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May 17 2022

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

Appellate Case No. 2021-000701

The Honorable Letitia H. Verdin, Circuit Court Judge

The State of South Carolina.....Respondent,

v.

Tremaine Pierre Johnson.....Appellant.

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by not granting Johnson's motion for a directed verdict because the evidence adduced at trial was not sufficient to show more than a mere suspicion that Johnson was responsible for the murder of the victim?

STATEMENT OF THE CASE

Tremaine Pierre Johnson was indicted by the Spartanburg County grand jury for murder (2019-GS- 42-2045). He and his co-defendant, Robert Tyrell Gentry, were tried before the Honorable J. Derham Cole and a jury between June 14 and June 17, 2021. Gentry was indicted for accessory before and after the fact of murder. Appellant was represented by N. Douglas Brannon; the State was represented by Barry Barnette and Jennifer Elizabeth Wells. Johnson was convicted and sentenced to life in prison.

This appeal timely follows.

RELEVANT FACTS

Tremaine Pierre Johnson (Mr. Johnson) was charged and convicted for the murder of Brechue Ferrarri Wiles (Bree). ROA 14, 109. Johnson was tried along with his co-defendant, Robert Gentry, who was charged with accessory before and after the fact of murder. ROA 14-15. Bree Wiles lived at Campus Edge Apartments near the campus of the University of South Carolina Upstate. ROA 110. On May 9, 2018, Bree was shopping at Stein Mart with her mother, Fontae Wiles (Ms. Wiles). ROA 126. The two went out shopping for clothes for Ms. Wiles to wear to her aunt's 60th birthday dinner party. ROA 127. Ms. Wiles lived with her aunt, Joann Frances Littlejohn (Ms. Littlejohn), for whom the party was being thrown. ROA 125. Around 8:00pm that

night they returned to the residence and found themselves locked out of the home. ROA 126. The two sat in Bree's car and waited for Ms. Littlejohn to return and let them into the house.

After everyone was settled into the house, Ms. Littlejohn was preparing dinner when Bree received a phone call. ROA 127. The phone call was reportedly from a male. ROA 130. Ms. Littlejohn and Ms. Wiles heard Bree talking loudly on the phone during the entirety of the conversation. ROA 127. Shortly after the call ended, Bree informed her mother and aunt that she was going to meet someone and would be right back. ROA 128. Ms. Wiles testified that she recalled Bree saying that she was going to meet someone at Duncan Park near the water. ROA 138. Both women pleaded with Bree not to go out because they thought it was too late, but Bree insisted on leaving. ROA 128. Throughout the night, Ms. Wiles repeatedly called and texted Bree and told her to come home. ROA 130. She recalled hearing a male on the other line saying, "we have to go, come on, hang up the phone, we gotta go." ROA 130. Bree never came home that night. ROA 130.

The next day, May 10th, Ms. Wiles and Ms. Littlejohn went to work. ROA 131. They both worked for the same nursing home. Around noon, neither had heard from Bree. Ms. Wiles became concerned. ROA 131. It was customary for Bree to speak to her mother around noon every day. ROA 131. Ms. Wiles continued to work until 4:30pm. After she got off work, Ms. Wiles took Ms. Littlejohn's car and traveled to Bree's apartment to see if she could find Bree or her car. She could not find either. She then went to Tremaine Johnson's house. ROA 131. Mr. Johnson and Bree had been in a relationship.

Mr. Johnson's mother answered the door and informed Ms. Wiles she had not seen Bree or Mr. Johnson at that point. ROA 142. Ms. Johnson called her son, who also stated he had not seen Bree in the last couple of days. ROA 142. He told her he last saw her on Tuesday. ROA 143.

Ms. Wiles left and went home. Later that day, Bree's younger sister posted on Facebook stating that her sister was missing. ROA 144.

On the morning of May 11th, Mr. Louis Dischler (Mr. Dischler) was on his daily morning walk through Duncan Park. ROA 120. Mr. Dischler, who lived 500-600 feet away from where the body was discovered, testified that the park has two trails that run through it. ROA 121, 122. One is an asphalt trail and runs through the woods, the other is unimproved and runs directly into the lake. ROA 121. Mr. Dischler took the second trail towards the lake. As he walked alongside the lake, he noticed a shoe. ROA 121. According to him, this was not a shoe that someone would take walking on a trail. He referred to it as a "street shoe." ROA 121. He continued to walk and found a second shoe close by. ROA 121. He proceeded along the trail where he eventually found a body of what appeared to be "a girl of small stature" face down by the lake. ROA 121. Mr. Dischler did not have his cellphone. ROA 121. He returned to the entrance of the path where he found another person walking and asked them to call 911. ROA 122. He waited at a picnic table until the police showed up to investigate the scene. ROA 122.

In a nearby parking lot, law enforcement found Bree's car. One of the car doors had been left open. ROA 153. Investigators used the canine unit to track her scent. ROA 155. The canine went straight from the smell of the car directly to where Bree's body had been found in the lake. ROA 159, 160. This led investigators to believe that her body was taken to the lake directly from the car to the lake. ROA 160. Forensics confirmed that it was Bree's body in the lake. On that same day, Ms. Wiles had gone to the Spartanburg County Sheriff's Office to file a missing person's report. ROA 144. Ms. Littlejohn met her there. ROA 132. While the police talked to Ms. Wiles, Bree's body was being discovered by the officers at the lake. ROA 133. Law enforcement informed Ms. Wiles. ROA 133.

After identifying it was Bree Wiles's body in the lake, Investigator Chris Taylor of the Spartanburg Police Department tried to find out who was the last person Bree was with. ROA 353. He spoke with Ms. Wiles and Ms. Littlejohn who told Taylor she was a relationship with Tremaine Johnson at the time of her death. ROA 354. Investigator Taylor contacted Tremaine's mother, and through her, Mr. Johnson himself. ROA 354. The investigators met Mr. Johnson at his residence. He was then taken to the police station. ROA 354.

During the investigation, Mr. Johnson gave police consent to search his phone, as well as a buccal swab. ROA 358-59. Investigators extracted data from Mr. Johnson's cell phone and found there had been communication between he and another individual, Robert Gentry, leading up to Bree's disappearance. ROA 361. Investigators subsequently spoke to Mr. Gentry. On May 18, Mr. Gentry gave consent to the investigators to search his car and his home. ROA 229. On May 21, he consented to the search of his phone. ROA 236

Investigator William Reece of the Spartanburg County Police Department was the supervisor of the criminal investigations division at the time of these events. ROA 223. He reviewed the phone call details on the phones and conducted a search of Mr. Gentry's car and home. ROA 223. While searching Mr. Gentry's car, police found a partial box with TulAmmo in his glove box with a .40 caliber Smith and Wesson pistol. ROA 231. Law enforcement also found an additional empty box of TulAmmo on the floorboard. ROA 230. Additionally, during a search of his home, law enforcement found a Smith and Wesson box under his bed. ROA 234. Although the gun recovered by the police could have been a match to the bullet found at the crime scene, Michele Eichenmiller, a SLED forensic firearms examiner testified that "thousands, if not hundreds of thousands of Smith and Wesson .40 caliber pistols exist in the possession of Americans today. Probably "thousands" in South Carolina alone. ROA 300. Additionally, they are

not illegal to own, and a Mr. Gentry purchased this weapon, as evidenced by a March 20, 2017 receipt introduced at trial. ROA 384, 399. A search of Tremaine Johnson's car did not produce anything of any evidentiary value. ROA 190.

Searches were conducted on the cell phones of Mr. Gentry and Mr. Johnson. Investigator A.J. Smith of the City of Spartanburg was asked to look for any information in reference to Johnson and Wiles having a relationship. Investigator Reece also looked for communications between Wiles and Johnson. ROA 225.

On April 5, 2018, their communications began. ROA 244. On May 1, Bree began to suspect that she was pregnant. ROA 246. Bree indicated she believed Mr. Johnson was acting different towards her. "Hey. I don't like how you've been acting towards me. I didn't do anything wrong, and I just feel since you treat me like a random bitch, I don't feel a need for us to talk anymore." ROA 248. The two continued to communicate about their relationship and the baby for the next few days. ROA 249-255. Investigator Reece testified that Johnson conducted internet searches for abortion clinic on May 2. ROA 251. Later he conducted a search for "Is the poisonous in a granddaddy long leg?" ROA 253, ll. 7-8. On May 3, he searched for "what can you-- what can you take to get rid of a baby in your stomach?" and "Mifeprex or Mifeprexon." ROA 253. Later on May 3, Johnson conducted searches for "poison" and "types of poison" and "Poison ivy" and "Poison that can kill you for sale." ROA 255.

On May 5, there were communications from Wiles to Johnson that her mother had purchased a diaper disposal pail for the baby. ROA 257.

Later on that date, there was an exchange where Wiles indicated there was something "called early D.N.A. and I would have to pay \$400 to \$800." Since there was a possibility of a miscarriage she wanted to wait until she was 5 months pregnant. ROA 258.

On May 7, Wiles sent Johnson a picture of her stomach. ROA 259.

On May 8, Wiles had a conversation with her cousin Jeremy at 10:46pm. ROA 260. She said she was "scared to see her" referring to her mother. Jeremy responded, "I know. But you can do it. She's a Christian mother." ROA 261. Shortly after that, Wiles sent a message to Johnson that said: "You know what. Fuck you! I should have told you to your face. I'm not going to disrespect your mom like that. I don't need you in my child's life. Let me tell you one thing now. You-- I'll-- don't try to come back! You said what you said." ROA 261. At 11:00pm, she stated: "Nothing else I can forgive you for. Good bye. You're blocked." ROA 261. Johnson responded "Shut up. Ain't nobody outta the child's life. I didn't have nothing else to say." That message was not read by Wiles. ROA 262.

On the morning of May 9, communications began between Mr. Johnson and Mr. Gentry via Facebook Messenger. The two spoke on the phone once that day for a minute and 25 seconds. ROA 264. The two continued to stay in contact sparingly over the next few days. As they were messaging back and forth, their phone correspondences were deleted by Mr. Gentry. ROA 273. The Facebook messages, however, were not deleted. ROA 300. According to Mr. Reece, although messages are deleted, they are unable to see when messages or calls were deleted or how many were deleted at once. ROA 303, 309. Cellebrite, the software program used by law enforcement to extract the cell phone data, can only identify that calls and text messages were deleted. ROA 298. Johnson used Daniel Hines's phone at 9:07 to call Wiles. The call connected and they spoke for 6 minutes and 58 seconds. ROA 268.

On May 9, 2018 at 9:31, Wiles called Johnson's phone and they spoke for a minute and 35 seconds. ROA 268. At 10:17pm, Johnson messaged Gentry and asked "what you doing?" ROA 269. Ms. Sidney Dean spoke to Johnson at 11:48 and they spoke for 10 minutes. ROA 271.

On May 10, Gentry sends a message to Johnson that said, "All right. I'm up. About to head to work." ROA 271. At 10:36 Gentry began to conduct internet searches on "It's cheaper than dirt", "cheap guns" "Bulk ammo", "guns, parts and accessories, "Cheaper than dirt." ROA 272. Reece testified that "Cheaper than dirt" is a website for purchasing weapons. ROA 272. At 10:44, Johnson reached out to Gentry to see where he was. Johnson conducted an internet search to get an address for Gentry's work location. ROA 273. At 11:16, Johnson sent Gentry a message asking him to step outside of work for a second. ROA 273. Gentry responds, "Shit. What's up?" ROA 273. Johnson attempted to call Gentry and they spoke for 16 seconds. ROA 274. At 12:41, Gentry conducts additional internet searches, "sell items cheaper than dirt", "handguns for sale. Pistols, revolvers, 9mms, cheaper than dirt, diamond back a.m., semi auto pistol, 9 mm, barrel, 15-round Ameriglo, night site, stainless steel, slide, Palmer frame, flat dark earth finish with the serial number." Gentry continued to look up numerous other search terms associated with guns. ROA 275. At 2:18, he searched "only 11 states require gun owners to report stolen weapons to police. My pistol was stolen." ROA 276.

On May 10 at 2:56, Johnson sent Gentry a message that stated, "do it today, Fam! Happened two days ago." ROA 276. Gentry responded "Iat" (or, all right). ROA 276.

Then, at 3:03, Bree's mother sent a message to Johnson to ask if he had seen Bree.

At 3:05- 3:15, Gentry searches for "report firearm. Theft or loss. Alcohol, tobacco, firearms and explosives." ROA 277.

At 4:43, Johnson responds to Ms. Wiles's text and stated, "Hey. How are you doing? No. I haven't. Not since in a couple of days ago. Is everything okay?"

At 12:39am, Johnson sent a text to Bree that stated, "Hey. Are you okay? Where you at." ROA 279. Johnson then called Gentry and they spoke for 1 minute and 26 seconds. ROA 279.

Although the two began to speak on May 9, according to Mr. Reece, there was never a mention of any gun or firearm of any sort.

Q: Now, there is nothing in the texts or Facebook messages between Gentry about a gun or firearm of any kind?

A: No sir.

Q: There are no any texts or facebook messages between Gentry and Johnson even using slang word, slang words for gun...There's nothing like that in the text between the two.

A: Correct.

Q: There's nothing about Johnson wanting to get a gun.

A: No, sir.

Q: Nothing about Johnson wanting to get a gun from Gentry.

A: Correct.

Q: Nothing about can I borrow a gun.

A: Correct.

Q: Nothing about Johnson asking Gentry whether he had a gun.

A: Right.

Q: There's also nothing in the texts or Facebook messages between Gentry and Johnson about the return of a gun.

A: Correct

ROA 293-294.

R.C. Clay Simmonds of SLED was qualified as an expert, without objection, in cellular data analysis and cell tower analysis. ROA 329. He began his analysis of the cellular data on May 9, based on his communication with the investigators in the case. ROA 339. At 10:18pm, Johnson's telephone was utilizing Tower 61320, Sector 3. Ms. Wiles's phone utilized the same

tower at 11:23, 11:25, and 11:27pm. This is the tower that services Duncan Park area of Spartanburg. ROA 346. All three of those calls went to voice mail. ROA 348. At 11:24pm, Johnson's phone moved to Tower 62603, Sector 1. It returned to Tower 61320 using sector 2 later. On cross-examination, Simmonds testified that the use of cellular data "isn't GPS," it's "just a general area." ROA 351, ll. 5-7.

Sidney Dean was a female friend of Johnson's. She spoke to him May 9 at 11:48. Tr. 368. He testified he seemed "like he was off. He didn't really want to talk to me." ROA 368, ll. 23-24. She never spoke to him again. ROA 369.

Caprice Alo is Robert Gentry's child's mother. ROA 371. She was living with Gentry's mother at the time. On the night of May 9, Gentry, she, and Gentry's mother had a barbeque. Johnson came by the house around 4:00 or 5:00pm. ROA 374. Johnson and Gentry spoke in the road. ROA 374. Gentry met Johnson at his car. She did not observe anything between the two. Johnson was there for less than five minutes. ROA 375.

Michele Eichenmiller from SLED was qualified as an expert in firearms examination. ROA 389. No gun was ever recovered in this case, but she was able to testified that only one manufacturer makes firearms with the specifications of the bullet that was found in the victim. She opined that Smith & Wesson was the only brand who could have fired the bullet in this case. ROA 395. She noted there were "thousands, if not hundreds of thousands" of Smith & Wesson .40 caliber pistols in the United States and "still probably thousands" in South Carolina alone. ROA 399, ll. 17-19.

At trial Ms. Donna Money testified as an expert witness in DNA analysis without objection. ROA 402, 403. During this testimony, she spoke about four of the items she tested for DNA evidence. Exhibit 1 – the buccal swab from Tremaine Johnson, Exhibit 2 – the shell casing from

the crime scene, Exhibit 3 – the spot of blood from the crime scene, Exhibit 4 – a swab off some keys that were found at the crime scene and Exhibit 9 – the fetus recovered from Bree Wiles. ROA 404, 405, 408. Exhibit 1 was used as DNA of Mr. Johnson to compare to the other exhibits in an attempt to find any physical evidence to connect him to this crime. After examination of Exhibit 2, the shell casing, Ms. Money concluded that there was no usable DNA from the casing. ROA 409. Exhibit 3, the blood spot from the scene, came back as a match to the DNA of Bree Wiles. The same was concluded for Exhibit 4, the key found three feet from her body. The only evidence that tied to Mr. Johnson to this murder was the fact that DNA concluded that he was the father of the child found in Bree Wiles. This evidence, however, was not discovered until 2021. ROA 414. A previous DNA test conducted in 2018 was inconclusive. ROA 414. It was only as a result of the advancement of technology that paternity could be established.

Mr. Johnson had no connection to the gun, and there was no evidence that he saw Bree Wiles on the night that she died. On June 17, 2021, the jury returned a guilty verdict charging Mr. Johnson with the murder of Bree Wiles.

ARGUMENT

The trial court erred by not granting Johnson’s motion for a directed verdict because the evidence adduced at trial was not sufficient to show more than a mere suspicion that Johnson was responsible for the murder of the victim.

At the close of the State’s case, trial counsel motioned the trial court for a directed verdict. ROA 447. The trial court denied the motion. ROA 458-59. The trial court erred because the evidence presented at trial was not sufficient to submit the case to the jury. As is well-established under South Carolina law, 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. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). *See also State v. Williams*, 321 S.C.327, 332, 468 S.E.2d 626, 629 (1996). “The jury weighs the evidence but when there is an absence of evidence, it becomes the duty of the trial judge to direct a verdict...” *State v. Schrock*, 283 S.C. 129, 134, 322 S.E.2d 450, 452-53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. *Id.* at 133, 322 S.E.2d at 452 (citing *State v. Manis*, 214 S.C. 99, 51 S.E.2d 370 (1949)).

In *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), the South Carolina Supreme Court, analyzing the evidence in the light most favorable to the State, found that the State’s evidence only raised a suspicion of guilt that Bostick committed the crime. The State’s case consisted of the following evidence: (1) the decedent’s car keys, calculator, and other items from her home were found in the Bostick family’s burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick’s mother did not use those accelerants when she burned things in the pile; (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick’s jeans excluded about ninety-nine percent of the population, the blood could not be matched to the decedent’s DNA. Also, the weapon used to kill the decedent was never introduced into evidence, and there was no evidence introduced to show that Bostick had knowledge the decedent may have had money in the briefcase or if any money was, in fact, in the briefcase on that date. *Id.* at 141-42, 708 S.E.2d 778.

In *Schrock, supra*, a double-homicide case, the South Carolina Supreme Court reversed a conviction where the State did not offer any evidence that the defendant was at the scene of the crime, could not definitely testify that the footprint found at the scene was made by shoes allegedly

owned by the defendant, the State could not establish that cigarettes found at the scene had been smoked by the defendant, a hand print found at the scene was not the defendant's, and shoes presented in evidence were not identified by any witness who had seen the defendant actually wearing the shoes.

Also, in *State v. Arnold*, 361 S.C. 386, 605 S.E.2d 529 (2004), the South Carolina Supreme Court found evidence insufficient when the defendant's fingerprint on a coffee cup lid tab established that he was in the borrowed BMW on the same day the victim was last seen, and that the BMW was abandoned in Tennessee where the defendant stayed after his stay in Savannah, Georgia only raised a suspicion of guilt and was not sufficient to uphold the conviction. Also see *Mitchell, supra* at 409 ("The only evidence linking respondent to the burglary is the fingerprint").

In *State v. Pearson*, 410 S.C. 392, 764 S.E.2d 706 (Ct. App. 2014), this Court reversed the appellant's conviction due to insufficient evidence of guilt. In that case, the appellant's fingerprint was found at the scene of the attack, and law enforcement showed that appellant and his co-defendant had earlier worked at the victim's home. Law enforcement also showed appellant claimed he had never been to the victim's home before, but that he had actually performed a landscaping project at that location for 5 days. *See also State v. Bennett*, 408 S.C. 302, 758 S.E.2d 743 (Ct. App. 2014) (reversing conviction due to insufficient evidence when the evidence consisted of 1) finding appellant's fingerprint on a community room television set that may have been manipulated by the burglar in an attempt to remove the television, and 2) the appellant's DNA found below the space where a stolen television set sat in a computer room).

At most the evidence presented in this case showed that appellant knew the victim for a month before she informed him she was pregnant. He looked up information relating to terminating a pregnancy and it is undisputed the two had some disagreement about having a child.

The evidence also showed appellant had some question about the child's paternity. The evidence showed there were communications between appellant and a long-time friend of his, Robert Gentry. Gentry looked up information about guns including selling them and reporting them stolen. The evidence showed appellant sent a message to Gentry that said, "do it today, Fam! Happened two days ago." And the evidence showed appellant spoke to another romantic interest on the night the victim died (and it was their last communication) and that appellant's phone may have been in the vicinity of where the victim's body was found. What the evidence did not show is any connection between appellant and the gun, or that he had any reason to kill her. At the time the victim was killed, appellant had no idea he was the biological father of the child. It strains credulity to believe that appellant would murder the victim when he had only known her for a month and she claimed to be pregnant with his child. There were no discussions of child support or other obligations between the two. But additionally, the State did not show any connection between appellant and the murder weapon, or even that he was at the scene of the murder. The State's case against appellant was highly speculative and should not have been allowed to go to the jury. Respectfully, this Court should vacate appellant's conviction and sentence.

CONCLUSION

Respectfully, appellant asks this Court to vacate his conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief and Reply Brief comply with Rule 211(b), SCACR.

/s/ Elizabeth Franklin-Best

May 17, 2022.