STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID C. MOSLEY,

APPELLANT

APPELLATE CASE NO. 2024-001102

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STANDARD OF REVIEW 3

ARGUMENT

The trial court erred in failing to grant a directed verdict on the conspiracy and attempted armed robbery charges where the evidence only raised a mere suspicion of guilt. 4

CONCLUSION 10

PETITION TO BE RELIEVED AS COUNSEL 11

TABLE OF AUTHORITIES

Cases

Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967) 11

State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011) 7

State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001) 8

State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004) 7

State v. Frazier, 386 S.C. 526, 689 S.E.2d 610 (2010) 3

State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402 (2013) 7

State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009) 3

State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001) 7, 8

State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000) 7

State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011) 7, 8

State v. Passio, 433 S.C. 666, 861 S.E.2d 785 (Ct. App. 2021) 3

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to grant a directed verdict on the conspiracy and attempted armed robbery charges where the evidence only raised a mere suspicion of guilt?

STATEMENT OF THE CASE

A Greenville County grand jury indicted Appellant during the December 2020 term for murder, possession of a weapon during the commission of a violent crime, and conspiracy. Appellant was also indicted for attempted armed robbery in May 2024. R. 751-756; R. 751-754. His case was called to trial on June 17, 2024, before the Honorable Perry H. Gravely, and a jury. Appellant was tried jointly with his codefendants, Jaylin Hill and Braelon Brown. Assistant Solicitors William Douglas Richardson, Jr.,[1] and Britni McCall represented the State. Kraig Pringle represented Appellant. David Cantrell, Jr., represented Brown. Richard Warder represented Hill. R. 1.

At the conclusion of the State's presentation of evidence, Assistant Solicitor Richardson chose to dismiss the weapons offense as to each defendant. R. 598, l. 21-R. 599, l. 10.

On June 21, 2024, the jury acquitted Appellant of murder but found him guilty as indicted for attempted armed robbery and conspiracy.[2] R. 728, l. 20-R. 729, l. 1. He was sentenced to incarceration for eighteen years for attempted armed robbery and five years for conspiracy, sentences to run concurrently. R. 749, ll. 10-14; R. 755-758.

This appeal follows.

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1 Although listed on the cover of the transcript as "Mr. Douglas", the Assistant Solicitor is referred to as "Mr. Richardson" throughout the trial.

2The jury also acquitted Hill of murder, but found him guilty of attempted armed robbery and conspiracy. Brown was found guilty as indicted on all charges. R. 728, l. 13-R. 729, l. 1.

STANDARD OF REVIEW

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Passio, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021), aff'd as modified, 440 S.C. 1, 889 S.E.2d 584 (2023) *quoting* State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009). "A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." Id. "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case was properly submitted to the jury." State v. Passio, 433 S.C. 666, 673, 861 S.E.2d 785, 789 (Ct. App. 2021) *quoting* State v. Frazier, 386 S.C. 526, 531, 689 S.E.2d 610, 613 (2010). "When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State." Id.

ARGUMENT

The trial court erred in failing to grant a directed verdict on the conspiracy and attempted armed robbery charges where the evidence only raised a mere suspicion of guilt.

Relevant Facts

On the night of December 19, 2019, fifteen-year-old Kerolos Zaky, the decedent, picked up his friend, Thomas Mueller, from Mueller's house. Zaky then picked up Nijah Croskey, another friend, from Croskey's house. Zaky, Mueller, and Croskey went to McDonald's to use the restaurant's Wi-Fi. While at McDonald's, Croskey contacted some of his friends on Snapchat or Instagram about hanging out. Zaky eventually picked up Appellant, Jaylin Hill, Braelon Brown, Jamazzeo Glover, and Tyreke McMahand.[3] Zaky and Mueller had never met Appellant, Hill, Brown, Glover, or McMahand. R. 419, l. 15-R. 422, l. 16; R. 445, l. 2-R. 447, l. 19.

Zaky drove the group of eight to a Spinx convenience store where they hung out for just over thirty minutes. R. 487, ll. 16-19. According to Glover, while the group was at the Spinx, Hill asked Zaky if Zaky had change for a twenty-dollar bill. Zaky allegedly said all he had was "a hundred dollars." This is when Hill devised a plan to rob Zaky. Glover claimed Hill typed a message in Snapchat on his phone and showed the text to Appellant, Glover, Brown, and McMahand without actually sending the message. The message read, "Do y'all want to rob him or not?" Despite the fact that the eight teenagers were crammed into a small car, Glover

[3] In December 2019, Jamazzeo Glover and Braelon Brown were eighteen years old, Thomas Mueller was seventeen years old, Nijah Croskey, Appellant, and Jaylin Hill were fifteen years old, and Tyreke McMahand was fourteen years old. McMahand was adjudicated in Family Court. Glover was an indicted co-defendant in the case until he testified at trial. He ultimately pled guilty to accessory after the fact and received a suspended YOA sentence.

maintained that Zaky, Mueller, and Croskey did not see Hill's message. R. 338, l. 9-R. 341, l. 24.

Hill then suggested Zaky drive the group to the Kingswood neighborhood in Piedmont where he knew "some girls." On the way to Kingswood, Hill typed another message on Snapchat again without actually sending it. This message read, "Are we going to do this or not?" According to Glover, Hill showed the message to Appellant and Brown. Glover claimed Brown nodded his head in agreement while Appellant "just sat there." R. 344, l. 8-R. 345, l. 21.

Zaky parked his car in front of an abandoned house in Kingswood. Once he parked, everyone got out of the car. Brown asked Zaky to "pop the trunk" so Brown could retrieve his book bag. According to Glover, as Zaky was unlocking the trunk, Brown "pistol-whipped him in the head." Hill, Brown, McMahand, and Appellant then allegedly began beating Zaky with their hands. They attempted to rob him, but Zaky did not have anything on his person. Eventually Zaky was able to get back into the driver's seat of his car. As he was slowly driving away, Glover claimed Appellant told Brown to "blast that N word." Brown then fired five or six shots into the car. Glover maintained that he "took off running" after the first shot. R. 346, l. 2-R. 352, l. 20.

Mueller and Croskey did not see the shooting. They both fled as soon as Zaky was struck in the back of the head with the pistol. R. 424, l. 18-R. 426, l. 23; R. 449, l. 6-R. 452, l. 7. Mueller identified Glover as the person who initially struck Zaky with the gun. R. 432, l. 5-R. 433, l. 21. Zaky was found unresponsive on the scene. R. 202, l. 23-R. 203, l. 9. An autopsy revealed Zaky died from a gunshot wound. R. 583, l. 23-R. 588, l. 7.

That same evening Tori Fleming called police to inform them that four to five black males she described as "babies…boys" had knocked on her door claiming they were being shot

at. She described the boys as "frantic, scared." One of the boys had bloody knuckles, which she cleaned off with cotton swabs. The boys left Fleming's home while she was on the phone with police. R. 241, l. 12-R. 245, l. 22. Fleming lived approximately .06 miles from the scene of the shooting. R. 481, ll. 4-17. Police ultimately collected the cotton swabs from Fleming's bathroom trashcan and sent them for DNA testing. R. 123, l. 13-R. 127, l. 7. DNA analyst Timothy Nafziger tested the blood found on the cotton swabs. R. 288, ll. 11-20. He reported that there were three DNA profiles obtained from the cotton swabs. The minor DNA profile contributor was identified as Zaky. The major DNA contributor was identified as Appellant. The third trace DNA profile was from an unidentified contributor. R. 293, l. 19-R. 297, l. 2.

After the State rested its case, Counsel Pringle made a motion for a directed verdict. Regarding the conspiracy and armed robbery charges he argued that "there's only been -- there's been very limited direct testimony or evidence that even places him in any kind of vicinity of this scuffle. There's no evidence that he was part of any conspiracy or any of this hand of one mentality, no affirmative acts." Counsel Pringle continued that even if the jury believed that Hill showed a cellphone message around the back seat, there was no overt act on the part of Appellant showing him agreeing to participate in the conspiracy or robbery. He finished by stating that Appellant "has to have done something that puts him in that realm where he's part of this scheme, this robbery. Mere presence isn't enough." R. 590, l. 17-R. 591, l. 19.

The State responded that in the light most favorable to the State there was evidence "that an armed robbery text was shown through the car in which [Appellant] saw along with the other codefendants, that that armed robbery text led to the sending of that car to that house that was abandoned in which all codefendants got out of the car, including [Appellant]." The State continued that there was evidence that Zaky was attacked by all of the defendant's over money

and that was sufficient for the crime of attempted armed robbery. R. 591, l. 22-R. 592, l. 8. The trial court denied the motion for a directed verdict of acquittal. R. 594, ll. 1-3.

Discussion

"The circuit court should not refuse to grant the directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. Suspicion implies a belief or opinion as to guilt based upon facts or circumstance which do not amount to proof." State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004). "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. 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. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013).

Our Supreme Court "has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict." State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011). In Odems, this Court cited State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), and State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001), as "jurisprudence . . . instructive in explaining the

proof required in cases built wholly on circumstantial evidence." Id. Specifically, the trial court "should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty." Odems, 395 S.C. at 586, 720 S.E.2d at 50 (citation omitted). "Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." See State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (internal quotation omitted).

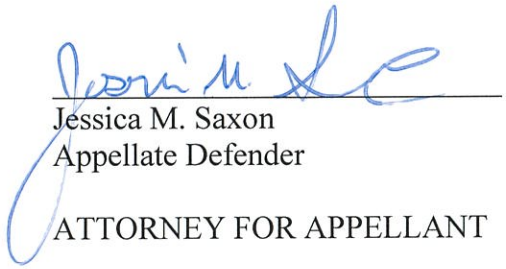
The evidence adduced at trial was that Hill instigated the purported plan to rob Zaky by showing a message on his phone to the five individuals in the back seat of Zaky's car. Initially, no one reacted to Hill's suggested plan of robbing Zaky. Hill proceeded to bring up the idea of robbing Zaky a second time and which point Brown, and only Brown, agreed to participate in the plan. Zaky was directed by Hill to drive to the abandoned house in the Kingswood neighborhood where all eight individuals got out of the car. Brown then requested Zaky open the truck at which point Brown pistol whipped Zaky. The only evidence tendered against Appellant was Glover's testimony he was involved in the fight after Brown pistol whipped Zaky, along with the blood evidence which supported the State's theory that he had struck Zaky.

Reviewing all the evidence shows that the State failed to present sufficient evidence to support that Appellant entered into a conspiracy to rob Zaky or attempted an armed robbery of Zaky. Appellant never agreed to the plan to rob Zaky through any overt act or form of acknowledgment. The fact that Appellant exited the vehicle at the abandoned house is not evidence of any crime, as every person in the car exited the vehicle once they arrived in the Kingswood neighborhood. There was also not testimony that Appellant demanded any property from Zaky. The only evidence that Appellant was involved in the fight after the group arrived at Kingswood is the biased testimony of Glover combined with the blood evidence. However, such

evidence does not dictate that Appellant was involved in any conspiracy or attempted armed robbery. At most, such evidence merely raised a suspicion of Appellant's guilt. The evidence did not constitute sufficient proof from which a jury could have fairly and logically deduced Appellant was guilty of conspiracy and attempted armed robbery. The trial court erred in failing to grant Appellant a direct verdict of acquittal.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of April, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Apr 23 2025
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THE STATE,

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V.

DAVID C. MOSLEY,

APPELLANT

APPELLATE CASE NO. 2024-001102

PETITION TO BE RELIEVED AS COUNSEL

Counsel for David C. Mosley states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Perry H. Gravely, which was held on June 17-21, 2024, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for David C. Mosley.

Respectfully Submitted,

Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of April, 2025.

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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(s): 2020-GS-23-7749A, 2024-GS-23-2584A
(2) Sentencing Sheets dated June 21, 2024
(3) Trial Transcript dated June 17-21, 2024

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

Jessica M. Saxon
Appellate Defender

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ATTORNEY FOR APPELLANT

This 23rd day of April, 2025.

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."

Jessica M. Saxon
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APPELLATE CASE NO. 2024-001102

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 David C. Mosley, #394252, at Turbeville Correctional Institution, 1578 Clarence Coker Hwy, Turbeville, SC 29162, this 23rd day of April, 2025.

Jessica M. Saxon
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