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Sep 22 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RISHARD LEWIS GETER,

APPELLANT

APPELLATE CASE NO. 2023-000255

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying Appellant's motion for a direct verdict where the evidence presented at trial was largely circumstantial and only raised a suspicion of guilt?

STATEMENT OF THE CASE

Appellant was indicted during the February 2020 term of the Spartanburg County grand jury for one count each of murder, possession of a weapon during the commission of a violent crime, and breach of peace of a high and aggravated nature. R. 404-407. On February 13, 2023, the State, represented by Maressa Cuenca and Derrick Balsa, called the case to trial before the Honorable J. Mark Hayes, III, and a jury. Appellant was represented by Robert B. Hall. R. 1. After a four-day trial Appellant was found guilty as indicted. R. 393, l. 14-R. 394, l. 8. Judge Hayes sentence Appellant to concurrent terms of imprisonment of forty years on the murder, five years on the weapon charge, and ten years on the breach of peace. R. 400, ll. 13-24; R. 408-413.

STANDARD OF REVIEW

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Passio, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021) *quoting* State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). “A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged.” Id. “If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury.” State v. Passio, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021) *quoting* State v. Frazier, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010). “When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State.” Id.

ARGUMENT

The trial court erred in denying Appellant's motion for a direct verdict where the evidence presented at trial was largely circumstantial and only raised a suspicion of guilt.

Relevant Facts

On November 1, 2019, officers with the Spartanburg City Police Department responded to a report of a shooting at 333 Amherst Drive. R. 76, l. 18-R. 77, l. 14; R. 80, ll. 4-6; R. 87, l. 11-R. 88, l. 8. When officers arrived on the scene they discovered a black male, later identified as Jason Eison, laying face up on the ground next to a black four-door Chevy Impala that was parked along the street. R. 80, ll.10-16; R. 88, ll. 12-17. No other individuals were observed on scene. R. 83, ll. 1-6; R. 89, ll. 16-19. Eison was alive when EMS arrived, but he succumbed to his injuries. R. 126, l. 9-R. 127, l. 15. His cause of death was determined to be multiple gunshot wounds. R. 290, l. 11-15.

Although they could not identify the shooter, two witnesses testified that on the day of the shooting several people were in the yard of 333 Amherst arguing with Eison about him having hit a woman. During the argument a blue Toyota pickup truck pulled up to the location and a thin black male with dreads wearing a ball cap, who was between 6'2" and 6'4" tall, exited the truck shooting at Eison. R. 157, l. 10-R. 160, l. 25; R. 166, l. 19-25; R. 175, l. 21-R. 176, l. 18. The individual that called 911 testified that the shooter was tall and lanky with medium length dreads. She could not remember any significant details about his clothing and stated he left the scene in a mid-sized sedan. She believed the shooter was holding the gun in his right hand. R. 325, l. 18-R. 328, l. 6.

Two witnesses testified that on the day of the shooting Appellant received a phone call. Shanice Johnson, a co-worker and former girlfriend of Appellant, stated that Appellant received

a phone call prior to the shooting and was very upset while on the phone. She testified he was upset about someone getting hit. When she picked him up later that evening for work, she stated he was calm and collected. R. 137, l. 8-R. 140, l. 21. A friend of Appellant's, Erica Gray, testified that Appellant had received a phone call while he was at her house between five and five thirty, prior to the shooting, and that Appellant was being loud. She stated that there was nothing unusual about Appellant being loud as he was always loud. She could not say if he was upset or not while on the phone. R. 147, l. 6-R. 148, l. 7; R. 151, ll. 10-15; R. 153, ll. 1-5.

During the investigation police were able to identify and speak with some of the individuals who had been in the yard of 333 Amherst at the time of the shooting. Police spoke with Rodney Nash, LaKia Gooden, and Kenya Geter. R. 265, ll. 21-25. Lead Investigator Chris Taylor testified that the interviews did not go very well as people did not want to have anything to do with the incident. Initially, no one would identify the shooter. However, after multiple interviews Kenya Geter, Appellant's aunt, told police that Appellant was the shooter. R. 266, ll. 2-16. No one else identified Appellant as the shooter prior to trial.¹ R. 273, ll. 12-13.

At trial Kenya Geter testified that she had been in a relationship with Eison but that they were no longer involved at the time of his death. The evening before the incident Eison had stopped by her house during a birthday celebration for her nephew David. She had gotten in Eison's car to speak with him when he suddenly drove off, taking her to a motel. He then had Kenya drive his vehicle and while she was driving, he struck her. R. 209, l. 13-R. 211, l. 6. She confirmed that the argument that occurred outside of 333 Amherst the following day was regarding Eison striking her. R. 211, l. 17-R. 212, l. 1.

¹ During trial Rodney Nash also identified Appellant as the shooter. R. 184, ll. 1-15. Based on the testimony of Investigator Taylor it appears that the in-court identification by Nash was the first time Nash ever stated Appellant was the shooter. R. 274, ll. 6-9

Kenya testified that during the argument she heard Appellant drive up and then heard gun shots. She stated, "I saw him when he did it." R. 217, ll. 1-24. She testified that Appellant was wearing a jacket with cartoon faces on it, blue jeans, and a hoodie mask when he shot Eison. R. 220, ll. 13-18. Kenya admitted that she initially told police she could not identify the shooter. She conceded that she identified Appellant as the shooter because she was concerned that people thought she had something to do with the shooting. R. 224, l. 24-R. 225, l. 21; R. 226, l. 21-R. 227, l. 6.

Regarding physical evidence, forensic investigators recovered six nine-millimeter shell casing from the scene. R. 103-105. Bullet fragments were recovered during the autopsy, but the fragments were too small to determine what caliber they would have been. R. 106, l. 21-R.107, l. 11. A search warrant was executed on Appellant's residence. During the search police recovered a jacket patterned with cartoon character faces, various .40 and .45 caliber bullets, and an empty gun box for a .40 caliber Glock. R. 107, l. 22-R. 109, l. 22; R. 112, l. 21-R. 114, l. 16. Four particle lifts were taken from the jacket to test for gunshot residue (GSR): one from the right sleeve, one from the left sleeve, one from the right chest, and one from the left chest. R. 298, ll. 15-24. The particle lifts were tested for GSR by SLED forensic scientist Tyler Sturkie. R. 302, l. 24-R. 303, l. 2; R. 305, ll. 17-22. Agent Sturkie reported that there were four GSR particles found on the jacket. One GSR particle was on the right chest of the jacket and three GSR particles were on the left sleeve of the jacket. No GSR was found on the right sleeve or left chest of the jacket. R. 312, l. 16-R. 313, l. 6.

At the close of the State's case Counsel Hall moved for a direct verdict. He argued that the evidence that had been presented was "somewhat confusing and conflicting" and therefore a jury would not be able to find Appellant guilty of the charges. R. 319, l. 25-R. 320, l. 5. The

State argued that in the light most favorable to the non-moving party, it had presented sufficient evidence for the case to be submitted to the jury. R. 320, l. 7-R. 321, l. 11. The circuit court denied the directed verdict motion finding the evidence sufficient in the light most favorable to the State. R. 321, ll. 14-25.

Discussion

“The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt based upon facts or circumstance which do not amount to proof.” State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). “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 416, 429 S.E.2d at 409.

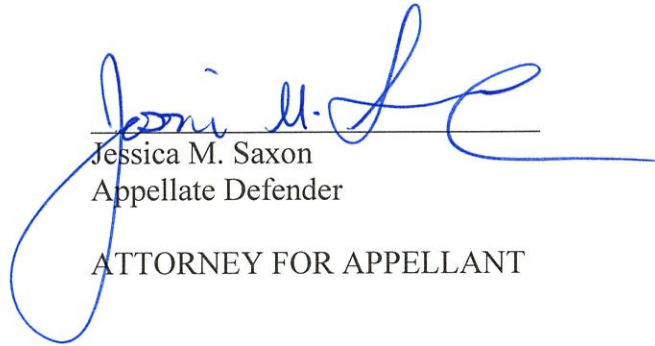
The evidence against Appellant was largely circumstantial and did not reasonably tend to prove he was guilty. Most of the witnesses could only provide a generic description of the shooter as a tall, slender, black male with dreads. There was conflicting testimony about the clothing worn by the shooter and the vehicle that was driven by the shooter to and from the scene. There was testimony that Appellant had received a phone call that was upsetting but also that he was not upset on the phone call. Further, the limited forensic evidence in the case did not link Appellant to the crime. Appellant was not connected to the blue truck, nor was the murder weapon ever located or connected to Appellant. The bullets recovered from Appellant's home did not match the bullets recovered from the scene. Even the GSR test conducted on Appellant's jacket did not link him to the shooting in any meaningful manner as there was not a substantial amount of GSR found and no GSR found on the right sleeve of the jacket.

The State relied primarily upon the testimony of Kenya Geter as she was the only person to identify Appellant as the shooter. Notably, no other witnesses testified that the shooter was wearing a jacket patterned with cartoon faces or a hoodie mask at the time of the shooting. Additionally, Kenya only identified Appellant as the shooter after there was talk that people thought she was involved in the shooting. Her testimony was contradicted by the testimony of the other witnesses and the limited forensic evidence in the case.

The evidence the State presented at trial did not reasonably link Appellant to the murder of Eison. It, at most, only raised a suspicion that Appellant was involved in the shooting. As such, the evidence was insufficient to submit to the jury and the trial court should have granted the direct verdict motion.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests that this Court reverse his convictions and sentences and remand the case back to the General Sessions Court of Spartanburg County for a new trial.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 22nd day of September, 2023.

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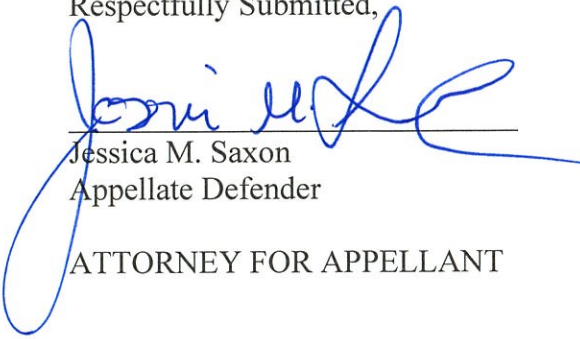
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rishard Lewis Geter states:

1. She is 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 before Judge J. Mark Hayes, which was held on February 13 - 16, 2023, 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, 87 S. Ct. 1396 (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 Rishard Lewis Geter.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

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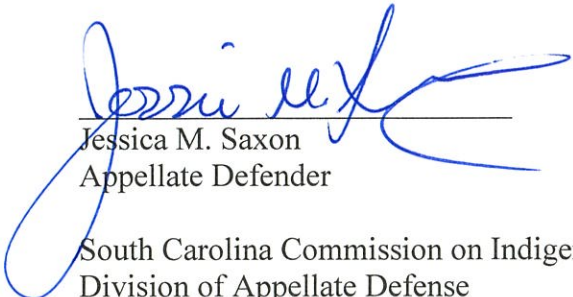
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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s): 2020-GS-42-0908, 2020-GS-42-0908A, 2023-GS-42-0557;
- (2) Trial transcript Volumes I-IV dated February 13, 2023-February 16, 2023;
- (3) Sentencing Sheets

I certify that this designation contains no matter which is irrelevant to this appeal.



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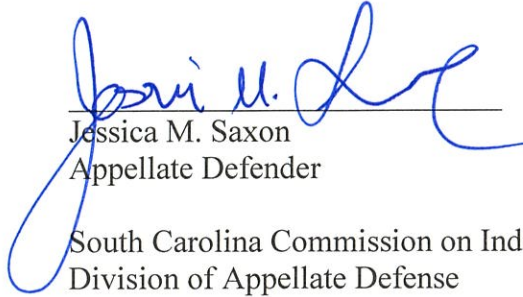
CERTIFICATE OF COUNSEL

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."

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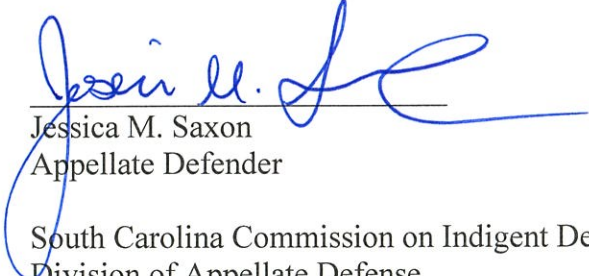
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CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Rishard Lewis Geter, #311627, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 22nd day of September, 2023.



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