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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FERNANDO J. WRIGHT,

APPELLANT.

APPELLATE CASE NO. 2023-000742

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by failing to direct a verdict for the offense of murder when the state did not present evidence that the killing occurred in Dorchester County where Appellant was tried, rather the evidence established the killing occurred in Berkeley County where the body was found?

STATEMENT OF THE CASE

A Dorchester County grand jury indicted Appellant on September 1, 2022 for two counts of kidnapping and first degree burglary. It subsequently indicted Appellant on February 2, 2023 for murder. R. 739-746. Appellant's case was called to trial on April 17, 2023 before the Honorable Maite Murphy, and a jury. R. 18. Assistant Solicitors David Osborne and Shannon Elliott represented the state. Chad Sheldon and Alecia Flores represented Appellant. R. 18.

On April 20, 2023, the jury found Appellant guilty as indicted. R. 725, l. 16 – 726, l. 3. He was sentenced to life without parole for murder and first degree burglary and thirty years for each count of kidnapping. R. 735, l. 15 – 736, l. 14.

This appeal follows.

STANDARD OF REVIEW

This Court reviews the denial of a directed verdict motion in a criminal case under the any evidence standard of review. State v. Cain, 419 S.C. 24, 33, 795 S.E.2d 846, 851 (2017).

ARGUMENT

The trial court erred by failing to direct a verdict for the offense of murder when the state did not present evidence that the killing occurred in Dorchester County where Appellant was tried, rather the evidence established the killing occurred in Berkeley County where the body was found.

Relevant Facts

Appellant moved pretrial to quash the indictment for murder. The indictment alleged in part that the killing happened in either Dorchester County or Berkeley County. Defense counsel acknowledged that indictments are “only notice documents.” However, he asserted Appellant refused to waive venue. Counsel explained that since he was retained in April 2021 up until January 2023, it was his understanding “that if there was going to be a murder [indictment], it was going to be in Berkeley County.” Suddenly, in January 2023, he was “alerted we were having Dorchester County handle the murder charge.” R. 69, l. 18 – 70, l. 6. Citing to S.C. Code Ann. § 17-19-20 and § 17-19-30, counsel argued the indictment was invalid on its face because it did not set forth the place where the murder allegedly occurred. Instead, it listed two different places: Dorchester County and Berkeley County. He asserted, “So how is the defendant supposed to know what to defend against in Dorchester or Berkeley County because it’s either/or.” R. 70, ll. 7-21.

Citing to State v. Williams, 321 S.C. 327, 468 S.E.2d 626 (1996), the assistant solicitor argued venue in a criminal case need not be affirmatively proved and circumstantial evidence of venue, though slight, is sufficient. He admitted the state did not know “exactly where the fatal shot was fired on Dominique Harper nor do we know exactly where Dominique Harper died, but I would submit to the jury there is far more evidence to conclude that Dominique Harper was

shot and killed in Dorchester County than Berkeley County.” R. 71, ll. 10-22. He then listed some of the evidence he believed showed Harper was shot and killed in Dorchester County. R. 71, l. 23 – 73, l. 8. The solicitor again cited to Williams for the proposition that “where some acts material to the offense occur in one county and some in another, venue is proper in either county.” He argued there were certainly actions that occurred in Dorchester County, making Dorchester the proper venue. R. 73, ll. 9-18.

Defense counsel countered by citing the evidence, including the only direct evidence, that the murder happened in Berkeley County. Specifically, counsel cited in part to the “jail house confidential informant” who claimed Appellant told him the shooting happened as they were crossing a bridge, an overpass over Interstate 26, which is in Berkeley County. Counsel also asserted that the body and the decedent’s burned car were found in Berkeley County. He likewise cited to Williams for the proposition that “it can be inferred that the crime was committed in the state as well as the county where the body is found.” R. 74, l. 3 – 75, l. 3.

After emphasizing that an indictment is a notice document, the trial court found venue was proper in Dorchester County. It determined that “the evidence, at least at this junction, seems to suggest that the majority or the evidence critical to the commission of the crime commenced in Dorchester County.” It emphasized that “the motion may be more appropriate at the directed verdict stage depending on how the evidence is presented.” R. 75, l. 9 – 76, l. 21.

After the state rested, Appellant moved for a directed verdict based on venue. Defense counsel argued the state failed to present any evidence that the murder occurred in Dorchester County. He asserted, “Judge, everything has indicated that this was Berkeley County. Even if there is circumstantial evidence, it has to be substantial circumstantial evidence that the shooting and the killing happened in Dorchester County. And the evidence points to the fact that this

occurred in Berkeley County. Therefore, the State hasn't met its burden for a directed verdict.” R. 642, l. 20 – 643, l. 10.

The trial court found there was “evidence critical to the commission of the offense . . . connected to Dorchester County . . . rendering it an appropriate venue.” Accordingly, the court refused to direct a verdict. R. 644, l. 19 – 645, l. 2.

Discussion

The trial court erred by failing to direct a verdict for the offense of murder when the state did not present evidence that the killing occurred in Dorchester County where Appellant was tried, rather the evidence established the killing occurred in Berkeley County where the body was found.

“A criminal defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment.” State v. Williams, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996) (citing State v. Evans, 307 S.C. 477, 415 S.E.2d 816 (1992) and State v. McCoy, 98 S.C. 133, 82 S.E. 280 (1914)). “Although an accused has a right to be tried in the county in which the offense is alleged to have been committed, this right is not jurisdictional.” State v. Brisbon, 323 S.C. 324, 327, 474 S.E.2d 433, 435 (1996) (citing State v. Evans, 307 S.C. 477, 415 S.E.2d 816 (1992)). “Venue in a criminal case need not be affirmatively proved if there is sufficient evidence from which it can be inferred.” Id. (citing State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (1987); State v. Horne, 282 S.C. 444, 319 S.E.2d 703 (1984); and State v. Vareen, 223 S.C. 34, 74 S.E.2d 223 (1953)); See also State v. Williams, 321 S.C. 327, 334, 468 S.E.2d 626, 630 (1996). “Evidence of venue, though slight, is sufficient in the absence of conflicting evidence and may be proved by

circumstantial as well as direct evidence.” Id. (citing State v. Wharton, 263 S.C. 437, 211 S.E.2d 237 (1975) and State v. Henderson, 285 S.C. 320, 329 S.E.2d 448 (Ct. App. 1985)).

“Generally, it can be inferred that the crime was committed in the state as well as county where the body is found.” Williams, 321 S.C. at 334, 468 S.E.2d at 630 (citing United States v. Rees, 193 F.Supp. 849 (D. Md. 1961)). However, “where acts essential to the offense are committed in different counties, the accused may be tried in either county.” Brisbon, 323 S.C. at 327, 474 S.E.2d at 435 (citing State v. McLeod, 303 S.C. 420, 401 S.E.2d 175 (1991); Wray v. State, 288 S.C. 474, 343 S.E.2d 617 (1986); State v. Allen, 266 S.C. 468, 224 S.E.2d 881 (1976); State v. Gasque, 241 S.C. 316, 128 S.E.2d 154 (1962)).

South Carolina Code Ann. § 17-21-20 covers the issue of venue where a person causes injury in one county and death occurs in another. It states:

When any person shall be struck, wounded, poisoned or otherwise injured in one county and dies thereof in another any inquisition or indictment thereon found by jurors of either county shall be as good and effectual in law as if the stroke, wound, poisoning or other injury had been committed and done in the county in which the party shall die. And the person guilty of such striking, wounding, poisoning or other injury and every accessory thereto, either before or after the fact, shall be tried in the county in which such indictment shall be found and, if convicted, punished in the same mode, manner and form as if the deceased had suffered such striking, wounding, poisoning or other injury and death in the county in which such indictment shall be found.

In Owens, our Supreme Court determined that where there were signs of a struggle at the decedent’s Horry County residence at which he was last seen, and where ransom money was demanded and delivered in Horry County, there was sufficient evidence to establish venue in Horry County even though the decedent’s body was never found. Owens, 293 S.C. at 166, 359 S.E.2d 277-78.

In McLeod, the Court held that venue was proper in either Colleton or Beaufort counties. The decedent’s clothing and decomposed body were found in Beaufort County. However, she

was last seen alive in Colleton County, witnesses saw her there being forced into a car by the defendant, and there were signs of a struggle at her Colleton County residence. McLeod, 303 S.C. at 422, 401 S.E.2d at 176.

In Brisbon, our Supreme Court held there was sufficient evidence to find that venue was proper in Lexington County. Brisbon worked in Lexington County; blood that could potentially be the decedent's was found on a sofa at Brisbon's workplace; an axe on which were found blood stains and Brisbon's palm print was likewise found at the same location. Thus, despite the fact that the decedent's body was found in Lee County, the Court determined that evidence critical to the commission of the offense was connected to Lexington, thereby rendering Lexington a proper venue. Accordingly, the Court held the trial court did not err in refusing to grant a directed verdict to Brisbon based on the state's failure to establish Lexington as a proper venue.

In Williams, the Court held venue was proper in Edgefield County where the bodies of the decedents, a mother and son, were found inside the family van six miles from their home near Augusta, Georgia. The van appeared to have been intentionally set on fire. The mother's cause of death was blunt head trauma due to a beating and the son's cause of death was asphyxiation due to manual strangulation. A bath towel and the son's tennis shoes with blood stains on them were found at the family's home in Georgia. Williams, 321 S.C. at 330-31, 468 S.E.2d at 628. The Court concluded that although there was evidence that some of the acts material to the homicides may have been committed in Georgia, the deaths occurred sometime between the time the decedents were last seen in Georgia and the time the fire started in the van in South Carolina. The Court held because both bodies were found in Edgefield County, there

was sufficient evidence from which a trier of fact could reasonably infer the decedents died there. Id. at 334, 468 S.E.2d at 630.

In this case, the only direct evidence as to where the decedent was killed was Jeron McCants' testimony that Appellant allegedly told him he shot the decedent as they were traveling in the decedent's car "right before [they] got to a bridge . . . right beside the interstate" on Cypress Campground Road. R. 373, ll. 13-18. This bridge is likely an overpass over Interstate 26 and is located in Berkeley County. Although the overpass is very close to Berkeley County's border with Dorchester County, it is located in Berkeley County.

Moreover, the circumstantial evidence established the murder occurred in Berkeley County. First, the body was found in Berkeley County in a ditch off Cypress Campground Road. As our Supreme Court asserted in Williams, generally, it can be inferred that the crime was committed in the county where the body was found. See Williams, 321 S.C. at 334, 468 S.E.2d at 630. Additionally, the decedent's burned car, where the killing likely took place, was found in Berkeley County.

Similar to Williams, although there was evidence that some of the acts material to the offense may have been committed in Dorchester County, the body was found in Berkeley County. Accordingly, a reasonable trier of fact could only conclude the murder happened in Berkeley County.

Respectfully, this Court should hold the trial court erred by denying Appellant's motion for a direct a verdict for the offense of murder since the state failed to present sufficient evidence that the killing occurred in Dorchester County, the county where Appellant was tried.

CONCLUSION

Based on the foregoing argument, this Court should direct a verdict for the offense of murder.

Respectfully submitted,

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

ATTORNEY FOR APPELLANT

This 21st day of March, 2024.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Maite Murphy, Circuit Court Judge

THE STATE,

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FERNANDO J. WRIGHT,

APPELLANT

APPELLATE CASE NO. 2023-000742

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Fernando J. Wright 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 April 17-23, 2023 before the Honorable Maite Murphy, 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 Fernando J. Wright.

Respectfully Submitted,

s/ Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of March, 2024.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Honorable Maite Murphy, Circuit Court Judge

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APPELLATE CASE NO. 2023-000742

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

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

- (1) Complete Pretrial Transcript dated March 20, 2023;
- (2) Complete Transcript dated April 17, 2023;
- (3) Complete Trial Transcript dated April 17-20, 2023;
- (4) Indictments;
- (5) 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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Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

This 21st day of March, 2024.

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.”

s/ Lara M. Caudy_____

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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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 her primary email address listed in the Attorney Information System (AIS); and on Fernando J. Wright, #364344, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 21st day of March, 2024.

s/ Lara M. Caudy

Lara M. Caudy

Appellate Defender

ATTORNEY FOR APPELLANT