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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE BELCHER III,

APPELLANT

APPELLATE CASE NO. 2023-001378

FINAL BRIEF OF APPELLANT

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2.

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STATEMENT OF ISSUES ON APPEAL

1.

Did the trial judge err by denying Appellant's motion for a directed verdict as to the offenses of murder, armed robbery, first degree burglary, larceny, and possession of a weapon during the commission of a violent crime when the state failed to present any direct or substantial circumstantial evidence of Appellant's guilt rather the evidence merely raised a suspicion Appellant was involved?

2.

Did the trial judge err by refusing to charge the jury that "The testimony of an accomplice should be received with great care and caution. You should consider whether the particular accomplice is testifying truthfully or falsely in order to obtain a favorable recommendation by the government in the sentencing of his own case. You should not convict the defendant on the uncorroborated testimony of an accomplice unless you believe that testimony beyond a reasonable doubt" when the instruction was a correct statement of the law and supported by the evidence presented?

STATEMENT OF THE CASE

A Greenville County grand jury indicted Appellant on October 6, 2020 for murder, armed robbery, first degree burglary, possession of a weapon during the commission of a violent crime, conspiracy, and petit larceny. R. 554-557. His case was called to trial on July 17, 2023 before the Honorable Perry H. Gravely, and a jury. R. 1. He was tried jointly with his codefendant, Raymond Martinez. Assistant Solicitors Elizabeth Gary and Jay Jennings-Gresham represented the state. Kenneth Gibson represented Appellant. Christopher Grubbs and Kaitlin Diaz represented Martinez. R. 1.

On July 20, 2023, the jury found Appellant guilty as indicted. R. 507, l. 24 – 508, l. 14. He was sentenced to forty-five years for murder, thirty years for armed robbery, twenty years for first degree burglary, five years for the weapons offense, time served for conspiracy, and time served for petit larceny.[1] All sentences were ordered to be served concurrently. R. 512, ll. 5-11.

This appeal follows.

[1] Appellant had served 1,674 days in pretrial detention. R. 512, ll. 5-6.

ARGUMENT

1.

The trial judge erred by denying Appellant's motion for a directed verdict as to the offenses of murder, armed robbery, first degree burglary, larceny, and possession of a weapon during the commission of a violent crime when the state failed to present any direct or substantial circumstantial evidence of Appellant's guilt rather the evidence merely raised a suspicion Appellant was involved.

Relevant Facts

Almost the sole evidence against Appellant was the testimony of Kirk Porter. Porter claimed that he was at Keyla Mansell's apartment in Greenville on December 31, 2017 with Mansell, Appellant, and Raymond Martinez. According to Porter, Mansell told the others that "she knew a lick." Porter explained that a lick is "when you rob somebody." Mansell said the individual "might have some cocaine and money."

Porter claimed that at some point that evening, they set out to rob the person suggested by Mansell. Porter was the driver. He drove the group in his girlfriend's silver Mercedes from Crestwood Apartments where Mansell lived to a church off of Poinsett Highway. The individual they planned to rob supposedly lived down the street from the church. Porter claimed Appellant and Martinez, who were armed, got out of the car and walked "somewhere down the road." He was not sure which way they walked. Mansell and Porter stayed in the car. According to Porter, a short time later, Porter left the church and picked Appellant and Martinez up somewhere "up the street some." Neither Appellant nor Martinez said anything when they got back into the car and their demeanor was the same as usual. Porter claimed that Martinez was carrying a clear

container with change inside, but neither Martinez nor Appellant had any drugs. R. 257, l. 2 – 268, l. 4.

Porter drove the group back to Crestwood Apartments. He testified that he dropped Mansell and Appellant off and then drove Martinez to the Ingles grocery store on Poinsett Highway. Martinez went into Ingles with the clear container of change to use the Coinstar machine to exchange the change for paper money. When Martinez came back to the car, he allegedly told Porter that the Coinstar machine was not working. Porter then dropped Martinez off at a trailer on Alice Street. R. 268, l. 5 – 271, l. 15. Porter claimed he found out the following day that the person they planned to rob the night before had died. R. 272, ll. 14-18.

The decedent was found dead inside his apartment on Razor Drive shortly after eight o'clock on the night of December 31, 2017. The apartment appeared to have been ransacked, but there were no signs of forced entry. R. 113, ll. 3-16. The decedent was last seen alive around 7:35 pm by two women who had visited his apartment. His fiancé called him twice at 7:46 pm and 7:48 pm but was unable to reach him. R. 114, l. 21 – 119, l. 11.

Surveillance footage from the Crestwood Apartments showed Porter's silver Mercedes leaving the complex at 7:04 pm on December 31, 2017 and returning at 7:36 pm. The vehicle then leaves again at 7:39 pm and returns at 7:53 pm. It leaves a final time at 8:15 pm. R. 132, l. 18 – 135, l. 25.

Investigators obtained footage from Ingles showing Martinez enter the store carrying a container on December 31, 2017, at 8:22 pm and approach the Coinstar machine. He stayed at the Coinstar machine for several minutes. Martinez then walked to customer service where he obtained cash in exchange for the Coinstar ticket. The receipt from the Coinstar machine, which was timestamped at 8:27 pm on December 31, 2017, showed he cashed in $81.41, paid a fee of

$9.69, and was given $71.72 from customer service. The footage showed Martinez leaving the store at 8:28 pm. As he was leaving, Martinez put the container he was carrying into the trash can. R. 160, l. 7 – 184, l. 18.

There was absolutely no physical or forensic evidence connecting Appellant to the crime. The only other evidence against Appellant was testimony from his then girlfriend, Sherry McBee. She claimed that sometime during January 2018, she saw Appellant crying at the edge of her bed. According to McBee, Appellant was "rocking back and forth" and said, "I did something bad. I did something bad." R. 203, l. 23 – 204, l. 24.

After the state rested, Appellant moved for a directed verdict. Defense counsel argued the state failed to present sufficient evidence to submit the case to the jury. R. 399, ll. 8-13. The judge denied the motion "based on the totality of the facts and the standard under which I must look at them and the circumstantial evidence." R. 399, ll. 14-17.

The jury struggled to reach a verdict. During its deliberations, the jury sent numerous notes to the judge. It asked to view several electronic exhibits. It also requested to be recharged on murder and malice. Another note asked, "Does deliberation have a timeline? If we were to find the defendants guilty on the lesser charges, does that mean they are guilty of murder?" The jury also asked, "how does the hand of one is the hand of all apply to separate charges." It then requested to be recharged on "the hand of one is the hand of all." After deliberating for nearly eight hours, the jury ultimately found Appellant guilty as indicted. See R. 492, l. 5 – 508, l. 14; R. 550-553.

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)).

Discussion

The trial judge erred by denying Appellant's motion for a directed verdict as to the offenses of murder, armed robbery, first degree burglary, larceny, and possession of a weapon during the commission of a violent crime when the state failed to present any direct or substantial circumstantial evidence of Appellant's guilt rather the evidence merely raised a suspicion Appellant was involved.

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 direct evidence or substantial circumstantial evidence of Appellant's guilt. The primary evidence against Appellant was the testimony of Kirk Porter who claimed he, Appellant, Raymond Martinez, and Keyla Mansell conspired to rob an individual of money and cocaine. Porter never identified the individual they planned to rob. He merely claimed he dropped Appellant and Martinez off at a church down the road from where the decedent lived. A short time later, he picked Appellant and Martinez up somewhere up the road. According to Porter, neither Appellant nor Martinez said anything upon returning to the car and their demeanor was the same as always. Neither of them had any drugs or money with the exception of Martinez who allegedly had a clear container with change inside. While Porter's testimony may have been evidence Appellant was guilty of conspiracy, there was no evidence Appellant committed first degree burglary, armed robbery, larceny, or murder.

The only other evidence presented was footage from Crestwood Apartments showing Porter's silver Mercedes coming and going around the time of the murder, the footage of Martinez using the Coinstar machine at Ingles later that night, and records showing Appellant's phone was in the area of the decedent's apartment around the time of his death.

Because the state failed to present any direct or substantial circumstantial evidence of Appellant's guilt, this Court should direct a verdict of acquittal for murder, armed robbery, first degree burglary, larceny, and possession of a weapon during the commission of a violent crime.

2.

The trial judge erred by refusing to charge the jury that "The testimony of an accomplice should be received with great care and caution. You should consider whether the particular accomplice is testifying truthfully or falsely in order to obtain a favorable recommendation by the government in the sentencing of his own case. You should not convict the defendant on the uncorroborated testimony of an accomplice unless you believe that testimony beyond a reasonable doubt" when the instruction was a correct statement of the law and supported by the evidence presented.

Relevant Facts

During the charge conference, Appellant requested the judge charge the jury on accomplice credibility. The requested charge stated:

> The testimony of an accomplice should be received with great care and caution. You should consider whether the particular accomplice is testifying truthfully or falsely in order to obtain a favorable recommendation by the government in the sentencing of his own case. You should not convict the defendant on the uncorroborated testimony of an accomplice unless you believe that testimony beyond a reasonable doubt.

R. 513.

Defense counsel stated the charge was "a verbatim charge from the pattern jury instructions for federal criminal cases in the district of South Carolina." R. 402, ll. 1-3. He argued the authority in support of the instruction is based upon United States Supreme Court jurisprudence that dates back to 1917 and that this jurisprudence also applies to the State of South Carolina. Counsel asserted the charge is "a standard jury instruction that is given in every federal [criminal] trial within the State of South Carolina as well as all the other states as well." In support of his request, counsel cited to Caminetti v. United States, 242 U.S. 470, 495 (1917). His request to charges along with supporting authority was marked as Court's Exhibit No. 5.

The trial judge denied the request to charge. He found the instruction was a comment on the facts and goes further than "the state courts in South Carolina usually go." He concluded that the "spirit" of the charge was covered by the general instruction about the believability of witnesses. R. 403, ll. 9-23.

Standard of Review

"In criminal cases an appellate court sits to review errors of law only." State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Id. "It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge." State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005) (quoting Clark, 339 S.C. at 390, 529 S.E.2d at 539) (internal quotation marks omitted). "If there is any evidence to support a charge, the trial court should grant the request." Id. (citing State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999)). "The requesting party must have been prejudiced by the trial court's failure to give the instruction in order to warrant reversal on appeal." Id. at 195-196, 624 S.E.2d at 445 (citing Clark, 339 S.C. at 390, 529 S.E.2d at 539).

Discussion

The trial judge erred by refusing to instruct the jury with the requested charge concerning accomplice testimony when the instruction was a correct statement of the law and supported by the evidence presented. Again, the requested charge stated:

> The testimony of an accomplice should be received with great care and caution. You should consider whether the particular accomplice is testifying truthfully or falsely in order to obtain a favorable recommendation by the government in the sentencing of his own case. You should not convict the defendant on the uncorroborated testimony of an accomplice unless you believe that testimony beyond a reasonable doubt.

R. 513.

The requested charge came directly from the Pattern Jury Instructions for Federal Criminal Cases and is supported by United States Supreme Court precedent as well as case law from the Fourth Circuit Court of Appeals.

In Caminetti v. United States, 242 U.S. 470, 495 (1917), the United States Supreme Court exclaimed, "It is the better practice for courts to caution juries against too much reliance upon the testimony of accomplices, and to require corroborating testimony before giving credence to such evidence. While this is so, there is no absolute rule of law preventing convictions on the testimony of accomplices if juries believe them."

In United States v. Safley, 408 F.2d 603, 605 (4th Cir. 1969), Fourth Circuit Court of Appeals cited favorably to the charge. Safley and his codefendant argued the trial judge erred by instructing the jury that "ordinarily it is assumed that a witness will speak the truth." After emphasizing that the instruction was improper, the Fourth Circuit concluded the jury was "not likely to have been misled by the erroneous instruction concerning the assumption of a witness' truthfulness" given that the jury was charged "that the accomplice's testimony should be received with care and caution, and that the defendants should not be convicted on the accomplice's uncorroborated testimony unless it was believed beyond a reasonable doubt." Id.

The Fourth Circuit Court of Appeals cited favorably to the charge again in United States v. Howard, 590 F.2d 564 (4th Cir. 1979). Howard and his codefendant argued the trial judge erred by instructing the jury in part that "a plea agreement . . . has been described by the United

States Supreme Court as an essential component of the administration of justice, and when properly administered is to be encouraged; the disposition of charges after plea discussions is not only an essential part of the criminal process, but a highly desirable one, primarily because it leads to prompt and largely final disposition of most criminal cases." Id. The appellants argued the effect of the charge was to put the imprimatur of the Supreme Court upon testimony given by the witnesses who had pleaded guilty to related charges and testified against the appellants at trial. Id. The Fourth Circuit held there was "no danger that an imprimatur was put upon the testimony of witnesses who had pleaded guilty" given the trial judge's cautionary instruction that "you should consider whether the particular accomplice is testifying truthfully or falsely in order to obtain a favorable recommendation by the government in the sentencing of his or her own case." Id.

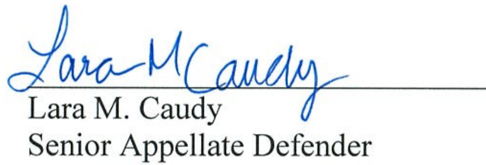
Almost the sole evidence against Appellant was the testimony of his alleged accomplice, Kirk Porter. Porter admitted that he had been charged with the same offenses as Appellant, but was permitted to plead guilty to the lesser included offense of voluntary manslaughter in exchange for his testimony against Appellant. The remainder of Porter's charges were dismissed as part of the plea agreement. Porter was awaiting sentencing at the time of Appellant's trial and facing two to thirty years in prison. The requested charge was essential to help the jury understand how to consider Porter's testimony and judge his credibility given these circumstances.

Because the trial judge erred by refusing to give the requested charge, this Court should reverse Appellant's convictions and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal for murder, armed robbery, first degree burglary, larceny, and possession of a weapon during the commission of a violent crime. In the alternative, Appellant requests this Court reverse his convictions and remand for a new trial.

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of December, 2024.

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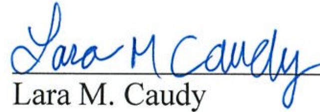
CERTIFICATE OF COUNSEL

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."

December 20, 2024.



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Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

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V.

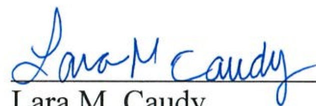
ROBERT LEE BELCHER III,

APPELLANT

APPELLATE CASE NO. 2023-001378

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 has been served upon Melody J. Brown, Esquire, at her primary email address listed in the Attorney Information System (AIS), this 20th day of December, 2024.



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Date:	Friday, December 20, 2024 9:48:00 AM
Attachments:	2023-001378 - State v. Robert Belcher - Final Brief of Appellant.pdf

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Good Morning Ms. Brown,

Attached for service in the above-referenced case is the final brief of appellant, which will be filed with the Court of Appeals today, December 20, 2024, via email filing.

Thank you!

Sara McInnis
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