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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Jasper County

Robert J. Bonds, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRIAN JAMEL REDDING,

APPELLANT.

APPELLATE CASE NO. 2022-001213

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by denying Appellant's motion for a directed verdict when the state failed to present any direct or substantial circumstantial evidence Appellant shot his girlfriend rather the evidence merely raised a suspicion Appellant was involved in the murder?

STATEMENT OF THE CASE

A Jasper County grand jury indicted Appellant on June 10, 2021 for murder and possession of a weapon during the commission of a violent crime. R. 878-881. His case was called to trial on August 15, 2022 before the Honorable Robert Bonds, and a jury. R. 1. Assistant Solicitor Hunter Swanson represented the state. R. 1. Carolyn Carmody represented Appellant. R. 1.

On August 19, 2022, the jury found Appellant guilty as indicted. R. 858, ll. 5-14. He was sentenced to forty-eight years for murder and five years concurrent for the weapons offense. R. 877, ll. 3-18.

This appeal follows.

STATEMENT OF FACTS

Appellant and Cypress Noonan, the decedent, met in January 2020 at a laundromat in Ridgeland. R. 703, ll. 14-20. Cypress, who was driving her sister's van, backed into Appellant's car. The two talked, exchanged phone numbers, and "made plans to get together later." R. 703, l. 16 – 704, l. 1. Cypress was only sixteen years old. She had dropped out of high school and was living in the van. She did not have a good relationship with her mother and, while she had several older sisters, they argued and bickered a lot. R. 705, ll. 10-16.

Within a few months of meeting, Appellant and Cypress developed a romantic relationship. Appellant was drawn to Cypress because she was kind and funny and she could relate to him. R. 704, ll. 2-15. Appellant "felt obligated" to provide for Cypress and do what he could so Cypress did not have to sleep in her sister's van. Appellant bought Cypress basic toiletries, such as deodorant, and underwear. R. 704, ll. 23-25. The couple also began staying in daily rental motels, including the Forest Motel in Ridgeland. R. 707, l. 14 – 708, l. 12. A room was forty dollars a night. R.705, l. 22 – 706, l. 3. If Appellant could not afford a room on any particular night, he would sleep with Cypress in the van, either in his mother's driveway or Cypress's sister's driveway. While Appellant was welcome to stay at his mother's house, Cypress was not because Appellant's mother did not approve of their relationship due to their age difference.[1] R. 706, l. 4 – 707, l. 1. Likewise, while Cypress was welcome to stay at her sister's house, Appellant was not, again, because Cypress's sister did not approve of the relationship. R. 252, l. 9 – 253, l. 14. Rather than be apart, Appellant and Cypress chose to sleep together in the van. R. 706, ll. 11-16.

[1] Appellant was thirty-one years old at the time.

On the morning of September 6, 2020, Appellant discovered Cypress's body in the room they shared together at the Forest Motel. Appellant had been gone most of the morning and returned to the motel around 9:45 a.m. R. 571, l. 20 – 572, l. 5. He saw Peter Patel, the owner of the motel, outside near the utility room and said good morning. Appellant then used his key to unlock the door to his room. When he entered, Appellant saw Cypress sitting up in bed. However, he quickly noticed blood on the sheets. Appellant ran to Cypress and grabbed her. He then saw a gunshot wound on her forehead. Appellant was "stunned." He ran outside and asked Patel if he had seen anyone or heard anything. When Patel answered no, Appellant immediately ran back into the room and called 911. R. 730, l. 11 – 731, l. 12.

When patrol officers with the Ridgeland Police Department arrived, Appellant was sitting on the side of the bed next to Cypress. R. 53, ll. 17-22. He was asked to leave the room. Appellant sat in a chair just outside the door to the room and used Cypress's phone to call her sisters and tell them what happened. R. 732, l. 6 – 733, l. 15.

The Ridgeland Police Department requested assistance from the South Carolina Law Enforcement Division (SLED). R. 101, ll. 11-16. While the Ridgeland officers waited for SLED to arrive, they merely secured the scene. They did not canvass the area for witnesses nor did they question any other occupants of the motel. SLED Agent Katie McCallister, who was the first agent from SLED to arrive, led the investigation. R. 102, ll. 1-5. She arrived around 12:15 p.m. It was then that law enforcement finally began to question individuals at the motel. However, no one heard a gunshot or any disturbance. R. 408, l. 11 – 409, l. 22.

Agents with SLED's crime scene unit processed the motel room where Cypress was found. R. 157, ll. 2-20. There were no signs of forced entry or of a struggle inside the room. R. 165, ll. 7-10; R. 168, ll. 21-25. A white powdery substance, razor blades, and bags consistent

with narcotic packaging where found on a table in the corner of the room. R. 169, ll. 1-16; R. 112, l. 2 – 113, l. 4. A cartridge case was found on the floor between the bed and the wall. It was collected and submitted to the firearms department for analysis. R. 166, l. 16 – 168, l. 14. It was later determined to be a nine millimeter caliber cartridge case. R. 357, ll. 3-6. Cypress's DNA was found on the cartridge case, but Appellant was excluded as a possible contributor. R. 487, l. 18 – 491, l. 3.

During the autopsy, the pathologist found a fired bullet in Cypress's hair. R. 444, ll. 11-21. The bullet was collected and submitted to the firearms department for analysis. R. 175, ll. 13-21. The bullet was consistent with a nine millimeter Luger caliber. Based on the caliber and the width, number, and direction of twist of the lands and groves on the bullet, it was determined the bullet was fired by a gun manufactured by SCCY. R. 359, l. 10 – 360, l. 5. SCCY manufactures thousands of firearms in a multitude of colors, including teal. It was never determined which firearm actually fired the bullet as no firearm was ever submitted to SLED for analysis. R. 366, ll. 6-10.

Appellant fully cooperated with law enforcement that day and during the two months following Cypress's death before he was ultimately arrested. Appellant consented to a gunshot residue (GSR) test, which was collected at 10:25 that morning.[2] R. 102, ll. 6-24; R. 115, l. 13 – 117, l. 23. He also gave a written statement at the scene shortly after police arrived and agreed to accompany Investigator John Croft to the Ridgeland Police Department to be interviewed. This interview, which was audio and video recorded, lasted over an hour. R. 118, l. 9 – 121, l. 8. During this interview, Appellant consented to provide a "DNA sample" for comparison

[2] No particles consistent with GSR were found on Appellant's hands. R. 468, ll. 10-14.

purposes, which was collected through use of a buccal swab. R. 164, ll. 6-20. He also voluntarily gave law enforcement the clothing he was wearing. R. 173, ll. 16-19.

After his interview with Croft was over, Appellant returned to the Forest Motel. He was there when Agent McCallister arrived. Appellant also agreed to speak with McCallister. He spoke to McCallister at the Ridgeland Police Department for nearly three hours and told her about his whereabouts that morning. Appellant voluntarily gave McCallister his two cell phones and provided his passcode. He shared information about his and Cypress's Facebook accounts. R. 410, l. 2 – 414, l. 16.

Appellant was driving Ashley Dodson's car that day. Law enforcement executed three separate search warrants on the vehicle. Nothing of evidentiary value was ever found. R. 415, ll. 3-15.

Desiree Noonan, Cypress's sister, testified that about a month before Cypress's death, she was visiting Cypress at the Days Inn where Cypress was living with Appellant at the time. Desiree claimed she saw a turquoise gun in the room. However, she did not pay attention to the gun and did not know anything else about it, such as the manufacturer or the caliber. R. 235, l. 21 – 237, l. 11. Desiree admitted she had never seen Appellant with a gun. R. 244, ll. 3-5.

Taylor Cowherd, Cypress's eldest sister, testified that one day, about two months before Cypress's death, she pulled up to her mother's house and saw Appellant and Cypress sitting in a car parked in the driveway. Taylor claimed she walked up to the car and saw Appellant with a teal or aqua colored gun. While she touched the gun, Taylor could not recall any details about the firearm, such as the manufacturer. R. 234, ll. 6-24; R. 263, l. 22 – 264, l. 6.

Paige Mayma, another one of Cypress's sisters, also claimed that she saw Appellant with a turquoise gun on several occasions. She said "it looked like" a nine millimeter. The last time

she saw Appellant with this gun was sometime during the week before Cypress's death. R. 324, l. 23 – 325, l. 21. Paige also claimed there were "difficulties" or "problems" within Appellant and Cypress's relationship and that she once saw Cypress cry as a result of something Appellant did. Paige also witnessed Appellant's "controlling behavior" toward Cypress. R. 331, l. 5 – 332, l. 1. Despite these allegations, Paige admitted she had never seen any bruises on Cypress or any "signs" she "had been beaten." R. 333, ll. 9-14.

Whitney Uva, Cypress's friend, vaguely claimed there was a time when she saw Cypress upset about her relationship with Appellant. R. 292, ll. 21-25. However, Whitney also never saw Cypress with bruises or any signs that she was being abused. R. 298, ll. 8-20.

Taniya Payne, Cypress's friend, claimed she saw Appellant with two different guns on separate occasions. One was blue and the other was silver. While Taniya told Agent McCallister four days after Cypress's death that she saw Appellant with a blue firearm at the Sure Stay Motel, during her testimony, she claimed she also saw Appellant with a gun at the Forest Motel. Taniya never mentioned the silver gun to McCallister. R. 308, l. 17 – 313, l. 9.

Taniya also claimed that Appellant was "controlling with Cypress" and that she witnessed "difficulties between the two of them" one day when she visited them at the Forest Motel. R. 305, ll. 23-25; R. 307, ll. 10-15.

Appellant presented an alibi defense. At the time, he was driving Ashley Dodson's car. Ashley had to be at work at 7:00 a.m. on September 6, 2020. Appellant set an alarm and left the motel early to pick up Ashley from Beaufort. He stopped at a gas station along the way at 6:30 a.m., which was confirmed by surveillance footage. After picking up Ashley, Appellant drove her to a McDonald's in Bluffton where she worked. He then drove to Simmonsville Road to pick up his cousin Danielle Smith. Appellant had agreed to drive Smith to their uncle's house in

Pineland so Smith could see her children. On the way to Pineland, Appellant stopped at the Forest Motel to get his wallet. Cypress was alive and laying in bed at the time. This was around 8:10 a.m. Once Appellant got to Pineland, he stayed at his uncle's house for a while to work on Ashley's car. The dust cover panel underneath the car was dragging. After securing the dust cover panel, Appellant changed his shirt because it was covered in dirt from working underneath the vehicle. Appellant then returned to the Forest Motel and discovered Cypress's body. R. 713, l. 2 – 731, l. 9. The cell site location information (CSLI) from Appellant's cell phone verified his alibi. See R. 543, l. 16 – 580, l. 17. Danielle Smith and Alvin Shiggs, Appellant's uncle, testified and further corroborated Appellant's alibi.

STANDARD OF REVIEW

"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)).

ARGUMENT

The trial judge erred by denying Appellant's motion for a directed verdict when the state failed to present any direct or substantial circumstantial evidence Appellant shot his girlfriend rather the evidence merely raised a suspicion Appellant was involved in the murder.

Relevant Facts

After the state rested, Appellant moved for a directed verdict. Defense counsel argued the state failed to present any evidence that Appellant killed Cypress Noonan. She also emphasized there was no evidence of malice either express or implied. The judge found that, while it was a circumstantial case, there was substantial circumstantial evidence to submit the case to the jury. R. 504, l. 13 – 509, l. 5.

Appellant renewed his directed verdict motion after his presentation of evidence. Defense counsel argued there was no evidence of malice or hostility between Cypress and Appellant on September 6, 2020. She also emphasized that Appellant had an alibi which was corroborated by witness testimony and his cell site location information. The judge denied the motion reasoning that he was concerned with the existence of evidence, not its weight. He emphasized the testimony that there was "potential animus [between Cypress and Appellant], dominating behavior on [Appellant's] part, that they [Cypress and Appellant] argued, that she [Cypress] wasn't happy . . ." R. 765, l. 2 – 769, l. 14.

Discussion

The trial judge erred by denying Appellant's motion for a directed verdict when the state failed to present any direct or substantial circumstantial evidence Appellant shot Cypress Noonan rather the evidence merely raised a suspicion Appellant was involved in the murder since he was the last known person to see Cypress alive.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused," the trial judge may deny the motion for directed verdict. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant's favor unless there is substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant 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); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is appropriate when the evidence produced "merely raises a suspicion the accused is guilty." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Our courts define suspicion as "a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

In Mitchell, 341 S.C. at 409, 535 S.E.2d at 127, the South Carolina 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 Lollis Court 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 only 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 found this evidence insufficient. Lollis, 343 S.C. at 584-585, 541 S.E.2d at 256-257.

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. As explained by the Court, although our courts have abandoned the traditional circumstantial evidence jury charge, the language of the charge is instructive in making a directed verdict determination. The traditional charge provided:

> Every circumstance relied upon by the State be proven beyond a reasonable doubt; and … all of the circumstances proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.

Id. at 590, 720 S.E.2d at 52 (quoting State v. Hernandez, 382 S.C. 620, 626 n.2, 677 S.E.2d 603, 606 n.2 (2009)).

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 137-141, 708 S.E.2d at 775-778. The only 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.

In this case, the state failed to present any evidence Appellant killed Cypress. The assistant solicitor conceded at trial that there was no direct evidence of Appellant's guilt. Because Appellant was the last known person to see Cypress alive and discovered her body, law enforcement immediately focused its investigation on him. The state's circumstantial evidence merely showed Appellant had access to a teal or aqua firearm in the months before Cypress's death, Appellant was controlling toward Cypress and there were "difficulties" in the relationship, Appellant changed his shirt sometime between 6:30 a.m. and 9:45 a.m. that morning, Appellant had particles of GSR on his shorts, and, as mentioned, Appellant was the last known person to see Cypress alive.

Appellant presented an alibi that was corroborated by several witnesses as well as his cell site location information establishing that he could not have killed Cypress. There simply was not substantial circumstantial evidence Appellant murdered Cypress. Consequently, the trial judge erred by denying Appellant's motion for a directed verdict.

Respectfully, this Court should direct a verdict of acquittal for murder and possession of a weapon during the commission of a violent crime.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal for murder and possession of a weapon during the commission of a violent crime.

Respectfully Submitted,

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

ATTORNEY FOR APPELLANT

This 13th day of March, 2024.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

March 13, 2024.

s/ Lara M. Caudy
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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 Final Brief of Appellant in the above referenced case have been served upon Deborah R.J. Shupe, Esquire, at her primary email addresses listed in the Attorney Information System (AIS), this 13th day of March, 2024.

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

ATTORNEY FOR APPELLANT