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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Chester County

Honorable Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES JEFFREY BOATWRIGHT,

APPELLANT

APPELLATE CASE NO. 2024-002039

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by denying Appellant's motion for a directed verdict for first degree burglary when the state failed to present any direct or substantial circumstantial evidence that Appellant had an intent to commit a crime in the dwelling he entered without consent, which is an essential element of the offense?

STATEMENT OF THE CASE

A Chester County grand jury indicted Appellant on March 19, 2024, for second degree burglary (nonviolent). R. 212 – 213. His case was called to trial on November 18, 2024, before the Honorable Donald H. Hocker, and a jury. R. 1. Prior to the start of Appellant's trial, the state moved to amend the indictment to change the offense from second degree burglary (nonviolent) to first degree burglary. Appellant consented to the amendment. R. 3, l. 1 – 11, l. 14. Assistant Solicitors Julia Sporano-Cesmat and Candice Lively represented the state. Kay Boulware and William Frick represented Appellant. R. 2.

On November 22, 2024, the jury found Appellant guilty of first degree burglary. R. 207, ll. 11-19. He was sentenced to fifteen years imprisonment. R. 210, l. 22 – 211, l. 6.

This appeal follows.

STATEMENT OF FACTS

In August 2023, Appellant was homeless and living in the City of Chester. He had been having ongoing problems with individuals harassing and following him. One of these individuals was named Leon. At 6:35 in morning on August 4, 2023, Appellant called 911 to report that he was being harassed and followed. R. 28, 11. 9-13. He explained to dispatch that he was asleep by the ballpark when two individuals approached him. These individuals were also homeless. One was carrying a stick. Appellant suspected they were trying to rob him so he immediately left the area. The individuals continued to follow Appellant for roughly an hour before he called 911. See State's Exhibit No. 1 (911 Calls).

Deputy Brian Radford was dispatched to Appellant's location in response to his call. R. 142, l. 12 – 143, l. 9. Appellant was walking down the sidewalk along a busy road. Appellant told Radford that he wanted to press charges against the individuals who were harassing him and that he believed they should be arrested for attempted strong arm robbery. See State's Exhibit No. 5 (Body Camera Videos). Radford told Appellant that his account of events did not support a charge of strong arm robbery and that he could not arrest the individuals. Appellant became increasingly frustrated and told Radford that law enforcement failed to act the last time he reported being harassed. If the individuals could not be arrested for attempted strong arm robbery, Appellant told Radford he wanted them to be arrested for harassment. Appellant explained to the deputy that the individuals snuck up on him while he was sleeping in the woods, woke him up, and then continued to follow him. Appellant eventually walked away from Radford after the deputy stated he could not help Appellant. See State's Exhibit No. 5 (Body Camera Videos).

Around eleven o'clock that night, Appellant called his girlfriend, Daisy White, and told her that he was walking to the park and that two men were chasing him. Appellant identified one of the men as Leon, who White knew was someone Appellant had had problems with in the past. Appellant told White he had to hang up so he could call 911. White did not hear from Appellant again that night. R. 134, l. 22 – 137, l. 24.

About five hours later, at 4:21 am on August 5, 2023, Appellant again called 911. R. 25, l. 2 – 28, l. 5. While Appellant never spoke to the dispatcher, he sounded to be in considerable distress. Appellant was yelling and breathing heavy. He sounded as if he was running. Appellant could be heard yelling in part, "I think its Leon and he has someone with him. They're trying to kill me. Why are y'all following me, man? Please go home. I'm in the creek. Please go away, man. Help! Help! Help! Please go home, man. Please go away. Help! Help! Help! Help! Please go home, man. Help!" See State's Exhibit No. 1 (911 Calls).

Deputies Kendall Pollard and Caleb Tolson with the Chester County Sheriff's Office were dispatched to Wylie Park in response to Appellant's 911 call. They arrived at 4:26 am. They immediately noticed there were no cars in the parking lot. The two searched the park with flashlights, but did not see or hear anyone. They walked about one hundred yards into the woods following the various trails. After six to seven minutes of searching Wylie Park, the deputes abruptly left after they received a call from dispatch regarding a burglary in progress. R. 37, l. 8 – 41, l. 7.

At 4:32 am, Diane Simpson called 911 to report that someone had broken into her house near Wylie Park. She told the operator that she believed at least two men were in her living room and they were being very loud. See State's Exhibit No. 1 (911 Calls). Simpson later told the jury that she was sound asleep in her bed when she suddenly heard someone yell, "Give me

the brick, give me the brick." She thought she heard at least two voices in her house, but the voices were never speaking at the same time. She hid in her bedroom closet until law enforcement arrived. R. 103, l. 7 – 106, l. 3.

Deputies Pollard and Tolson arrived at Simpson's residence at 4:37 am.[1] As they were approaching the front door with guns drawn, Appellant walked out of the door holding two knives in his hand. Appellant immediately dropped the knives into a flowerpot outside the front door. Appellant complied with the officers' orders to show them his hands and get on the ground. Deputy Pollard placed Appellant in handcuffs. R. 43, l. 8 – 46, l. 10; R. 71, l. 4 – 74, l. 7. Throughout this encounter, Appellant repeatedly said, "I am the one who called!" After Appellant was in custody, Pollard and Tolson thoroughly searched Simpson's house. However, no one besides Simpson was found inside or outside the property. R. 46, l. 17 – 47, l. 19; See State's Exhibit No. 5 (Body Camera Videos).

After the search, Appellant told Deputy Pollard that there was no one else with him and no one else inside the house. He explained that there was one man chasing him through the creek, which was behind Simpson's house, and another person following him in a car. Appellant broke into Simpson's house in an effort to get away from whoever was chasing him. See State's Exhibit No. 5 (Body Camera Videos). Appellant later identified the man who was chasing him through the creek as Leon. When Deputy Pollard commented that Appellant was "covered in blood," Appellant explained that he had fallen in the creek and "busted his nose." See State's Exhibit No. 5 (Body Camera Videos). Appellant also told Pollard, "I didn't do anything wrong" and "I had no choice." See State's Exhibit No. 5 (Body Camera Videos).

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[1] Wylie Park is located behind Simpson's house. There is a creek in the wooded area between Simpson's house and Wylie Park. R. 111, l. 22 – 112, l. 15. It took Pollard and Tolson roughly three minutes to travel from Wylie Park to Simpson's house.

While speaking to another deputy after Appellant was detained and the search was complete, Pollard acknowledged that Appellant was the individual who had called for help in Wylie Park and commented that Appellant must have run through Wylie Park to get to Simpson's house. See State's Exhibit No. 5 (Body Camera Videos).

Deputy Pollard eventually advised Appellant of his Miranda rights and briefly questioned him while the two stood in the driveway of Simpson's residence. Appellant again told Pollard that he was alone, that he "busted through" the glass window beside the front door, that he "popped" the front door open and entered the house, and that he did not steal or "mess with" anything inside the house with the exception of grabbing two knives from the kitchen in an effort to protect himself because he "was scared to death." Appellant explained that Leon and Junior had been "mad at [him]" for a couple of months and often followed and chased him. As he was running through Wylie Park, Appellant said he saw two flashlights in the woods behind him.[2] Appellant repeated that he was "scared for his life" and did not enter Simpson's house "because he wanted to." See State's Exhibit No. 5 (Body Camera Videos).

Law enforcement found Appellant's jacket and cell phone just outside the front door next to the flowerpot where Appellant dropped the knives. R. 125, ll. 2-5. The jacket was "extremely wet," which was consistent with Appellant's account that he had fallen in the creek behind Simpson's house as he was running. R. 125, ll. 10-14. The crime scene investigator collected a latent print from the inside of the glass storm door and swabs of suspected blood from the inside of the front door frame and the trim of the archway at the entrance to the living room. R. 123, l. 17 – 124, l. 24. The DNA profile developed from the swabs of blood matched Appellant's DNA

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[2] The flashlights Appellant saw likely belonged to Deputies Pollard and Tolson as they searched Wylie Park in response to Appellant's 911 call.

profile. R. 128, l. 10 – 130, l. 7. The latent print lifted from inside the glass storm door was identified as Appellant's print. R. 130, l. 8 – 131, l. 16.

STANDARD OF REVIEW

"The defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011) (citing State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001)). "However, if there is any direct or *substantial* circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)) (emphasis in original). "On appeal from the denial of a directed verdict, this Court must view the evidence in the light most favorable to the State." Id. (citing State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001)).

"A [trial court] should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty." Id. (citing State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984)). "Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." State v. Buckmon, 347 S.C. 316, 322, 555 S.E.2d 402, 404-405 (2001) (citing Lollis, 343 S.C. at 584, 541 S.E.2d at 256). "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. Shands, 424 S.C. 106, 135, 817 S.E.2d 524, 539 (Ct. App. 2018) (citing State v. Hernandez, 382 S.C. 620, 624, 677 S.E.2d 603, 605 (2009)).

ARGUMENT

The trial court erred by denying Appellant's motion for a directed verdict for first degree burglary when the state failed to present any direct or substantial circumstantial evidence that Appellant had an intent to commit a crime in the dwelling he entered without consent, an essential element of the offense.

Relevant Facts

After the state rested, Appellant moved for a directed verdict. Defense counsel conceded there was evidence Appellant entered a dwelling without consent. However, she argued there was no evidence Appellant intended to commit a crime in the dwelling. Counsel asserted, "Even in the [light] most favorable to the State, we have no evidence that Mr. Boatwright [Appellant] intended to do anything in that residence that would be a crime . . ." She further emphasized that the intent to commit a crime therein must exist before the defendant entered the dwelling and no such evidence existed in this case. However, there was evidence that Appellant had ongoing problems with individuals harassing him and evidence that he was being chased immediately prior to entering Simpson's house. R. 160, l. 24 – 162, l. 7.

Citing to State v. Meggett, 398 S.C. 516, 728 S.E.2d 492 (2012), the assistant solicitor argued that intent may be inferred from conduct and that whether the defendant possessed the requisite intent at the time the crime was committed is a question for the jury. She commented that Appellant "did steal two knives from this house and then walk out." R. 162, l. 10 – 163, l. 8.

The trial court found there was "enough" evidence "based upon the totality of the circumstances to send the case to the jury" and that the defense could argue "the issue of intent to commit a crime" to the jury. R. 163, ll. 9-20.

During the first day of deliberations, the jury sent a note asking, "Number one, saying what happens if we cannot agree? Question two, can we consider a lesser charge?" R. 201, ll. 22-25. It is unclear how long the jury had been deliberating when it asked these questions as no times were provided in the record. The court stated that "by consent from both sides, it has been agreed that I will just handwrite a note back to them [the jurors] saying, please continue with your deliberations. And then I'll respond that the only charge to consider is the burglary first." R. 202, ll. 1-8. The parties agreed at that time that the jury should not be given an Allen[3] charge. R. 202, ll. 9-13.

At some point thereafter, the jury sent a second note "in effect asking to go home, sleep on it . . . Come back tomorrow." R. 202, ll. 16-20. The court permitted the jury to adjourn for the evening, commenting that the jurors had been deliberating for "a little over three hours." R. 203, ll. 15-17.

The jury resumed deliberations the following morning. However, the jury again stated it was unable to agree on a verdict. Consequently, the court gave the jury an Allen charge. R. 205, l. 6 – 206, l. 18. At some point after the Allen charge was given, the jury reached a unanimous verdict. R. 206, l. 22 – 207, l. 10. It is unclear from the record how long the jury deliberated that morning before the Allen charge was given or how long after the Allen charge was given that the jury ultimately reached a verdict finding Appellant guilty.

During sentencing, the trial court stated "for the benefit of those jurors who are here" that the penalty for first degree burglary is "a minimum of 15 [years] all the way to life in prison without parole." The court commented that the possible sentencing range for first degree burglary was "one of the questions that [the jury] asked that [the court] would not answer"

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[3] Allen v. United States, 164 U.S. 492 (1896).

during deliberations. R. 210, l. 22 – 211, l. 3. This question from the jury was never put on the record.

Discussion

The trial court erred by denying Appellant's motion for a directed verdict for first degree burglary when the state failed to present any direct or substantial circumstantial evidence that Appellant had an intent to commit a crime in Simpson's house, which he admittedly entered without consent, since "intent to commit a crime therein" is an essential element of the offense.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). When the prosecution relies exclusively on circumstantial evidence, the trial court must direct a verdict in the defendant's favor unless there is substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant 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); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is proper when the evidence produced "merely raises a suspicion the accused is guilty." State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001); State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). Our courts define suspicion as "a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

In State v. Mitchell, 341 S.C. at 409, 535 S.E.2d at 127, our Supreme Court held the trial court erred by failing to direct a verdict where the evidence presented against Mitchell was his

fingerprint at the scene of the burglary. Likewise, the Court in Lollis directed a verdict of acquittal where the state presented no direct evidence that Lollis was involved in setting fire to his home. The circumstantial evidence against Lollis was that his wife admitted to the arson, he had placed valuables in storage prior to the fire, he possessed a key to the storage unit, and he allegedly had financial troubles. The Court found this evidence insufficient. 343 S.C. at 584-85, 541 S.E.2d at 256-57.

In State v. Odems, 395 S.C 582, 720 S.E.2d 48 (2012), our Supreme Court held the defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that Odems was involved in the burglary. Although Odems was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that Odems was present during the home invasion. The witness who saw individuals at the home claimed she saw two, not three as were found in the car. Fingerprints collected from the stolen goods did not match Odems, but matched the other individuals in the car. One of the individuals who admitted his involvement claimed Odems was picked up after the burglary at a gas station. Id. at 588, 720 S.E.2d at 51.

In State v. Bostick, 392 S.C. 134, 141, 708 S.E.2d 774, 778 (2011), the Supreme Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt. Rather, the Court found the evidence was capable of producing only a suspicion of Bostick's guilt. Id. Although the police found items belonging to the decedent in a burn pile behind Bostick's mother's house, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. Id. at 137-41, 708 S.E.2d at 775-78. The other evidence presented against Bostick was that he had a chemical pattern that matched gasoline on his shoes and gasoline was used to start the fire at the decedent's home,

and DNA from blood on Bostick's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the decedent. Id. at 142, 708 S.E.2d at 778.

In State v. Arnold, our Supreme Court held a directed verdict of acquittal for murder should have been granted. Arnold was convicted of murdering Dr. Jennings Cox of Savannah, Georgia. Cox was last seen alive on June 18, 1997, when he borrowed a colleague's car, a BMW, to go to a dentist appointment. Three days later, his body was found off Interstate 95 in Colleton County. He was shot twice. Information on a floppy disk found on Cox's computer led the police to Bobby Ray Ware. Ware admitted to having a sexual relationship with Cox. Ware introduced Cox to Arnold, who was staying with Ware, on the weekend of June 14, 1997. Cox and Arnold had sex that weekend. Ware left for Chicago on June 17, 1997. When Ware left, Arnold was still staying at Ware's residence. On June 19, 1997, Ware received a message from Arnold to call him at a phone number in Tennessee. Ware later contacted Arnold at a phone number identified as belonging to Arnold's father who lived in Tennessee. On June 20, 1997, the borrowed BMW was found in a parking lot in Tennessee. Arnold's fingerprint was found on the tab from a coffee cup lid found in the center compartment. 361 S.C. at 388-89, 605 S.E.2d at 530. The Court held this evidence, in the light most favorable to the state, merely raised a suspicion of guilt. It was not sufficient evidence that Arnold killed Cox. Id. at 390, 605 S.E.2d at 531.

Appellant was tried for first degree burglary. "First degree burglary is a statutory offense in South Carolina that is defined as follows: 'A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling,' and any one of several enumerated aggravating circumstances exists." State v. Meggett, 398 S.C. 516, 526, 728 S.E.2d 492, 497 (Ct. App. 2012) (quoting S.C. Code Ann. § 16-11-311(A)). Aggravating circumstances include entering or remaining in the dwelling at night and being

armed with a deadly weapon while effecting entry or while in the dwelling. S.C. Code Ann. § 16-11-311(A)(1).

Here, the state failed to present any evidence from which the jury could reasonably conclude Appellant possessed the intent to commit a crime at the time he entered Simpson's home. "Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred." Meggett, 398 S.C. at 527, 728 S.E.2d at 498 (quoting State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971)) (internal quotation marks omitted). The evidence presented showed Appellant was homeless, that he had been repeatedly harassed and followed in the days leading up to the break in, that he called 911 a mere eleven minutes before Simpson called 911 to report the intruder, and that during his 911 call Appellant sounded in danger with someone actively chasing and threatening him. Based on these circumstances, there was no evidence presented that Appellant intended to commit a crime inside Simpson's residence at the time he made entry.

Our Supreme Court has held that "in determining whether a defendant possessed the necessary criminal intent in a burglary case, a defendant's actions after he entered a dwelling can constitute evidence of his intent at the time of his unlawful entry." Meggett, 398 S.C. at 527, 728 S.E.2d at 498 (citing State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000)). In Pinckney, the Court provided the following example reflecting this principle: "if a defendant entered a house and committed criminal sexual conduct (CSC), the jury could find him guilty of burglary even though there may not have been any specific evidence that at the time he entered the house he intended to commit CSC. His actions after entering the house (i.e. the commission of the CSC) would be evidence of his reason for entering the house and would at least support

the denial of a directed verdict motion." Meggett, 398 S.C. at 527, 728 S.E.2d at 498 (citing Pinckney, 339 S.C. at 349-50, 529 S.E.2d at 527-28).

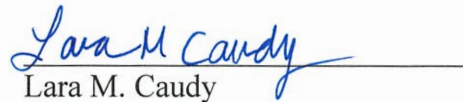
In this case, Appellant's conduct after he entered Simpson's house demonstrates that he did not have any intent to commit a crime in the dwelling at the time he entered. Appellant did not assault Simpson. Appellant did not steal. Appellant did not disturb anything inside the residence with the exception of grabbing two knives from the kitchen for his own protection, which only supported his statement that he entered Simpson's house because he was scared and was being chased. When law enforcement arrived, Appellant immediately walked outside the house, dropped the knives, and cooperated with the deputies explaining that he was the one who called 911.

Respectfully, because the state failed to present any evidence that Appellant intended "to commit a crime therein" at the time he entered Simpson's house, this Court should direct a verdict of acquittal for first degree burglary.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal for first degree burglary.

Respectfully submitted,



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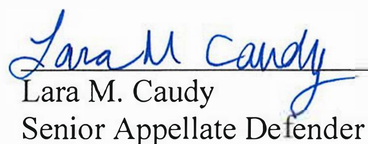
This 6th day of January, 2026.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

January 6, 2026.



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