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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court Of General Sessions
The Honorable Jocelyn J. Newman, Circuit Court Judge

Appellate Case No. 2024-002126

THE STATE,

Respondent,

v.

CLIFTON EUGENE KIMBLE,

Appellant.

INITIAL BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for directed verdict where the State produced evidence showing Appellant inflicted great bodily injury by strangling Victim to the point of unconsciousness.

STATEMENT OF THE CASE

Clifton Kimble was indicted by the Richland County Grand Jury for assault and battery of a high and aggravated nature, kidnapping, and first degree burglary. Appellant proceeded to a jury trial on December 9, 2024, before the Honorable Jocelyn Newman. Appellant was convicted of ABHAN but acquitted of kidnapping and first degree burglary. Appellant was sentenced to ten years' imprisonment. Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

Victim and Appellant were engaged in an on again off again relationship for some time. (Tr. p. 213). Victim testified that at the time of the incident the two were not together. (Tr. p. 220). Victim's son testified that Appellant never lived with them but that he would visit often. (Tr. p. 185-6). Both Victim and Appellant testified that they went to a store on the night of the incident and that the two had a disagreement. (Tr. p. 220-3; 332-3). Victim testified that Appellant walked back to her home and began pounding on the door. (Tr. p. 222-3).

Victim's son testified that at this point he was in his brother's room to watch a movie. (Tr. p. 189). He further stated that before the two could begin the film, he heard a loud bang. (Tr. p. 190). Victim's son testified that he could hear Appellant banging on the door asking to be let in while Victim told him to leave. (Tr. p. 191). Victim stated that she let Appellant in because he was so loud. (Tr. p. 224-5). Victim's son testified that once Appellant entered the home lots of yelling and banging occurred. (Tr. p. 193). He stated that he heard someone choking, followed by a bang and a thud. (Tr. p. 193-5). At this point, he went into the room and saw his mother lying on the floor unconscious. (Tr. p. 195-6). Victim testified that Appellant choked her with his thumbs over the middle of her throat and hit her before she passed out. (Tr. p. 225-8). After shaking her several times, Victim woke up. (Tr. p. 195). Victim's son testified that when she initially awoke, she did not recognize her kids. (Tr. p. 196).

Dr. Hayes testified that Victim suffered from laceration to her lower lip. (Tr. p. 264). Victim also received scans for a potential facial fracture, injury to the head, and cervical spine. (Tr. p. 264). Victim's scans "turned out negative." (Tr. p. 264). Hayes noted that he diagnosed Victim with a concussion, contusion to the head, contusion to the face, and contusion to the cervical spine. (Tr. p. 265).

Victim's son stated he called 911. (Tr. p. 195-6). Deputy Taylor arrived at the scene. (Tr. p. 164). Taylor stated that Victim was with her children and had a towel draped over her mouth. (Tr. p. 165). Taylor testified that Victim's eye was bleeding at this point. (Tr. p. 166). Victim initially stated she did not know what happened but later reported that she was attacked by Appellant. (Tr. p. 166; 173-5).

Appellant testified that the two had an argument at the store, which resulted in him walking back to Victim's house. (Tr. p. 333). He testified that he needed to go back to the home to gather his belongings such as his lawnmower, blower, and vacuum. (Tr. p. 336). Appellant stated that Victim initiated the attack and that she repeatedly hit him. (Tr. p. 346-8). Appellant stated that ultimately, he had to push her to get away and that resulted in Victim's busted lip. (Tr. p. 350).

At the conclusion of the State's case, Appellant moved for a directed verdict. (Tr. p. 279). At that time, the court denied Appellant's motion. (Tr. p. 279). At the conclusion of the defense's case, Appellant renewed his motion for a directed verdict. (Tr. p. 386). The court denied Appellant's motion, noting the court was concerned with the existence of evidence, not its weight, and that Victim's testimony constituted some evidence. (Tr. p. 387).

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). In ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence rather than with its weight. State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998). On appeal from the denial of a directed verdict, courts view the evidence in the light most favorable to the State. Id. If any direct evidence or substantial circumstantial evidence tending to prove the accused’s guilt exists, courts must conclude the trial court properly submitted the case to the jury. State v. Dixon, 337 S.C. 455, 458, 523 S.E.2d 784, 786 (Ct. App. 1999).

ARGUMENT

The trial court correctly denied Appellant’s motion for directed verdict because the State produced evidence showing Appellant inflicted great bodily injury by strangling Victim to the point of unconsciousness.

The trial court did not err in denying Appellant’s motion for directed verdict because the State showed some evidence which, when considered in the light most favorable to the State, substantially tends to prove Appellant inflicted great bodily injury or employed means likely to produce great bodily injury. Victim and her son testified that Appellant choked Victim to the point that Victim passed out.

S.C. Code Ann. § 16-3-600(B) provides that:

- (1) A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:
 - (a) great bodily injury to another person results; or
 - (b) the act is accomplished by means likely to produce death or great bodily injury.

The statute also clarifies that “Great bodily injury means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.” S.C. Code Ann. § 16-3-600 (internal quotations omitted).

Under our system of justice, the judge and jury have distinct roles when a jury trial is conducted in a criminal case. Shannon v. United States, 512 U.S. 573, 579 (1994). The judge is tasked with administering the proceedings, instructing the jury on the applicable law, and ensuring all sides receive a fair trial. See State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge has a duty to instruct the jury on the law applicable to the case);

State v. Stanley, 365 S.C. 24, 39, 615 S.E.2d 455, 463 (Ct. App. 2005) (“A judge has a responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of criminal justice.”). Meanwhile, the jury alone has the task of finding the facts, weighing the evidence, choosing what inferences should be drawn from it, and ultimately deciding whether the State has met its burden of proving the defendant’s guilt beyond a reasonable doubt. See United States v. Gaudin, 515 U.S. 506, 514 (1995) (“[T]he jury’s constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence.”).

“When ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not its weight. A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. 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. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury.” State v. Weston, 367 S.C. 279, 292-293, 625 S.E.2d 641, 648 (2006) (citing State v. Cherry, 361 S.C. 588, 591-592, 606 S.E.2d 475, 477-478 (2004)). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury’s exclusive role to find the facts, weigh the evidence, evaluate witness credibility, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson v. Virginia, 443 U.S. 307, 319 (1979) (“[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.”).

On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling.

State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

The United States Supreme Court noted the following:

[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, **and to draw reasonable inferences from basic facts to ultimate facts.**

Jackson v. Virginia, 443 U.S. 307, 319 (1979) (emphasis added). "When evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury." State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968). When it comes to testimony appellate courts consider only the existence or non-existence of evidence, not witness credibility, in reviewing the denial of a directed verdict. State v. Cherry, 348 S.C. 281, 559 S.E.2d 297 (App. 2001) (affirmed in result 361 S.C. 588, 606 S.E.2d 475).

In Chatman, the defendant caused a death by pressing a shoulder on the neck of the victim. State v. Chatman, 336 S.C. 149, 153, 519 S.E.2d 100, 102-3 (1999). When determining whether an involuntary manslaughter charge was appropriate, our Supreme court considered if the defendant's actions naturally tend to cause death or great bodily harm. Id. In its analysis, the court noted that this action did not rise to the level of naturally tending to cause death or great bodily harm because the defendant did not attempt to strangle Victim with his hands. Id. Specifically, the Chatman Court noted "This is not the traditional strangulation type situation. Appellant was not attempting to strangle Victim by placing his hands around Victim's neck. As

such, we think appellant's actions were not the kind which would naturally tend to cause serious bodily injury or death." Id.

Here, the State produced some evidence that Appellant's action of choking Victim to the point of passing out inflicted great bodily injury. Both Victim and her son testified that Appellant choked Victim and that she passed out. Further, Victim went so far as to say that she felt as if she was dead and that she would not have survived without her son shaking her and screaming her name. (Tr. p. 228). Cherry, 348 S.C. 281, 559 S.E.2d 297 (noting a judge "should grant a directed verdict motion when the evidence merely raises a suspicion that the accused is guilty").

Further, photographic evidence also showed Victim's injury to her lip and side. See United States v. Lepanto, 817 F.2d 1463, 1467 (10th Cir. 1987) ("Defendant's knowledge of the underlying offense may be proven entirely by circumstantial evidence."); Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-175 (2010) ("The jury serves as the fact finder and is charged with the duty of weighing the evidence admitted at trial and reaching a verdict. . . . [I]t is exclusively within the jury's province to decide how much weight the evidence deserves."); State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d 769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury."). Our Supreme Court's discussion in Chapman highlights the significant injuries that can come from traditional strangulation. As such, the testimony from Victim and Victim's son allow the jury to reasonably reach the determination that Appellant inflicted great bodily injury or injured Victim through means likely to produce death or great bodily injury.

The trial court properly presented the case to the jury because the testimony and photographic evidence reasonably tend to prove Appellant's guilt. See State v. Bennett, 415 S.C. 232, 236-37, 781 S.E.2d 352, 354 (2016) ("[W]hen ruling on a directed verdict motion, the trial

court views the evidence in the light most favorable to the State and must submit the case to the jury 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.’”). Accordingly, the State met its burden and the motion was properly denied. Appellant’s conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

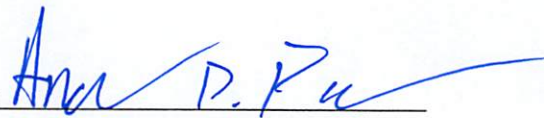
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