THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Appellate Case No. 2023-001791

Indictment No. 2023-GS-26-00416

The State, Respondent,

v.

Fanotti Nacier Neal, Appellant.

INITIAL BRIEF OF APPELLANT

Respectfully submitted,

June 11, 2024

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STATEMENT OF ISSUE ON APPEAL

Did the Trial Judge abuse his discretion by denying Appellant's motion for a new trial, since the state failed to present substantial circumstantial evidence of Appellant's guilt of murder under the hand of one hand of all theory of accomplice liability?

STATEMENT OF THE CASE

A Horry County grand jury indicted Appellant on January 25, 2023, for Murder and Burglary 1st Degree. R. * (Indictments). Appellant was tried on November 6, 2023 through November 9, 2023 before the Honorable William Seals, Circuit Judge, and a jury. Tr. 1. Appellant was jointly tried with his co-defendant, Micah Pressley. Tr. 1. Assistant Solicitors Nancy Livesay and Adam Harrelson represented the state. Tr. 1. David Rigney represented Appellant and Ralph Wilson, Sr., represented co-defendant Micah Pressley. Tr. 1. At the close of the State's case, Judge Seals granted Appellants' motion for a directed verdict in regard to the burglary charge only. Tr. 744, ll. 11-12. The jury found Appellant guilty as indicted on the murder charge. Tr. 810, ll. 24-25, Tr. 811, l 1. Appellant moved for a judgment of acquittal notwithstanding the verdict and in the alternative for a new trial, based on the insufficiency of the evidence. Tr. 812, ll. 15-19. Judge Seals denied Appellant's motion. Tr. 812, ll. 20-21. Appellant was sentenced to 40 years in prison. Tr. 822, ll. 6-9.

This appeal followed.

STATEMENT OF FACTS

During the early morning hours of May 29, 2022, Appellant and four other individuals traveled from Florence, South Carolina, to an apartment in Conway, South Carolina. Tr. 632, ll. 13-15. Charrel Floyd was one of the females who arrived at the apartment, having traveled from Florence, and she identified the vehicle which the individuals came from Florence in as her sister's car. Tr. 633, ll. 8-12. Ms. Floyd also identified all the individuals who were in the car with her. Tr. 633, l. 25; Tr. 634, ll. 1-25; Tr. 635, ll. 1-25; Tr. 636, ll. 1-17.

When Ms. Floyd entered the apartment in Conway, she observed two people in the main living area of the apartment. Tr. 637, ll. 16-21. Both were sleeping. Tr. 637, l. 25; Tr. 638, ll. 1-5. While she was in the apartment, she did not see anyone else in the apartment come out of any of the bedrooms. Tr. 638, ll. 6-8.

Upon entering the apartment, Appellant greeted Marion Robinson, one of the individuals who was staying in the apartment that night. Tr. 236, ll. 7-10; Tr. 283, ll. 5-10; Tr. 639, ll. 18-22. Appellant and Robinson had previously worked together. Tr. 283, ll.19-23. Robinson, who was sleeping in a chair at the apartment, woke up long enough to acknowledge Appellant. Tr. 236, ll. 22-25. When he saw Appellant in the apartment, Robinson said he didn't think too much of it. He just went back to sleep. Tr. 237, ll. 22-25. Thus, after a fist bump with Appellant, Robinson went back to sleep. Tr. 232, ll. 9-10. Josh McPherson, the victim, was on a couch, also in the room where Robinson was located in the apartment. Tr. 231, ll. 10-20.

At trial, Robinson testified that he was neither surprised nor frightened upon seeing Appellant in the apartment. Tr. 237, ll. 2-25; Tr. 283, ll. 16-18; Tr. 286, ll. 1-4. Robinson further agreed that he had no reason to fear for himself or anyone else in the apartment upon seeing

Appellant in the apartment. Tr. 286, ll. 17-20. Robinson also testified that he was certain it was not Appellant that he saw standing in the apartment with a gun on the night of the incident. Tr. 289, ll. 17-21. Further, Robinson affirmed that he did not ever see Appellant with a gun that night. Tr. 289, ll. 22-23.

Within a short time after entering the apartment, Floyd, another female, identified by Floyd as "Kim," and a male, identified by Floyd as "Shi", left the apartment. Tr. 642, ll. 23-25; Tr. 644, ll. 8-11. Floyd stated that Appellant and co-defendant Micah Pressley remained in the apartment when Floyd and the other two individuals left the apartment. Tr. 643, ll. 6-8.

Robinson was awakened by what he described as the sound of two people tussling. Tr. 232, ll. 10-11. He then opened his eyes and saw somebody in a black hoodie who had shot McPherson, and that person ran out the door. Tr. 232, ll. 11-13. Robinson also stated that after McPherson was shot, he pulled the cover back over his face. Tr. 233, ll. 4-5. He later pulled the cover back down from his head, and went to check on McPherson. Tr. 234, ll. 5-6. Robinson saw that McPherson was bleeding, and he started banging on doors to tell everyone in the apartment to come out to the living room. Tr. 234, ll. 6-8.

A 911 call was placed by one of the young ladies in the apartment. Tr. 242, ll. 22-25. Police soon arrived at the scene. Tr. 146, ll. 17-18.

In an interview with police shortly after the event, Robinson mistakenly identified Appellant as the person who he believed had shot McPherson. Tr. 318, ll. 1-22. At trial, however, he testified that he had been mistaken in thinking Appellant was the shooter he saw. Tr. 256, ll. 1-16; Tr. 289, ll. 2-21. He explained that, at the time of his initial interview, he thought Appellant was the only person who had entered the apartment. Tr. 255, ll. 14-25.

The State did not offer any evidence tending to show that there was any preplanning involved with respect to Appellant and his co-defendant having the intention of killing Mr. McPherson. In fact, Detective Allan Huggins was not able to provide any DNA evidence, fingerprint evidence, or anything to connect Appellant to any weapon involved in the crime. Tr. 603, ll. 22-25, Tr. 604, l 1. Huggins also admitted that he did not know what Appellant actually did at the apartment on the night of the homicide, and that he could not testify that anything involved in the crime or crime scene could be directly related to Appellant. Tr. 604, ll. 2-25; Tr. 605, ll. 1-20.

With regard to what Appellant did at the apartment, Floyd agreed with the statement that Appellant was just hanging out there at the apartment. Tr. 688, ll. 22-25, Tr. 689, l. 1. She also agreed with this statement: "Would it be fair to say that he was merely present?" Tr. 689, ll. 7-9. Further, Officer Nicholas Contino testified that Appellant during the course of his interview, had said he, Appellant, was a "backseat rider." Tr. 379, ll. 4-6.

The jury convicted both Appellant and his co-defendant, Micah Pressley, of murder.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." State v. Wharton, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). "A trial judge has the discretion to grant or deny a motion for a new trial, and his decision will not be reversed absent a clear abuse of discretion." State v. Johnson, 376 S.C. 8, 11, 522 S.E.2d 137, 138 (1999).

ARGUMENT

The Trial Judge abused his discretion by denying Appellant's motion for a new trial, since the state failed to present substantial circumstantial evidence of Appellant's guilt of murder under the hand of one hand of all theory of accomplice liability.

At the trial of this case, the State presented various witnesses in an effort to show Appellant's connection to the murder of the victim. However, the circumstantial evidence presented by the state did not rise to the level required in order to obtain a conviction based on the hand of one hand of all theory of accomplice liability.

"If there is any direct evidence or any 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." State v. Ziegler, 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005). However, the Appellate Court "...must reverse if the evidence only gives rise to a mere suspicion of the defendant's guilt." State v. Prather, 429 S.C. 583, 608, 840 S.E.2d 551, 564 (2020).

In the instant case, the evidence presented by the State showed that Appellant was in the Apartment at the time the homicide took place. Tr. 236, ll. 7-10. There was no evidence presented regarding prior planning about the commission of the crime. A state's witness testified that no DNA or fingerprint evidence was found to connect the defendant to anything related to the crime. Tr. 603, ll. 22-25, Tr. 60, l. 1. The state presented no evidence that a weapon had been found on Appellant.

Further, a state's witness testified that he was neither surprised nor frightened upon seeing Appellant in the apartment. Tr. 237, ll. 22-25; Tr. 283, ll. 16-18; Tr. 286, ll. 1-4. Another witness for the state agreed that she could say that Appellant was "merely present" at the

apartment. Tr. 689, ll. 7-9. An investigating officer recalled that Appellant stated during his interview that he was just a "back seat rider". Tr. 379, ll. 4-6.

The evidence offered by the state showed that the Appellant was in the apartment at the time the crime took place. That evidence alone should not be sufficient to allow the jury to return a guilty verdict.

The Trial Court charged the jury as follows: "Present at the commission of a crime means to be sufficiently near to, aid and abet, and assist the commission of the crime. However, mere presence at the scene of the crime is not sufficient to convict one as a principle on the theory of aiding and abetting. Intent is also a necessary element, where there must have been a common design or intent to commit the crime, and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act." Tr. 806, ll. 9-17.

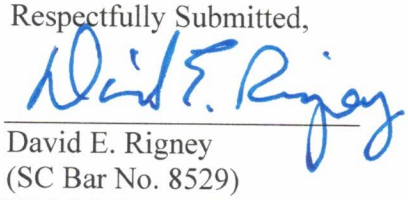
Appellant contends that there was insufficient evidence presented by the state to convict him in this case based on the hand of one hand of all theory of liability. At most, the circumstantial evidence presented by the state shows that he was merely present at the crime scene, and therefore is not guilty of the murder. In this case, the state presented evidence which raised a "mere suspicion" that Appellant was involved in this crime. Therefore, the defendant should not have been convicted of murder under the hand of one hand of all theory. State v. Prather, 429 S.C. 583, 608, 840 S.E.2d 551, 564 (2020).

Respectfully, since there was not substantial circumstantial evidence presented at trial to show Appellant's guilt under the hand of one hand of all theory of accomplice liability, the trial judge abused his discretion by failing to grant Appellant's Motion for a New Trial, and therefore his conviction and sentence should be reversed and the case remanded for a new trial.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests that this Court reverse his conviction and sentencing and remand the case to the Horry County Court of General Sessions for a new trial.

Respectfully Submitted,



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