.

Bollinger said the two people she saw were black men and described that one was wearing a white shirt and the other a dark shirt. Tr. 368, ll. 21-24; 373, ll. 14-17. She saw a third man run past holding a gun, she testified the man was so close that if her window was open she could have touched him. Tr. 368, l. 25-369, l. 4. Bollinger said he was a “black gentleman with no shirt on,” wearing “acid wash” jeans. Tr. 369, ll. 16-18. She testified his hair “looked shaved all the way around, like the sides of his head” with “little baby dreads” that “stood up.” Tr. 369, ll. 18-21. Bollinger said the gun was a “little” “silver and black” gun. Tr. 369, ll. 14-16. Bollinger gave a statement to law enforcement and was shown a photo lineup. Tr. 372, ll. 1-18. However, Bollinger said she was “very uncertain,” and could not identify anyone in the lineup. Tr. 372, ll. 20-25.

Stephanie Moss another resident testified that she saw a black car pull up and “saw some boys got out” and not long after she “heard some gunshots.” Tr. 349, ll. 14-18; 351, ll. 16-23. The only descriptions she gave of the persons she saw was that one was wearing a white shirt

that had blue anchors on it. Tr. 352, ll. 1-7. Moss testified that she did not see anyone fire a gun she only heard gunshots. Tr. 355, ll. 5-11. When she went outside after she discovered a gun laying where she had seen the car parked and she notified law enforcement. Tr. 353, ll. 12-24; 355, ll. 8-9. There was a second gun found in the parking lot by law enforcement officer Dennis Kelly. Tr. 489, ll. 6-19.

Gabriel Goode testified that at the time of the incident he was living in an apartment with his girlfriend and young child. Tr. 426, ll. 9-19. Goode said that on April 8, 2020, he and his cousin Justin Parks were sitting outside “smoking a blunt.” Tr. 428, ll. 5-5-8. Goode’s girlfriend and child had left not long before. Tr. 428, ll. 9-25. Goode testified that as he and Parks were outside “somebody came around shooting.” Tr. 431, ll. 1-3. He said the shooter was wearing a black ski mask and that the gun was tan. Tr. 431, l. 23-432, l. 10. Goode was shot in the foot and his cousin, Parks was shot in the leg. Tr. 433, ll. 1-10. Goode denied that he and Parks had any guns in their hands but admitted there was a gun inside the apartment laying on the couch. Tr. 433, ll. 17-25. Goode admitted that he had been arrested two times on gun charges and admitted he had owned more than one gun. Tr. 445, ll. 10-23; 446, ll. 8-12. He denied shooting back at the person shooting at them. Tr. 434, ll. 2-11.

The solicitor asked Goode if he knew a man named Ji’Tavius Adams and Goode admitted he did and that they had hung out “every now and then.” Tr. 439, ll. 3-7. Goode stated that Adams was in prison for murder but that he did not know what happened. Tr. 439, ll. 17-25.

Justin Parks testified that he was at Goode’s apartment on the day of the incident. Tr. 447, ll. 13-25. Parks did not hear any gunshots or see anything, and he does not know who shot him that day. Tr. 450, ll. 7-13; 454, ll. 2-3. Parks said he was sitting outside of Goode’s apartment on the phone and he just “black[ed] out” and was on the ground. Tr. 450, ll. 1-6.

Parks claimed he went from sitting to waking up and crawling in the apartment. Tr. 450, ll. 11-21. He said he was shot in the upper leg and femur area, his knee, and his right index finger. Tr. 452, l. 20-453, l. 7. Parks denied that either he or Goode had a gun on them before they were shot and denied that they shot anyone. Tr. 451, ll. 8-18.

Parks admitted he was currently incarcerated for a probation violation stemming from previous charges of possession of a weapon and drug charges. Tr. 447, 5-12; 456, ll. 6-17. When the solicitor asked if Parks knew Ji'Tavius Adams he said he did, and they had hung out. Parks said Adams was in jail for murdering "some dude named JP." Tr. 452, ll. 2-18.

At the conclusion of the state's case defense counsels for all three co-defendants made a motion for directed verdict and joined in each other's arguments. Tr. 869-88; 871, ll. 14-15; 888, ll. 9-10. Appellant's counsel argued a directed verdict should be granted as to criminal conspiracy where the state had no direct evidence and "weak weak weak" circumstantial evidence that appellant planned or participated in this incident. Tr. 877, ll. 13-17. Counsel argued the evidence indicating appellant's guilt was not substantial. Tr. 935, ll. 5-7. Appellant's counsel contended there was no evidence presented by the state that appellant knew either Goode or Parks and there was no evidence of any agreement to commit any crime. Tr. 870, ll. 11-15; 872, ll. 5-17; 877, ll. 7-11. Counsel averred there was no evidence that the co-defendants were ever all three together on the day of the incident. Tr. 871, ll. Additionally, counsel asserted no witness identified appellant as being present at the incident. Tr. 873, ll. 10-13.

Additionally, appellant's counsel made a motion for directed verdict as to attempted murder.⁴ He argued appellant was excluded from any DNA evidence and there was no gunshot residue evidence implicating appellant. Tr. 876, ll. 10-12. Appellant's counsel contended their

⁴ As stated above counsel for appellant joined in the arguments made by co-defendants' defense counsels. Tr. 869-88; 871, ll. 14-15; 888, ll. 9-10.

motion for directed verdict should be granted because there no direct evidence and insubstantial circumstantial evidence of attempted murder. Tr. 877, ll. 14-17.

The judge asked the solicitor to specifically give an overview of the evidence that the contended implicated appellant in the case because the court was “having some problem with whether there [was] enough there, in terms of Bollinger’s identification.” Tr. 908, ll. 10-19; 915, ll. 13-17.

The solicitor averred that there were photographs of the co-defendants showing the relationships between them. Tr. 908, ll. 20-23. He asserted that appellant was “right there in the middle of all of them and he [was] a prominent figure in this group of friends.” Tr. 909, ll. 1-4. He conceded there was no evidence that appellant was in the black sedan prior to the shooting but claimed the hospital video confirmed appellant was in the car shortly after the shooting. Tr. 909, ll. 5-11. The solicitor argued the hospital video that showed appellant and Mr. Hurley dropping their friend Mr. Alston off at the emergency room was “critical” in the case. Tr. 891, ll. 4-8; 909, ll. 5-12. He contended that state’s witness Laurel Bollinger was “ultimately the biggest eye witness as it pertains to [appellant].” Tr. 909, ll. 12-13. The state argued Bollinger’s testimony and the hospital video were “two pieces of strong evidence” that when put together were enough that a jury could draw reasonable inferences from those facts alone. Tr. 910, ll. 6-8; 911, ll. 2-9.

The trial judge declared “[i]f we’re doing ifs and maybes and perhaps, then it sounds like we’re lacking substantial circumstantial evidence to at least some of these charges.” Tr. 906, ll. 8-10. The judge stated that he was having difficulty with Bollinger’s identification. Tr. 915, ll. 14-17. After lengthy argument, the judge told the parties he needed more time because “this [was] probably one of the more unusual cases that I’ve tried.” Tr. 922, l. 24-923, l. 3; 930, ll. 1-

5. Although the judge had expressed concern regarding whether the state had shown evidence of specific intent to kill, ultimately, the following day, the judge denied appellant's motion for directed verdict.⁵ Tr. 900, l. 23-901, l. 4; 939, ll. 5-18; 1022, ll. 18-23.

Appellant testified his girlfriend dropped him off to visit his friend, Mr. Sloan at the same apartment complex that day. Tr. 962, ll. 1-22. When appellant was ready to go, he contacted Mr. Hurley for a ride. Tr. 964, ll. 1-13. As he and Hurley were leaving, they heard what they thought were fireworks but quickly realized were actually gunshots. Tr. 968, l. 5-969, l. 6. Next, they saw a man running, and recognized it was their friend Mr. Alston covered in blood. Tr. 969, l. 24-970, l. 8. When they pulled up to Alston, they helped him in the car and realizing he was badly injured, they drove him to the nearby hospital for treatment. Tr. 970, l. 13-971, l. 21.

At the end of appellant's case defense counsel renewed his motion for directed verdict and the court denied for same reasons as above. Tr. 1023-1027.

Discussion

The state presented evidence that appellant was friends with his co-defendants, Hill and Hurley and with the decedent, Alston. The state presented evidence that appellant had a friend, Jakevius Parker that had been murdered shortly before this shooting incident. Additionally, the state showed evidence that appellant and Hurley drove decedent to the hospital. However, the state offered no direct evidence and insubstantial circumstantial evidence that appellant conspired with Hill, Hurley, and the decedent to commit attempted murder.

In *State v. Mitchell*, 341 S.C. 134, 535 S.E.2d 126 (2000), the South Carolina Supreme Court held the lower court erred in failing to direct a verdict where the only evidence presented against defendant was his fingerprint at the scene of the burglary. Similarly, in *State v. Lollis*,

⁵ The trial court denied all of the motions for directed verdict except as to the possession of a weapon charge in regard to Hurley. Tr. 939, ll. 5-18; 1022, ll. 18-23.

343 S.C. 580, 541 S.E.2d 254 (2001), the South Carolina Supreme Court directed a verdict of acquittal in defendant's favor where the state presented no direct evidence that defendant was involved in setting fire to his home. The circumstantial evidence against defendant was that his wife admitted to the arson, defendant had placed valuables in storage prior to the fire, defendant possessed a key to the storage unit, and defendant allegedly had financial troubles. In that case the court found the evidence insufficient. *Lollis*, at 585, 541 S.E.2d at 257.

In *State v. Martin*, 340 S.C. 597, 533 S.E.2d 572 (2000), the South Carolina Supreme Court directed a verdict of acquittal in defendant's favor where the state failed to meet the "any substantial evidence" standard. In that case the state presented evidence that a car resembling the one defendant was driving was seen parked at the victim's apartment complex on the night of the murder. *Martin*, at 600, 533 S.E.2d at 573. The state also presented evidence defendant and co-defendant were late picking up defendant's girlfriend from work and when his girlfriend asked why they were late defendant replied, "some shit happened" and co-defendant added "somebody may have died tonight." *Id.*

In *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2012), the South Carolina Supreme Court held defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that defendant was involved in the burglary. Although defendant was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that defendant 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. *Odems*, at 584, 720 S.E.2d at 49. Fingerprints collected from the stolen goods did not match defendant's but matched the other individuals in the car. *Id.* at 588, 720 S.E.2d at 51. One of the individuals who admitted his involvement claimed defendant was picked up after the burglary at a gas

station. *Id.*

In *State v. Bostick*, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the South Carolina Supreme Court held the state failed to present substantial circumstantial evidence of defendant's guilt. Rather, the state's evidence could produce only a suspicion of defendant's guilt. *Id.* Although the police found items belonging to the victim in a burn pile behind the home of defendant's mother, the court held no evidence linked defendant to the evidence in the burn pile and the prosecution presented no testimony that defendant had control over the burn pile. *Id.* at 137-141, 708 S.E.2d at 775-778. The only other evidence presented against defendant 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 defendant'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's case has no direct evidence less circumstantial evidence of guilt than the cases cited above where the Court found the lower court should have directed a verdict in defendants' favor. In *Martin*, there was evidence presented that could be construed as an admission of guilt as well as a car matching the description of the car defendant was driving was seen at victim's apartment on the night of the murder. *Martin*, at 600, 533 S.E.2d at 573. In *Bostick*, the victim's belongings were found in a burn pile behind defendant's mother's home and defendant had blood on his jeans. Here, when the state closed its case, only the following pieces of circumstantial evidence had been presented appellant helped take Alston to the hospital and when they arrived appellant was shirtless and one of the men Bollinger saw running past her window was also shirtless.

Conversely, the state offered no evidence of any agreement between the co-defendants to

commit any crime. The state offered no evidence that the four men were together that day before the shooting occurred. Perhaps, had there been additional investigation into the shooting, more would be known about exactly what happened in this incident. All that is known is Hill, Goode, and Parks were shot and injured at an apartment complex. Alston was killed in the same shooting and Hurley and appellant drove Alston to the hospital to receive treatment. The state presented zero direct evidence and insubstantial circumstantial evidence that appellant planned the shooting with either of his co-defendant's or that he was involved in the shooting.

The state admittedly only offered circumstantial evidence that appellant was involved in this incident. During solicitor's argument regarding the motion the solicitor admitted Bollinger's testimony was "close" to direct evidence but conceded she did not make a "firm identification" of appellant. Tr. 917, ll. 3-6. During closing statements, the solicitor told the jury Bollinger was "[as] close to direct evidence eyewitness as you're going to find in this case." Tr. 1061, ll. 20-22. The evidence showed appellant was friends with Hurley, Hill, and the decedent and that he was at the apartment complex where the incident had occurred, and that he rode with Hurley to take decedent to the emergency room. The circumstantial case presented by the state did not demonstrate appellant was involved with the shooting incident. Thus, the trial judge should have directed a verdict in appellant's favor because the evidence presented only raised a suspicion of guilt.

CONCLUSION

Based on the foregoing, appellant requests that this Court reverse the trial court and grant appellant's motions for directed verdict as to criminal conspiracy and attempted murder.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of September, 2023.