STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No: 2012-212430

THE STATE,

Respondent,

v.

MICHAEL WILSON PEARSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly denied Appellant's motion for directed verdict because sufficient evidence was presented establishing Appellant was guilty of first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime.

STATEMENT OF THE CASE

A Clarendon County Grand Jury indicted Appellant for attempted murder, first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime. (R.* Indictments.) On May 14, 2012, Appellant proceeded to trial before a jury with his co-defendant Victor Weldon. Harry Devoe, Esquire, represented Appellant, John and Laura Knobeloch, Esquires, represented Weldon, and Solicitor Ernest A. Finney, III, and Assistant Solicitor Jason Corbett represented the State. The attempted murder charge was not submitted to the jury. The jury found Appellant guilty of all other charges, and the Honorable R. Ferrell Cothran, Jr., sentenced him to thirty years' imprisonment for first-degree burglary, thirty years' imprisonment for armed robbery, five years' imprisonment for grand larceny, twenty years' imprisonment for kidnapping, and five years' imprisonment for the weapon charge. The burglary and armed robbery sentences were consecutive and all other sentences were concurrent. (Tr. Vol. 5, pp. 76-77.)

On May 25, 2012, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

On May 15, 2010, Edward "Slick" Gibbons (Victim) walked out of his garage and was jumped by three men who came out of the storage room of his carport. (Tr. Vol. 3, p. 27, line 16; p. 32, line 20-p. 34, line 9.) The men beat him, robbed him, and stole his vehicle. (Tr. Vol. 3, p. 39, lines 23-25; p. 40, lines 6-13; p. 42, lines 15-21; p. 43, lines 19-22; p. 44, lines 10-18; p. 46, lines 12-15.) Appellant and his co-defendant, Victor Weldon, were arrested and charged with attempted murder, first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime. (R.* Indictments.)

At trial, Victim testified he left his house around 6:15 or 6:20 a.m., came out of the garage, and bent over to put on his shoes. (Tr. Vol. 3, p. 26, line 18; p. 33, lines 8-23.) At that point, three men came out of the storage room of his carport and jumped him. (Tr. Vol. 3, p. 34, lines 1-9.) The men were black and wore masks. (Tr. Vol. 3, p. 37, lines 5-18.) Victim testified the men robbed him of approximately $840 and then beat him, asking where the rest of the money was. (Tr. Vol. 3, p. 39, lines 6-25; p. 44, lines 10-18.) He described how the men sat on him, kicked him, stomped on his chest and stomach, and wrapped duct tape around his face. (Tr. Vol. 3, p. 42, line 15-p. 43, line 1.) Victim testified that one man had what he thought was a gun and he heard one man ask if they were going to shoot him. (Tr. Vol. 3, p. 42, lines 10-16; p. 44, lines 10-11; p. 56, lines 3-9.) After being beaten and robbed, he heard the men leaving and got up to see what kind of car they were driving. (Tr. Vol. 3, p. 9-15.) He heard someone say, "He's up, he's up," and saw one of the men jump out of the back of Victim's El Camino and run back in to hit him. (Tr. Vol. 3, p. 46, lines 16-19; p. 48, lines 1-3; p. 50, line 25-p. 51, line 5.) Victim testified the value of his El Camino was approximately $6,500.

(Tr. Vol. 3, p. 54, lines 18-20.) He testified he was taken to Clarendon Memorial Hospital by ambulance and then transported via helicopter to Columbia, where he spent more than a week in intensive care and then a week in a rehabilitation center. (Tr. Vol. 3, p. 57, lines 2-17.)

Victim's wife, Kay Gibbons, testified next. (Tr. Vol. 3, p. 90, line 17.) On the morning of the incident she was in bed, heard the doorbell, and opened the door to find her husband bloody, wrapped in tape, and barely able to stand. (Tr. Vol. 3, p. 92, lines 12-25.) She called her daughter, who called 911 and came to their house. (Tr. Vol. 3, p. 94, line 16-p. 95, line 9.) Gibbons testified that law enforcement and an ambulance arrived at the scene and Victim was taken to the hospital. (Tr. Vol. 3, p. 96, line 2-p. 97, line 25.)

The State called Cecil "Mac" Eaddy, Jr., to testify about finding Victim's car in the road. (Tr. Vol. 3, p. 111, line 19-p. 113, line 24.) He found the car running with the passenger door open at about 6:40 a.m. about a mile and a half from Victim's store. (Tr. Vol. 3, p. 116, lines 1-9.) Eaddy described how he pulled the car out of the road and turned it off, took the keys to Victim's store, and drove one of Victim's employees back to the car so the employee could drive it to Victim's store. (Tr. Vol. 3, p. 116, line 15-p. 117, line 24.)

Ricky Richards, an investigator with the Clarendon County Sheriff's Office, testified that he processed the vehicle after it had been found and taken to Victim's garage. (Tr. Vol. 3, p. 121, line 23-p. 123, line 5; p. 124, lines 2-7.) He found fingerprints on the rear quarter of the driver's side and the driver's side door jamb and sent them to Marie Hodge, a fingerprint technician with the Sumter Police Department.

(Tr. Vol. 3, p. 124, line 10-p. 127, line 6.) Richards admitted on cross-examination that there was no way to tell when the fingerprints were left. (Tr. Vol. 3, p. 134, lines 6-12.)

Next the State called Investigator Thomas "Lin" Ham of the Clarendon County Sheriff's Office. (Tr. Vol. 3, p. 136, line 15.) He testified that he was called to the scene on May 15, 2010, and had known Victim and Gibbons all his life. (Tr. Vol. 3, p. 137, lines 20-25.) He testified that his assignment was to assist and oversee Investigator Kenneth Clark's investigation because Clark was a new investigator. (Tr. Vol. 3, p. 138, lines 9-19.) Ham identified photographs from the crime scene showing black duct tape, blood spots, and Victim at the hospital with the tape still wrapped around his head. (Tr. Vol. 3, p. 141, lines 2-25; p. 142, lines 1-9.) He described how he wore gloves and helped the nurse get the tape off Victim's head. (Tr. Vol. 3, p. 142, lines 10-17.) After removing the tape, Ham testified that he put it in a bag and turned it over to Investigator Clark as evidence so it could be taken to SLED and processed. (Tr. Vol. 3, p. 142, lines 20-25.) Next, Ham testified to taking fingerprints from Appellant. (Tr. Vol. 3, p. 145, lines 12-25.) The State moved Appellant's fingerprint card into evidence and it was admitted without objection. (Tr. Vol. 3, p. 146, line 19-p. 147, line 1.) Ham testified regarding Investigator Clerk's interview with Appellant, for which Ham was present. (Tr. Vol. 3, p. 149, lines 19-23.) He testified that Appellant adamantly denied knowing Victim and said he did not know where Victim lived, had never been to Victim's home or place of business, and had never come into contact with Victim's vehicle. (Tr. Vol. 3, p. 150, lines 9-19.)

Next, the State called Marie Hodge, the fingerprint examiner for the Sumter Police Department. (Tr. Vol. 3, p. 158, line 11-p. 159, line 19.) The trial court qualified her as an expert in the field of fingerprint identification without objection. (Tr. Vol. 3, p.

162, lines 21-25.) She testified that she examined the latent print send by Richards and determined it was made by Appellant's right thumb based on a comparison with Appellant's fingerprint card. (Tr. Vol. 3, p. 170, line 10-p. 171, line 18.) On cross-examination, Hodge admitted there was no way to age or date a fingerprint. (Tr. Vol. 3, p. 175, lines 14-19.)

The State called Kenneth Clark, the investigator in charge of the case. (Tr. Vol. 4, p. 5, line 18-p. 7, line 4.) He testified Victim described the men who robbed and beat him as three black males, of mid age and medium build, who wore dark clothing and masks. (Tr. Vol. 4, p. 15, lines 20-25; p. 17, lines 14-19.) Clark verified a fingerprint lifted from the rear quarter panel of Victim's stolen vehicle matched Appellant. (Tr. Vol. 4, p. 20, line 10-p. 21, line 13.) He also testified concerning his interview with Appellant, confirming Investigator Ham's earlier testimony that Appellant denied having been around Victim's property or vehicle. (Tr. Vol. 4, p. 22, lines 9-17.) The State then asked Clark to describe why Appellant was charged with each of the six charges he faced. (Tr. Vol. 4, p. 23, line 14-p. 26, line 17.)

During Clark's investigation, he discovered Richard Gamble, a landscaper who verified that Appellant had previously been to Victim's house because he had taken Appellant with him to the home on several occasions to do landscaping. (Tr. Vol. 4, p. 33, line 22-p. 34, line 7.) Although Appellant and his co-defendant Weldon claimed not to know each other, Investigator Clark testified he had discovered that both men were at the South Carolina Vocational Rehabilitation Center (Voc Rehab) at the same time. (Tr. Vol. 4, p. 35, lines 3-25.) The State called John Hornsby to verify that Appellant and Weldon had worked together at Voc Rehab from December 9-12, 2008. (Tr. Vol. 4, p. 92, line 5-p. 95, line 16.)

The State called Richard Gamble, the landscaper who claimed to have taken Appellant to Victim's house to do yard work. (Tr. Vol. 4, p. 79, line 10-p. 81, line 5.) Gamble testified that Appellant had worked with him on landscaping projects at Victim's home and next door at Victim's son's home. He estimated they spent about a week at both homes in the spring of 2010, trimming and cleaning up. He further testified that Appellant had been in Victim's garage to get tools while they were working. (Tr. Vol. 4, p. 81, line 3-p. 83, line 1.)

After the State rested, Appellant moved for a directed verdict, arguing the only evidence was a fingerprint on the vehicle and that it could have gotten there at any time. (Tr. Vol. 4, p. 140, line 25-p. 142, line 6.) The trial court denied the directed verdict motion, finding the fingerprint, coupled with Appellant's statement that he had never had contact with Victim's home or vehicle, was sufficient evidence to send the case to the jury. (Tr. Vol. 4, p. 149, lines 5-p. 152, line 3.) Ultimately, the jury found Appellant guilty of first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime, and the trial court sentenced him to a total of sixty years' imprisonment. (Tr. Vol. 5, p. 67, line 22-p. 68, line 9; p. 76, line 25-p. 77, line 7.)

ARGUMENT

The trial court properly denied Appellant's motion for directed verdict because sufficient evidence was presented establishing Appellant was guilty of first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime.

Appellant argues the trial court erred in refusing to direct a verdict of acquittal for first-degree burglary, armed robbery, grand larceny, kidnapping, and possession of a weapon during the commission of a violent crime because the only evidence linking Appellant to the crime scene was a fingerprint found on Victim's vehicle and Appellant's statement denying knowing Victim despite testimony Appellant had done landscaping work for Victim. On the contrary, sufficient evidence existed for the trial court to deny the directed verdict motion and allow the case to be submitted to the jury. Appellant's fingerprint was found on Victim's stolen vehicle on the day it was stolen. Further, Appellant's own statement contradicted other testimony that Appellant was familiar with Victim's home and garage after doing landscaping work on his property. Thus, the trial court correctly denied the directed verdict motion and allowed the case to be submitted to the jury for resolution.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "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. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). 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. An appellate court must find a case is properly submitted to the jury if any direct evidence or

any substantial circumstantial evidence reasonably tends to prove the guilt of the accused. Id. at 292-93, 625 S.E.2d at 648. An appellate court may reverse a trial court's denial of a motion for a directed verdict if there is no evidence to support the trial court's ruling or if the ruling is based on an error of law. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

Appellant cites a number of cases and argues the evidence here failed to place Appellant at the scene of the crime. However, the cases Appellant cites can be distinguished from the case at hand. In State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004), the Supreme Court found:

> Viewing the evidence most favorably to the State, respondent's fingerprint on the coffee cup lid tab establishes he was in the borrowed BMW on the same day the victim was last seen alive. The fact that the BMW was found abandoned in Tennessee, the same state where respondent was located after his stay in Savannah, raises a suspicion of guilt but is not evidence that respondent killed Dr. Cox. Further, there is no evidence respondent was at the scene of the crime, which according to the State's theory was in Colleton County.

Arnold was a murder case where the crime occurred in Colleton County but the car was found in Tennessee, and police determined the car was not connected to the murder scene. There was not enough of a connection between finding the defendant's fingerprint in the victim's car and charging him with murder because the car was not the scene of the crime and did not appear to be involved in the actual murder.

State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000), is another murder case where the Supreme Court found a directed verdict should have been granted because the State failed to place the defendant at the scene of the crime. The only evidence in Martin was that a car similar to one of the defendant's cars was seen parked at Victim's apartment. Id. at 603, 533 S.E.2d at 603. However, no evidence showed it actually was the defendant's car, nor did any evidence establish the death occurred while that car was parked there. Id. In Martin, the evidence clearly established only a mere suspicion of guilt and no evidence supported the trial court's denial of a directed verdict.

In the case sub judice, part of the crime was the stealing of Victim's vehicle. The crime began with first-degree burglary when the men entered Victim's storage room before sunrise to wait for him and then progressed to armed robbery when they appeared to have a gun and robbed him. It became kidnapping when they restrained him by sitting on him and wrapping tape around his head and face and progressed to grand larceny with the stealing of Victim's El Camino. The entire crime was committed with a weapon, which led to the possession of a weapon during the commission of a violent crime charge. Unlike the above murder cases, Appellant's fingerprint on the stolen vehicle ties him directly to the crime of grand larceny. And because the vehicle was stolen from the scene where the rest of the crimes occurred, the evidence directly ties Appellant to the scene of the crimes. Appellant's fingerprint being found on the outside of the vehicle, coupled with the knowledge that one of the assailants rode in the back when the three men left the scene, was sufficient to tie Appellant to the crime of stealing the vehicle, which in turn connected him to all the crimes.

In his brief, Appellant relies in part on State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011). To distinguish Odems, one must only look at the facts of that case. In Odems,

police found twelve sets of fingerprints in the car and on the stolen goods. Id. at 588, 720 S.E.2d at 51. These prints included sets that matched two of the men charged with the crime. Id. However, none of the prints matched Odems. Id. Further, an eyewitness saw only two men at the scene, not three. Id. Finally, one of the co-defendants, Dawkins, explained that Odems got into the car after the crime had already been committed when they saw him at a nearby gas station. Id. The other co-defendant, Bell, told police he was with Dawkins during the burglary but that Odems was with them when they were stopped by police, never actually implicating Odems. Id., n.2. The Court found the State failed to produce substantial circumstantial evidence that Odems was guilty, instead raising only a mere suspicion, and the trial court erred in refusing to grant a directed verdict. Id. at 590-92, 720 S.E.2d at 52-53. Notably, the Odems Court pointed out that if there had been substantial circumstantial proof of his involvement in one of the four offenses he was charged with, it would prove his involvement in all. Id. at 591, 720 S.E.2d at 53. Thus, Odems actually supports the above argument about evidence of grand larceny tying Appellant to all the other crimes.

Appellant cites State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984), for the proposition that a court must direct a verdict if the evidence only raises a suspicion of guilt. In Schrock, the State presented evidence of a footprint found at the scene of the murders. However, "[e]xperts could not definitely testify that the footprint found at the scene was made by the shoes purported to belong to Schrock." Id. at 132, 322 S.E.2d at 452. A forensic scientist at trial said, "[T]here was just not quite enough of the individual marks to conclusively identify those shoes as having made those tracks." Id. Furthermore, cigarettes found at the scene could not be established as having been smoked by Schrock and a hand print nearby was not his. Id. The evidence presented in

Schrock is clearly insufficient and only raised a mere suspicion of his guilt. Thus, the Supreme Court was correct in finding the trial court should have directed a verdict.

In this case, much more evidence was presented than in Schrock. Here, Appellant's fingerprint was recovered from the rear of Victim's stolen vehicle. The fingerprint was matched to Appellant by a fingerprint analyst who testified at trial. Victim testified one man was in the back of the vehicle when the men began to leave and came back to beat him. Additionally, testimony was presented that Appellant knew where Victim lived, had been to his property, and had been inside his garage while working with a landscaper. This was in direct contradiction to Appellant's statement to police that he did not know Victim, did not know where Victim lived, had never been to Victim's home or place of business, and had never come into contact with Victim's vehicle. Indeed, the fact that Appellant denied ever coming into contact with Victim's vehicle leaves no other explanation for why his fingerprint would be on it except for the crimes. Appellant and co-defendant Weldon denied knowing each other. However, testimony was presented that Appellant and Weldon had been assigned to the same wood shop at Voc Rehab from December 9-12, 2008.

When Appellant moved for a directed verdict, the trial court carefully considered his and his co-defendant's arguments, including the cases brought to the trial court's attention. The trial court stated:

> As far as [Appellent]'s fingerprint the evidence in this case that has come before this jury that I recall he told the police officer he did not know [Victim]. He had not been at this house or his place of business.
>
> His vehicle was taken that morning. Within 30 minutes the vehicle was found abandoned a mile and a half or two miles away. The vehicle was processed and was carried to the auto parts place and processed. That day his fingerprint was found on the vehicle.

> And I certainly think at least that's sufficient evidence for the jury to make a determination of guilt or innocence in this case. And I respectfully deny your motion.

(Tr. Vol. 4, p. 149, lines 5-17.) Moreover, the trial court emphasized the testimony that Appellant had never had contact with the vehicle so there was no opportunity for the fingerprint to have gotten there lawfully. While testimony was presented that Appellant had worked in Victim's yard, no testimony was presented that he had anything to do with the vehicle. On the contrary, Appellant gave a statement to police that he had never had contact with the vehicle. Thus, the trial court properly concluded it was a question of fact the jury would have to decide. (Tr. Vol. 4, p. 149, line 22-p. 150, line 7.) The trial court then stated:

> [T]here's no testimony his print could have accidently gotten on that car. Now those are all questions of fact this jury is going to have to struggle with. But at this point in the game whether the evidence exists that they could make this determination and in fact circumstances that [his] prints are on the car within 30 minutes of the crime being [sic] occurred is at least sufficient to have placed him at the scene.
>
> It depends on - - I understand that the jury is going to have to make this determination as to whether they think the State has met its burden of proof. But at this point it's the existence of evidence and I think there is at least credible evidence in this record that the jury could make a finding of guilt.
>
> It's a number of facts they've got to struggle with. But I'm going to let them make that call. I'm sure both sides will argue what the evidence does or does not show. But at least at this point I think it goes further than the Mitchell, Arnold, or Bostic case. . . .
>
> And your client's fingerprint was found on the stolen vehicle within 30 minutes of the crime. They can at least - - they can decide if the State has not proved that he was there at the time of the crime or not; I don't know. There is at least evidence of that.

(Tr. Vol. 4, p. 151, line 1-p. 152, line 2.)

The above ruling demonstrates the trial court's careful consideration of the cases, the arguments, and whether evidence existed to place Appellant at the scene. Because the appellate court must consider all the evidence and reasonable inferences therefrom in the light most favorable to the State and may only reverse a trial court's denial of a motion for a directed verdict if there is **no evidence** to support the trial court's ruling or if the ruling is based on an error of law, this Court should affirm the trial court's ruling. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008) (emphasis added).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 12, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Clarendon County
The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No: 2012-212430

THE STATE,

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v.

MICHAEL WILSON PEARSON,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondent proposes the same Designation of Matter to be Included in the Record on Appeal as Appellant.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

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ATTORNEYS FOR RESPONDENT

August 12, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

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THE STATE,

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MICHAEL WILSON PEARSON,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 12th day of August, 2013.

ANGELA BENNETT
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