

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Robert Tyrell Gentry, Appellant.

Appellate Case № 2021-000692

Appeal From Spartanburg County
J. Derham Cole, Sr. Circuit Judge

Unpublished Opinion № 2025-UP-016
Heard October 9, 2024 - Filed January 15, 2025

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Robert Tyrell Gentry, the Appellant above named, hereby Petitions this court to rehear this matter based upon the following grounds:

1. This Court correctly held that the facts in this case are to be viewed in the light most favorable to the State, but failed to recognize that the inferences from those facts are not to be viewed in the light most favorable to the State. If the inferences from the facts in a circumstantial evidence case are always viewed in the light most favorable to the State, no circumstantial evidence would ever be reversed. As noted in the opening brief, the South Carolina the circumstantial evidence cases of *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004) and *State v. Hernandez*, 382 S.C.

620, 677 S.E.2d 603 (2009) all were reversed. In each case, the facts were such that a jury could reasonably infer guilt.

In *Bostick*, the facts were that the blood on the defendant's clothes excluded 99% of the population but the agent could not conclusively say the blood came from the victim.¹ Items of property belonging to the victim were found in a burn pile at the residence of the mother of the defendant. Gasoline was used as an accelerant in the fire and the shoes of the defendant contained a relatively fresh pattern that matched gasoline. From these facts a jury could logically infer Mr. Bostick committed the arson and murder. In reversing the case, the court said such inferences are not sufficient.

In *Arnold*, the automobile belonging to the deceased was found about ten miles from where the defendant was in Tennessee. A fingerprint of the defendant was found on a cup lid in the car. The defendant and the deceased knew each other and had had a sexual relationship. From these facts a jury could have easily drawn the inference that the defendant killed the deceased and drove his automobile to Tennessee.

In *Hernandez*, the defendant followed a tractor-trailer rig from Texas down a dirt road in rural Edgefield County. The three defendants were in a Ryder truck. The Ryder truck arrived at a predetermined location with a Ford Thunderbird. The driver of the Thunderbird, who escaped, directed the driver of the tractor-trailer to following him. All three vehicles, with the Thunderbird leading, went down the dirt road. From these facts the jury could have easily inferred that the defendants knew the tractor-trailer contained illegal drugs. What other reason

¹ As the jury inferred this blood was from the victim, they had a 99% chance of being right.

would there be to go down a dirt road in a rural county? The court reversed the conviction saying the inferences the jury could draw were not sufficient to convict.

While not stated in any of the opinions, something more is needed than an inference of guilt to convict. In the three cases an inference of guilt was logical and would be consistent with the facts proven. Unfortunately, the opinions did not state what else is needed.

The Fifth Circuit has stated, “[I]f the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged, then a reasonable jury must necessarily entertain a reasonable doubt.” *Clark v. Procnier*, 755 F.2d 394, 396 (5th Cir. 1985). In the Opinion, this court did not explain why the inferences of guilt were not simply nearly equal or, as argued in the brief, substantially more likely than the inference of innocence as would be required to establish guilt.

The court made special reference to the text message, “when [he was] dun.” This text message does not make reference to the murder. Nothing in the record makes this text message a reference to the murder more likely than to any other event. A reference to a murder is not substantially more likely. At best it is equal or nearly equal to not referring to a murder.

The court also placed special emphasis on the fact that after the murder, Mr. Gentry searched the internet for reporting lost or stolen guns. Such searches give no support to the claim that Mr. Gentry aided Tremaine Pierre Johnson in committing a murder by providing a gun. In fact, the most logical inference from such searches is that he found out after the fact his weapon was used in a murder and he was trying to figure out what to do. Had Mr. Gentry aided Mr. Johnson in the murder, logic would dictate they would have made a plan to get rid of the weapon. What evidence in the record makes these searches more likely to prove guilt than knowledge

acquired after the fact. Are not these two inferences equal or nearly equal so as to fail the circumstantial evidence test established by the Fifth Circuit?

In ruling on a circumstantial evidence case, the Minnesota court has said, “In identifying the reasonable inferences that can be drawn from the circumstances proved, ‘we view the circumstances proved as a whole and not as discrete and isolated facts.’ The State’s circumstantial evidence is sufficient when the reasonable inferences are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt. Put differently, if the circumstances proved, when viewed as a whole, are consistent with a reasonable inference of innocence, the State’s circumstantial evidence is not sufficient to support the conviction.” *State v. Segura*, 2 N.W.3d 142, 157 (Minn. 2024)(internal citations omitted).

As noted in the brief in this matter, such a standard has twice been used by our Supreme Court. *State v. Hernandez*, 382 S.C. 620, 677 S.E.2d 603 (2009) and *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011). To simply say substantial circumstantial evidence exists without defining the term, or stating why the evidence as to guilt is substantially more likely, provides no guidance to the bench and bar as to how circumstantial evidence cases should be viewed. This Court should rehear this matter and hold the State failed in its burden of proof.

2. This court further erred in the order in failing to acknowledge accessory before the fact requires knowledge that the crime of murder is going to be committed. The conviction of Mr. Gentry cannot be sustained without substantial circumstantial evidence that Mr. Gentry had actual knowledge that Mr. Johnson was going to commit a murder. In affirming the conviction, this court said, “The various communications—and the internet searches that followed—lend further support to the State’s theory that Gentry aided the principal by knowingly providing him

with the gun used in the murder and subsequently sought to attenuate his connection to the weapon he previously provided.” *State v. Gentry*, Op. № 2025-UP-016 (S.C.Ct.App. filed January 15, 2025) at 3. Mr. Gentry agrees the circumstantial evidence could be interpreted to prove Mr. Gentry knowingly gave the gun to Mr. Johnson. Giving the gun to Mr. Johnson is not a crime unless Mr. Gentry knew Mr. Johnson was going to commit a murder with the gun. As the Mississippi Supreme Court has held, “To render one liable as an accessory after the fact he must have had actual knowledge, at the time he relieved or assisted the principal, that the latter had committed a felony, or was an accessory before the fact to a felony; and such knowledge must be personal as distinguished from constructive.” *Matula v. State*, 220 So. 2d 833, 834 (Miss. 1969). Mr. Gentry knowingly providing the gun used in the murder is not sufficient to convict Mr. Gentry of accessory before the fact of murder. The State is required to prove Mr. Gentry had personal knowledge that Mr. Johnson was going to commit a murder with the gun. As one authority said, “In order to render one guilty as an accessory before the fact, he or she must have had the requisite criminal intent. Such person must have the same intent as the principal.” 22 C.J.S. Criminal Law: Substantive Principles § 179. As noted in the opening brief the intent required for murder is wilfulness. S.C. Code. § 17-19-30. Thus, the State must prove Mr. Gentry gave Mr. Johnson a gun knowing Mr. Johnson was going to use it in a murder. In the opinion, this court appears to say Mr. Gentry is guilty from “knowingly providing [Johnson] with the gun used on the murder” *Id.* Thus, this court created a strict liability crime for accessory before the fact if a person knowingly provided the means by which the crime was committed. This is not a correct statement of the law. This court should rehear this matter and hold the State failed to prove by substantial circumstantial evidence that Robert Tyrell Gentry

knew Tremaine Pierre Johnson intended to commit murder with the gun provided to him.

3. As stated in the opening brief, to convict Mr. Gentry of accessory after the fact to murder the state is required to prove some form of aiding in covering up the crime. As the South Carolina Supreme Court has said, “Three conditions must unite to render one an accessory after the fact: (1) The felony must be complete. (2) The accessory must have knowledge that the principal committed the felony. (3) The accessory must harbor or assist the principal felon. *State v. Nicholson*, 221 S.C. 399, 405, 70 S.E.2d 632, 634 (1952). In this case, the State must prove Mr. Gentry did something to harbor or assist Mr. Johnson after he learned a murder had been committed.

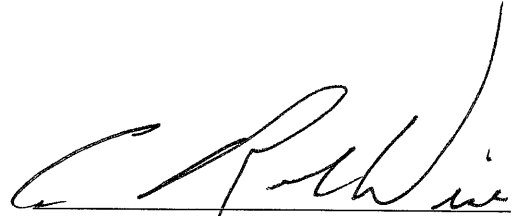
This court failed to explain in any manner how Mr. Gentry searching for lost or stolen guns or, as stated by the court, “‘death investigation in Duncan Park,’ ‘woman's body found in Duncan Park Lake,’ and ‘located body . . . was pregnant woman’” (*Id.* at 4) in any way aided Mr. Johnson in covering up the crime. Mr. Gentry never reported the gun stolen. No inference ever suggested he had the gun in his possession after the murder. In the opinion of the case against Mr. Johnson, this court stated, “Further, the State provided evidence that in the days following the murder, Johnson worked with his codefendant to dispose of the murder weapon.” *State v. Johnson*, Op. No. 2025-UP-018 (S.C.Ct.App. filed Jan. 23, 2025) at 3. The record has no proof that Mr. Johnson and Mr. Gentry disposed of the weapon. Obviously someone did, but that does not create any evidence that Mr. Gentry was the person who actually disposed or even helped dispose of the weapon. The fact that Mr. Gentry searched the internet about stolen or lost guns does not support the conclusion that he helped dispose of the gun. Mr. Gentry never reported the gun lost or stolen. As such, to hold Mr. Gentry did anything to aid Mr. Johnson is sheer

speculation. Again, nothing in the record suggests the inferences drawn by the court on this issue were, as discussed by the Fifth Circuit, not “equal or nearly equal.” This court did not explain why an inference of guilt as to accessory after the fact is substantially more likely. If the state is required to prove its case with substantial circumstantial evidence, this court should be required to explain why the inference of guilt is substantially more likely than the inference of innocence. As the facts of this case do not show the inference as to accessory after the fact are substantially more likely, then this court should reverse the conviction of Robert Tyrell Gentry for accessory after the fact.

CONCLUSION

For the foregoing reasons, this court should rehear this matter and issue an order finding that the State did not present substantial circumstantial evidence to establish that Robert Tyrell Gentry knew the gun was going to be used in a murder before the murder occurred and that none of the searches established that Mr. Gentry aided or abetted Tremaine Pierre Johnson to make him guilty of accessory after the fact to murder.

January 28, 2025



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Jan 28 2025

SC Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
General Sessions Court
The Honorable J. Derham Cole

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CERTIFICATE OF SERVICE

PERSONALLY appeared before me, Sandy Traynham who, after being duly sworn, deposes and says that she is the Secretary for C. Rauch Wise, Attorney for the Appellant in the above entitled case. That on January 28, 2025, she did deposit via email a copy of the Petition for Rehearing in the above case to Barry Joe Barnette bbarnette@spartanburgcounty.org, Alan McCrory Wilson agwilson@scag.gov, Melody Jane Brown mbrown@scag.gov, and Joshua Abraham Edwards jedwards@scag.gov.

January 28, 2025

/s/Sandy Traynham
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