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Aug 28 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Bentley Price, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY DONIAL WOODS, JR.,

APPELLANT

APPELLATE CASE NO. 2023-001991

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict of acquittal where the state's evidence merely raised a suspicion of appellant's guilt to the crime of murder where there was no direct evidence nor any substantial circumstantial evidence that appellant struck the decedent or actively participated and aided and abetted in a plan to kill the decedent since appellant was entitled to a directed verdict under these circumstances?

STATEMENT OF THE CASE

Appellant was indicted at the February 2, 2023 term of the Dorchester County grand jury for the offense of murder. R. p. 769 - 776. His case was called to trial on December 11, 2023, before the Honorable Bentley J. Price. Laree Hensley and Jim Smiley represented appellant. R. 1 - 2.

On December 11, 2023, the jury found appellant guilty of murder. R. 760. The state had served appellant with its notice of intent to seek a sentence of life imprisonment without parole based on appellant's prior criminal record if he was convicted of murder. Judge Price then sentenced appellant to life imprisonment without parole. R. 766.

This appeal follows.

STANDARD OF REVIEW

“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 429, 753 S.E.2d at 409.

ARGUMENT

The court erred by refusing to direct a verdict of acquittal where the state's evidence merely raised a suspicion of appellant's guilt to the crime of murder where there was no direct evidence nor any substantial circumstantial evidence that appellant struck the decedent or actively participated and aided and abetted in a plan to kill the decedent since appellant was entitled to a directed verdict under these circumstances.

Relevant Facts

The decedent in this case was a marijuana dealer. He lived with his fiancé and their child. However, apparently unbeknownst to the would-be robbers he kept his large marijuana stash and a large amount of cash hidden in a Dodge Charger on his cousin's property.

Summerville police officer Jonathan Lynch remembered on February 4, 2021, at around 11:16 p.m., he was dispatched to a robbery call. Lynch was advised by dispatch before he arrived at the apartment that the decedent who lived there "had an extensive history with drugs." R. 85, ll. 13-17. When he arrived at the apartment, the decedent's fiancé, Brittany Vasquez, met him outside yelling that she had been robbed. R. 74, l. 8 - 78, l. 15.

The police learned that Vasquez's cell phone was stolen during the robbery as was the decedent's automobile, and his Play Station 5. R. 89, l. 10 - 91, l. 13. Lynch himself was told there were four robbers involved and that two of them had Jamaican accents. R. 93, l. 12 - 94, l. 10.

Officer Matthew Brooks remembered seeing that the back sliding glass door to the apartment was broken. R. 106, ll. 2-8. Brooks also saw blood in the apartment that he swabbed for DNA. However, there was no DNA or fingerprint evidence inculpatory of appellant found inside or outside of the apartment. R. 103, l. 14 - 107, l. 22.

The decedent's body was found the next day in the Cypress Campground a good distance from the apartment. The decedent's hands were tied behind his back, he had injuries to his face, and he had been shot in the head. R. 137, l. 9 - 143, l. 12.

The decedent's automobile was found nearby, but it was "burned up." R. 148, l. 1 - 149, l. 14. The car was riddled with bullet holes, and the decedent was found lying face-down on the ground not far from the car. R. 148, l. 5 - 149, l. 14; 163, ll. 8-13.

Brittany Vasquez confirmed that the decedent was the father of her child. He routinely carried about five-thousand dollars on his person. R. 188, l. 1 - 189, l. 21. A couple of years before this fatal incident, the Summerville police department had executed a search warrant for drugs on their apartment. However, while they did not find any drugs, they did find six-to-seven-thousand dollars in cash. R. 189, l. 8 - 190, l. 6.

Brittany remembered that on February 4, 2021, she was lying in bed with her young son watching television when the four robbers came inside their apartment.¹ The robbers kept asking Brittany where the decedent kept his money: "Where was the money?" Brittany told them she did not know "what they were talking about." Brittany eventually asked the robbers how much money the decedent owed them, and they said, "a lot." R. 198, l. 21 - 202, l. 2.

The robbers tied her to a chair, and one of them cut her shirt off and fondled her. He told her if the decedent did not come home soon, they were going to strip her, and the decedent was going to find her dead and naked. R. 202, l. 4 - 203, l. 9.

One of the robbers used Brittany's phone to text the decedent, and he asked him: "Where you at?" They continued to ransack the apartment looking for money and drugs. She told the

¹ The state's theory of the case was that there were only three robbers involved, and the two robbers with "Jamaican accents" report was apparently never pursued since none of the three men arrested had Jamaican accents.

robbers that the decedent did not keep his money or marijuana on the property, but they continued to search anyway. R. 204, l. 18 - 205, l. 10.

Eventually, the decedent came home with pizza for dinner, and the robbers turned the lights off when they heard him approaching the apartment. One of the robbers put a gun to Brittany's head and told her not to alert the decedent. R. 206, l. 4 - 207, l. 17.

The robbers grabbed the decedent before he came inside, and Brittany heard one of them yell for the decedent to "get the fuck in the car." R. 692, ll. 11-23. Then Brittany heard "the car speed off." R. 207, ll. 4-24. Brittany identified appellant as being the "short robber" in a surveillance tape photograph taken on the night of the robbery from outside the apartment. Brittany told the police she gave the robbers her engagement ring and the decedent's Play Station 5 in an effort to placate them, but to no avail. R. 214, l. 1 - 215, l. 11.

Brittany remembered the next day they were called to Cypress Campground by the police. They identified the decedent's body there.² R. 217, l. 11 - 218, l. 9. Brittany testified that she did not know appellant nor the other two men arrested for the decedent's murder. R. 218, ll. 13-21.

Victoria Harper was born in England. She was the decedent's mother. R. 305, l. 11 - 307, l. 2. Harper knew the three alleged robbers -- Fernando Wright, Jabre Pringle, and appellant -- because they were good friends with the decedent, and they grew up together. Harper remembered having all three of the young boys in her house when they were younger. R. 326, l. 16 - 334, l. 17. Harper said one of the boys called her "Mom" and one of the other boys called her "Auntie." Tr. 334, ll. 8-14.

² The pathologist testified that decedent died from two gunshots to the back of his head. R. 679, ll. 14-24.

Detective Dust Morris identified a Facebook video showing the decedent counting a large amount of twenty-dollar bills. R. 410, ll. 4-19. The state also introduced a Facebook posting under the name Jose Sanchez, who the police said was appellant Terry Woods, from January 23, 2021, two weeks before the robbery. R. 495, l. 15. The writer on Facebook stated that “I need a lick” and another man responded: “I don’t fuck around no more, bro. [I have a job now]” The other man, allegedly appellant, responded: “Ain’t nothing wrong with that. Keep doing good my N.” R. 505, ll. 1-18.

The police were able to trace the decedent’s stolen Play Station 5 to an address in Columbia, South Carolina, where it was found in the home of co-defendant Fernando Wright on February 24, 2021. On Wright’s phone, there was a Google search for “how to unlock PS-5.” R. 550, l. 11 - 565, l. 21.

The state also introduced evidence of a text message from appellant to Wright from the day before the burglary which stated, “I’m rock bottom broke, so I need it by any means.” R. 568, l. 1 - 570, l. 21. The state also introduced a Facebook post with Fernando Wright flashing a large sum of money the day after the robbery. R. 577, l. 7 - 586, l. 3.

The police also interviewed appellant’s wife, and they introduced evidence appellant deposited six-hundred dollars into his wife’s bank account on February 5, 2021, the day after the robbery. R. 586, l. 1 - 588, l. 4. Appellant was later arrested in June of 2021. R. 629, ll. 13-14.

The directed verdict motion

Defense counsel Smiley moved for a directed verdict at the close of the evidence, arguing this case raised no more than a suspicion of appellant’s guilt. Even a strong suspicion of guilt was insufficient for the case to go to the jury. Smiley cited State v. Martin, 340 S.C. 597 (2000), a case with a large amount of circumstantial evidence of guilty in support of this legal principle.

Counsel argued that this was a totally circumstantial evidence case, and the evidence was insufficient to withstand a directed verdict motion. R. 691, l. 11 - 692, l. 9.

The solicitor argued that there was evidence Fernando Wright and appellant were talking about robbing the decedent in the days leading up to the robbery. He also said that Brittany Vasquez had identified appellant as being the “short robber” in a surveillance tape photograph taken on the night of the robbery. R. 692, ll. 11-23. The judge denied the directed verdict motion. R. 692, l. 24 - 693, l. 24.

Discussion

The evidence in this case did not rise to the level of the “substantial circumstantial evidence” necessary for a trial court to submit the case to the jury. See State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004).

The lower court should not refuse to grant a motion for a directed verdict where the evidence, as here, merely raises a suspicion that the accused is guilty. See State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). In Mitchell, the victim testified that Mitchell had been over to his house on a couple of occasions, and that Mitchell had also attended a social gathering at the victim’s home for about forty-five minutes to one hour. A police officer investigating the burglary found glass on the floor, and there was a screen from which the officer was able to get an identifiable fingerprint. That fingerprint matched Mitchell. The Supreme Court held that the state had failed to produce substantial circumstantial evidence reasonably tending to prove the guilt of the accused, and that a directed verdict should have been issued.

In State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000), cited by defense counsel, the Supreme Court also held the defendant was entitled to a directed verdict in that murder case. There was evidence a vehicle was seen on the night of the murder in the victim’s apartment complex that

was very similar to the car in which Martin and his co-defendant were traveling that night. Further, when Martin and his co-defendant were late picking up Martin's girlfriend the defendant told her "some shit happened," and the co-defendant added, "somebody may have died tonight." State v. Martin, 340 S.C. at 600, 533 S.E.2d at 601.

Evidence tied to the murder scene in Martin was also found in trash cans surrounding the bar where Martin's girlfriend worked. This Court held that all of this evidence, while certainly raising a strong suspicion of Martin's guilt, was insufficient to withstand a directed verdict motion.

Further, in State v. Schrock, 288 S.C. 129, 322 S.E.2d 450 (1984), the Supreme Court held that evidence the defendant was in the area of the murder scene, and that footprints at the scene were similar to his and were found in the area where the suspect was walking were insufficient to take the case to the jury.

In State v. Schrock, there was also evidence that Marlboro cigarette butts were found at the murder scene, and the defendant admitted to the police that he smoked Marlboro cigarettes. Further, tests performed on an oil can did not supply any conclusive connection between the crime scene and the defendant. The Supreme Court held the defendant was entitled to a directed verdict under these circumstances.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), our Supreme Court also held the defendant was entitled to a directed verdict despite strong evidence of his guilt. The decedent was killed in an arson on the Sunday after she brought home, as usual, the proceeds from the collection at Church for that Sunday. In a burn pile on Bostick's property, the victim's car keys, her calculator, and other items from her home were found. Further, Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire. Finally, Bostick was

acting suspiciously as he watched the victim's house burn down while smoking a cigarette with no apparent interest for her wellbeing.

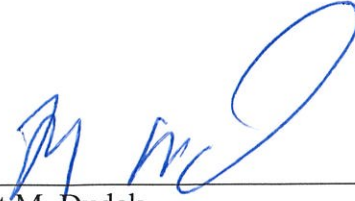
In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011), the Supreme Court held Odems was entitled to a directed verdict on the charges of first degree burglary, grand larceny, criminal conspiracy and malicious injury to personal property. The circumstantial evidence was that a brown car was stopped in the victim's driveway. That brown car was spotted by police about ninety minutes after the burglary, and pulled over. All of the occupants of the vehicle fled after the car was pulled over leaving behind the proceeds of the burglary.

Odems knocked at the door of a nearby house after he fled, and he asked the woman who answered the door to identify him to the police as her boyfriend. The Supreme Court found this was not "substantial circumstantial evidence" Odems participated in the burglary, and it held a directed verdict should have been granted for Odems.

Here, the evidence mainly implicated co-defendant Fernando Wright. There was evidence appellant purportedly was looking to perform a "lick" before the burglary in this case because he "was broke," and that he deposited six hundred dollars into his wife's bank account after the burglary. While the decedent identified appellant as the "short robber" from a surveillance tape outside of the apartment, she admitted she did not know appellant. This was not substantial circumstantial evidence or direct evidence that appellant aided and abetted Wright and Pringle in killing the decedent. Therefore, appellant was entitled to a directed verdict of acquittal on the murder charge. See State v. Martin; State v. Bostick; State v. Schrock; State v. Odems; State v. Arnold, supra.

CONCLUSION

By reason of the foregoing argument, a directed verdict of acquittal should be issued by this Court.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of August, 2024.

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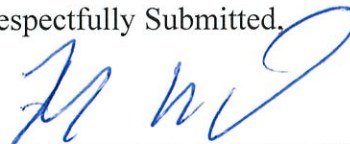
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Terry Donial Woods states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Bentley Price, which was held on December 11-15, 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Terry Donial Woods.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of August, 2024.

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APPELLATE CASE NO. 2023-001991

**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;
- (2) Entire trial transcript.

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

Robert M. Dudek
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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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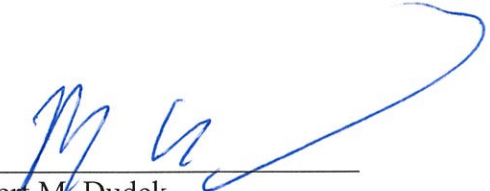
TERRY DONIAL WOODS, JR.,

APPELLANT

APPELLATE CASE NO. 2023-001991

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 Terry Donial Woods, #343444, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 28th day of August, 2024.



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