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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MACK ADAMS GAINES,

APPELLANT

APPELLATE CASE NO. 2022-000567

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to direct a verdict in favor of Gaines when the State failed to demonstrate he was a "caregiver" as defined by S.C. Code Ann. § 43-53-85(F) (2015) of the Omnibus Adult Protection Act?

STATEMENT OF THE CASE

In February of 2018, the Oconee County Grand Jury indicted Appellant, Mack Adams Gaines, for abuse or neglect of a vulnerable adult resulting in death, indictment #2018-GS-37-287. On April 18, 2022, Appellant proceeded with a jury trial before the Honorable R. Scott Sprouse. Fletcher N. Smith represented Appellant at trial. Jason Alderman and Brooke Ennis prosecuted the case. The jury returned a verdict of guilty. Judge Sprouse sentenced Appellant to twenty (20) years. A timely notice of intent to appeal was served on April 25, 2022. The direct appeal was perfected and a brief filed pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967), arguing that the trial judge erred in failing to exercise discretion in the sentencing of Appellant. On January 31, 2025, this Court denied counsel's motion to be relieved, pursuant to the Anders procedure, and asked the parties to brief the issue of whether the trial court erred in failing to direct a verdict in favor of Gaines when the State failed to demonstrate he was a "caregiver" as defined by S.C. Code Ann. § 43-53-85(F) (2015) of the Omnibus Adult Protection Act. This brief of Appellant follows.

STANDARD OF REVIEW

When a motion for a directed verdict of acquittal is made in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Morgan, 282 S.C. 409, 319 S.E.2d 335 (1984). The accused is entitled to a directed verdict when the evidence merely raises a suspicion of guilt. State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984); State v. Brownlee, 318 S.C. 34, 455 S.E.2d 704 (Ct.App.1995). The accused also is entitled to a directed verdict when the State fails to present evidence on a material element of the offense charged. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001); State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. Gore, 318 S.C. 157, 456 S.E.2d 419 (Ct.App.1995). However, if the State presents any evidence which reasonably tends to prove the defendants guilt, or from which the defendant's guilt can be fairly and logically deduced, the case must go to the jury. On appeal from the denial of a motion for directed verdict, this Court must view the evidence in a light most favorable to the State. State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (1989); Schrock, 283 S.C. at 132, 322 S.E.2d at 452.

State v. Brown, 360 S.C. 581, 586–87, 602 S.E.2d 392, 395 (2004)

ARGUMENT

The trial court erred in failing to direct a verdict in favor of Gaines when the State failed to demonstrate he was a "caregiver" as defined by S.C. Code Ann. § 43-53-85(F) (2015) of the Omnibus Adult Protection Act.

The jury found Appellant guilty of neglect of a vulnerable adult resulting in death pursuant to S.C. Code Ann. § 43-35-85(F) of the Omnibus Adult Protection Act [the Act]. Appellant and his ninety-two-year-old mother lived together in their family home. While Appellant was at work on Friday, December 15, 2017, his mother fell at the home. When Appellant got home from work, he found his mother on the floor. (R. p. 170, lines 16-18). In a videotaped interview with an investigator with the Oconee County Sheriff's Office that was introduced as State's Exhibit #16 and played for the jury, with redactions, Appellant told the investigator that he tried to get her up but his mother told him no because she was hurting. (State's Exhibit #16, 11:36:44). Appellant also told the investigator that he asked his mother if she wanted him to take her to the hospital and she said no and that she was scared. (State's Exhibit #16, 11:24:22). Later in the interview Appellant repeated that his mother did not want to go to the hospital. (State's Exhibit #16, 11:29:32). Appellant said that his mother continued to refuse to go to the hospital and he thought she would just get better. (State's Exhibit #16, 11:37:20). Appellant stated in the interview that he offered his mother food and water on Saturday and Sunday, but she refused. (State's Exhibit #16, 11:39:05). Appellant said that his mother was conscious during this time frame. (State's Exhibit #16, 11:42:08).

During the interview Appellant made a written statement that the investigator read aloud. In the statement Appellant wrote that he asked his mother every day about going to the hospital and each time she said no. (State's Exhibit #16, 12:22:14). Appellant wrote that he talked to his mother Monday morning before he left for work and all day at work, he was thinking she

needed to go to the hospital. (State's Exhibit #16, 12:21:52). Appellant called 911 when he got home from work on Monday, December 18, 2017. (R. p. 56, lines 10-17). Appellant's mother did not recover and died in January of 2018. The pathologist testified that the death was caused by, "[t]he death of the extremity and formation of decubiti allow germs into the body, and ultimately she developed pneumonia and organ failure." (R. p. 190, lines 5-7).

At the close of the State's case Appellant moved for a directed verdict of acquittal arguing the State failed to prove Appellant was a "caregiver" as required by S.C. Code Ann. § 43-35-85(F) and the definitions of "neglect" and "caregiver" found in S.C. Code Ann. § 43-35-10(2) and (6). (R. pp. 194-199; p. 200, line 16 – p. 201, lines 1-13). Appellant submitted a written motion to dismiss or quash indictment or motion for directed verdict. (Supplemental R. p. **). The judge denied the motion stating:

Now, in looking at what has been presented, I find the State has produced evidence to establish each of the elements. Mr. Smith, your arguments go toward the weight of that evidence rather than the existence of that evidence. So I would note for the record – and this is not an exhaustive list, but the State has produced evidence that the defendant is a relative and household member, that they shared groceries, the defendant signed documentation to allow her to be admitted to the hospital. There was also testimony and statement from the defendant that he made up his mind that he was going to call EMS whether she consented or not. Again, those are elements of fact. Those are jury questions whether that constitutes violation of the statute.

(R. p. 202, line 12 – p. 203, line 1). Appellant renewed the directed verdict motion at the close of the defense case. (R. p. 216, lines 2-3). The trial judge erred in refusing to grant the directed verdict motion when the State failed to prove that Appellant was a caregiver as required by the Act.

S.C. Code Ann. §43-35-85(F) provides, “A person who knowingly and wilfully abuses or neglects a vulnerable adult resulting in death is guilty of a felony and, upon conviction, must be imprisoned not more than thirty years.” The allegation in this case is that Appellant neglected his mother. Neglect is defined as

“Neglect” means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.

S.C. Code Ann. § 43-35-10(6). Neglect requires the failure or omission by a **caregiver**. “Caregiver” means a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.” S.C. Code Ann. § 43-35-10(2). While Appellant was a relative and household member, he was not a caregiver as defined by the Act.

Prior to her fall, Appellant’s mother was not a vulnerable adult as defined by the statute. “Vulnerable adult” means a person eighteen years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection. This includes a person who is impaired in the ability to adequately provide for the person's own care or protection because of the infirmities of aging including, but not limited to, organic brain damage, advanced age, and physical, mental, or emotional dysfunction. A resident of a facility is a vulnerable adult.” S.C. Code Ann. § 43-35-10(11). In Doe v. DSS,

407 S.C. 623, 638, 757 S.E.2d 712, 720 (2014), the South Carolina Supreme Court noted that there was no evidence "... that Doe's advanced age [eighty-six] substantially impaired her ability to adequately provide for her own care and protection." In the present case there is no evidence that, prior to her fall, Appellant's mother's advanced age of ninety-two impaired her ability to adequately provide for her own care and protection. Prior to her fall, there is no evidence of physical or mental infirmities that would prohibit Appellant's mother from living independently. In the interview Appellant told the investigator that his mother still drove, and on the Thursday before the fall she was "spunky." (State's Exhibit #16, 11:19:00). Prior to her fall Appellant's mother was not a vulnerable adult as defined by the Act. Appellant did not act as a caregiver prior to his mother's fall because a caregiver, by definition, is "a person who provides care to a vulnerable adult."

Appellant did not act as the caregiver of his mother after her fall. Although her status as a vulnerable adult may have changed after her fall, Appellant's status did not change. Appellant did not become a caregiver simply as a result of his mother's fall. Appellant did not become a caregiver by simply living in the same house with his mother. In the days after the fall, before Appellant called 911, Appellant's mother was still mentally competent when she repeatedly refused treatment offered by Appellant. Appellant was not a caregiver and had no legal duty to seek medical care for his mother, against her wishes.

At trial it was unclear if Appellant stated he was a caregiver. On re-direct examination, the investigator testified, "If you noticed in the video, when I spoke with Mr. Gaines and asked him during the questioning, I asked him about did he share groceries, did he share light bill, and he said, Yes. And I believe in the video I asked about a caregiver and he said that he was a caregiver in the video." (R. p. 178, lines 6-11). On re-cross, defense counsel asked, "I hate to

replay it, but it sounds like when you asked him that question about a caregiver he said, No.” (R. p. 179, lines 2-4). The investigator later answered, “Okay. I stand corrected if that is the case, but I would love to hear it again if that is the case.” (R. p. 179, lines 17-18). The video of the interview was not played again but had already been admitted in evidence.

It appears in the video of the interview that the investigator asked Appellant, “Are you her primary caregiver? Anybody else take care of her? (State’s Exhibit #16, 11:19:17-21). It sounds like Appellant answered, “Nah, I’m the only one that lives there. I’m the only son.” (State’s Exhibit #16, 11:19:22-25). Appellant then agrees that he and his mother shared groceries and the light/power bill. Appellant admitted to living in the house with his mother and sharing groceries and bills. In other words, Appellant admitted that he and his mother were roommates. Her fall did not make him her caregiver and he was under no legal duty to seek medical care for her. A caregiver, under the statute, has a legal duty to act. A roommate does not have a legal duty to act.

Whether or not Appellant may have had a moral obligation to do more, he was not a caregiver and did not have a legal duty under the statute to provide care for his mother. As the D.C. Circuit noted:

When the conduct at issue is an omission, however, the existence and nature of an underlying legal duty must be examined to determine whether the omission was indeed a violation of the law in the first place. “It is a long-established principle that criminal law generally regulates action, rather than omission, and that ‘[f]or criminal liability to be based upon a failure to act it must first be found that there is a duty to act—a legal duty and not simply a moral duty.’ ” United States v. Sabhnani, 599 F.3d 215, 237 (2d Cir.2010) (quoting 1 Wayne R. Lafave, Substantive Criminal Law § 6.2 (2d ed.2008)).

United States v. Sanford Ltd., 880 F. Supp. 2d 9, 16 (D.D.C. 2012). The State failed to prove that Appellant had a duty to act under the statute because the State failed to prove that Appellant

was a caregiver as required by the statute. The judge erred in refusing to direct a verdict of acquittal.


In State v. Cain, 419 S.C. 24, 30, 795 S.E.2d 846, 849 (2017), the Court wrote:

“It is a fundamental concept of criminal law that the State must prove beyond a reasonable doubt all the elements of the offense charged against the defendant.” State v. Brown, 360 S.C. 581, 590, 602 S.E.2d 392, 397 (2004). The State may not obtain a conviction when its proof as to any one element requires the jury to speculate or guess whether the defendant engaged in the conduct the legislature sought to criminalize. State v. Brown, 267 S.C. 311, 316, 227 S.E.2d 674, 677 (1976) (stating “the motion for a directed verdict should be granted where evidence ... is such as to permit the jury to merely conjecture or to speculate”).

In the present case the State failed to prove all of the elements of neglect of a vulnerable adult resulting in death pursuant to S.C. Code Ann. § 43-35-85(F). The State failed to prove that Appellant was a caregiver as defined in the Act. Caregiver status is an element of the offense. Viewing the evidence in the light most favorable to the State, the jury was left to speculate that Appellant’s status as his mother’s roommate escalated to caregiver after her fall. The judge erred in refusing to direct a verdict of acquittal.

CONCLUSION

Based on the above argument, this Court should reverse the sentence and remand to the trial court to direct a verdict of acquittal.


Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of March, 2025.

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APPELLATE CASE NO. 2022-000567

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Mack Adams Gaines, #102020, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 3rd day of March, 2025.



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