

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

J. Ernest Kinard, Jr., Circuit Court Judge

RECEIVED

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHARLES DAVIS,

APPELLANT

APPELLATE CASE NO. 2013-001408

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in denying Appellant's motion for a directed verdict on the charge of first degree burglary where the evidence indicated that Appellant had consent to enter his ex-girlfriend's apartment since he had a key to the apartment and since his ex-girlfriend testified that she assumed Appellant would use the key to come in unannounced?

STATEMENT OF THE CASE

On February 7, 2013, a Lancaster County Grand Jury indicted Appellant for first degree burglary and assault and battery of a high and aggravated nature (ABHAN). R. 121-124. His case was called to trial on February 13, 2013 before the Honorable Brooks P. Goldsmith, and a jury. R. 1. Appellant was tried in his absence after he failed to appear and Judge Goldsmith denied defense counsel's motion for a continuance. R. 3, l. 1 – 5, l. 11. Mark Grier represented Appellant. Randy Newman was the assistant solicitor. R. 1.

At the conclusion of the trial on February 13, 2013, the jury found Appellant guilty. R. 101, ll. 5-17. Judge Goldsmith sentenced Appellant to twenty years imprisonment for first degree burglary and ten years concurrent for ABHAN. R. 115, ll. 10-13.

The sealed sentence was opened by the Honorable J. Ernest Kindard, Jr. on June 18, 2013 after Appellant was located. R. 112. Judge Kindard reduced the first degree burglary sentence to the mandatory minimum of fifteen years imprisonment after a motion to reconsider was made by defense counsel. R. 115, l. 14 – 119, l. 19.

This appeal follows.

ARGUMENT

The court erred in denying Appellant's motion for a directed verdict on the charge of first degree burglary where the evidence indicated that Appellant had consent to enter his ex-girlfriend's apartment since he had a key to the apartment and since his ex-girlfriend testified that she assumed Appellant would use the key to come in unannounced.

Relevant Facts

Appellant was convicted of first degree burglary and ABHAN after he allegedly entered his ex-girlfriend's apartment in the early morning hours of February 11, 2007 and engaged in an altercation with her new boyfriend, Leon Caskey. For whatever reason, Appellant was not tried until six years later.

Appellant's ex-girlfriend, Sharita Colbert, explained that at the time of the incident she was eight months pregnant with Appellant's twins. R. 37, l. 25 – 38, l. 3; R. 43, ll. 4-12. Although Appellant and Colbert did not live together, Colbert testified that she had given Appellant a key to the back door of the apartment and that, while he usually called before he came over, she assumed that because he had a key he might use it to come over unannounced. R. 38, ll. 4-7; R. 42, l. 14 – 43, l. 3.

Colbert testified that on the night of February 11, 2007, she was at her apartment with her mother, her three year old child, and Leon Caskey. Colbert explained that she was romantically involved with Caskey at that time and that he often spent the night at her apartment. R. 43, ll. 13-16; R. 36, l. 24 – 37, l. 5. Before she went to sleep that night, Colbert locked the back door and placed a stove against the door to secure it. She explained that at that time she was afraid of Appellant and that she did not want him in her apartment that night. Colbert claimed that she awoke after she heard a disturbance, saw Appellant

inside the apartment, and ran upstairs. After she knew Appellant had left, she went back down stairs and tended to Caskey who was "bloody all over." Caskey called the police from his cellphone. R. 38, l. 15 – 41, l. 22.

Colbert claimed that Appellant entered the apartment that night because he was angry that she was romantically involved with Caskey. However, she stated that there was no "bad blood" between Appellant and Caskey before the incident. R. 44, ll. 11-19.

Officer Charles Campbell of the Lancaster Police Department was the first officer to arrive at the scene. He testified that he was called out to Sharita Colbert's apartment around 5:15 am on February 11, 2007 in regards to an assault. R. 46, l. 14 – 47, l. 11. Through his investigation, he learned that the suspect had entered the apartment through the back door. Campbell testified that there was a fresh partial footprint on the lower half of the back door and that it appeared the door had been kicked in. There was also damage to the door frame. R. 49, l. 21 – 50, l. 10; R. 51, l. 11 – 52, l. 9. After questioning Colbert, he learned the suspect was Appellant. R. 50, l. 13 – 51, l. 6. According to Campbell's report, Colbert told officers on scene that Appellant did not live at the residence and did not have a key. R. 49, ll. 15-20.

Lieutenant Phillip Hall of the Lancaster Police Department testified that he arrived at Colbert's apartment seconds behind Officer Campbell. Hall explained that shortly after he arrived he spoke with Caskey who, according to Hall, was in and out of consciousness. Hall testified that Caskey told him that Appellant assaulted him. R. 53, l. 12 – 54, l. 12; R. 55, l. 23-25. Lieutenant Hall explained that when the officers first arrived the back door to the apartment was opened and an oven was partially blocking the doorway. Hall claimed that

there was also splintering on the door frame where the suspect had used force to open the door and that there were fresh footprints on the outside of the door. R. 57, ll. 3 – 58, l. 8.

Hall further testified that he knew Appellant and that he and Appellant had a similar stature. Hall is six feet, three inches tall and weighed two hundred and eighty five pounds in February 2007. According to Hall, he and Appellant were “pretty much toe to toe” at that time and actually Appellant was “a little bit bigger” than Hall and had broader shoulders. R. 58, ll. 9-15.

William Bell, a paramedic for the Lancaster County EMS, testified that on February 11, 2007, he got called out to Colbert’s apartment and, once there, treated Leon Caskey. Caskey was conscious when Bell arrived. He had swelling above his left eye and a “knot” in his hair line. According to Bell, Caskey also complained of missing teeth, blood in his mouth, and extreme pain in his back. Bell testified that he considered Caskey’s injuries to be “serious.” R. 60, l. 8 – 21. Bell further explained that if a patient has his or her “mental faculties” then the patient makes the decision regarding whether to go to the hospital. If, however, the patient is “altered in any way in making a decision that a normal person would” make, then EMS makes the decision to take the patient to the hospital. In this case, it was not documented whether Caskey asked to be taken to the hospital, but because Caskey was conscious, Bell assumed he asked to be taken. R. 63, l. 16 – 64, l. 9.

Leon Caskey was the last witness to testify. He explained that on February 11, 2007, Sharita Colbert was “somewhat” his girlfriend and that the two were “good friends or whatever.” R. 65, ll. 3-10. He further explained that he spent the night at Colbert’s apartment that night and that the two went to bed between one and two o’clock in the morning. R. 65, ll. 19-23. Caskey claimed that he awoke to a noise that sounded like a

“boom, bam” and then he heard Colbert say something before she ran upstairs. Caskey testified that before he could turn around, someone was on his back. He did not know who it was at first, but he eventually realized it was Appellant. Caskey claimed Appellant hit him approximately eight or nine times. R. 65, l. 24 – 66, l. 20. Caskey thought he lost consciousness because there is “some stuff” he cannot remember. Caskey explained that his “eye was blood shot red and closed” and that his nose, jaw, and lip were swollen. He also had bleeding to the mouth and nose and lost four teeth. R. 66, l. 25 – 67, l. 24. Caskey explained that he was taken to the hospital, but released after a few hours. R. 68, ll. 2-4; R. 72, ll. 11-20; R. 70, ll. 12-16. He further stated that he was five feet, eleven inches tall and weighed one hundred fifty pounds and that Appellant was a lot bigger than him. R. 65, ll. 15-18; R. 68, ll. 11-16.

Motion for a Directed Verdict

At the conclusion of the state’s case, defense counsel moved for a directed verdict on both charges. However, he later withdrew his motion in regards to the ABHAN charge and conceded that there was enough evidence to present that charge to the jury.

With respect to the burglary charge, defense counsel stated, “Ms. Colbert testified that [Appellant] had a key to the apartment and it was reasonable to expect him to assume that he could enter without any specific consent on that occasion.” Defense counsel further argued that the evidence indicated that Appellant entered with consent and “with consent there would be no burglary . . .” R. 74, l. 20 – 77, l. 6.

The court denied Appellant’s motion for a directed verdict finding that “there is sufficient evidence for each of these matters to be submitted to the jury.” R. 77, ll. 7-11.

Discussion

The court erred in denying Appellant's motion for a directed verdict on the charge of first degree burglary where the evidence indicated that Appellant had consent to enter Colbert's apartment since he had a key to the apartment and since Colbert testified that she assumed Appellant would use the key to come in unannounced.

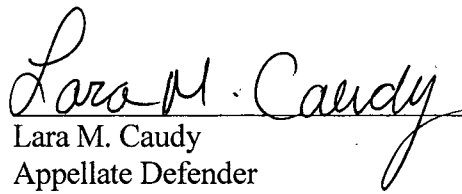
One of the elements of first degree burglary is "enters a dwelling without consent." S.C. Code Ann. § 16-11-311. The term "enter a building without consent" is defined as "to enter a building without the consent of the person in lawful possession." S.C. Code Ann. § 16-11-311(3)(a). Because the state did not establish that Appellant entered the apartment without Colbert's consent, the court erred by denying Appellant's motion for a direct verdict.

An accused is entitled to a directed verdict of acquittal when the state fails to present evidence on a material element of the offense charged. State v. Pittman, 373 S.C. 527, 546, 647 S.E.2d 144, 153 (2007) (citing State v. Brown, 360 S.C. 581, 586-587, 602 S.E.2d 392, 395 (2004)). The evidence in the present case established that Colbert, who was in lawful possession, had given Appellant a key to her apartment and assumed Appellant would use it to enter unannounced. Colbert's act of giving Appellant a key indicated that she gave Appellant consent to enter the apartment. There was no testimony that Colbert attempted to get the key back from Appellant or that she ever conveyed to Appellant that he no longer had permission to enter her home. For this reason, the Court should direct a verdict acquitting Appellant of first degree burglary.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction for first degree burglary and direct a verdict of acquittal.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of November, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

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APPELLATE CASE NO. 2013-001408

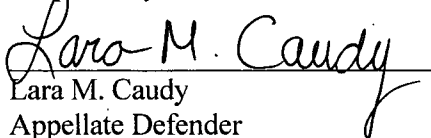
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charles Davis 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 Brooks P. Goldsmith, which was held on February 13, 2013, 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 Charles Davis.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of November, 2013.

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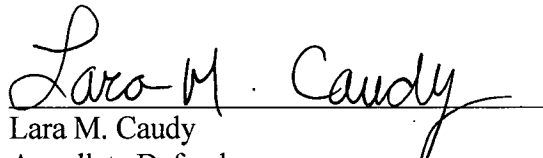
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Trial transcript dated February 13, 2013;
- (3) Sentencing transcript dated June 18, 2013.

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

November 22nd, 2013


Lara M. Caudy
Appellate Defender

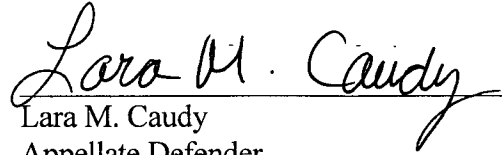
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Attorney for Appellant

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 22, 2013


Lara M. Caudy
Appellate Defender

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Division of Appellate Defense
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J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

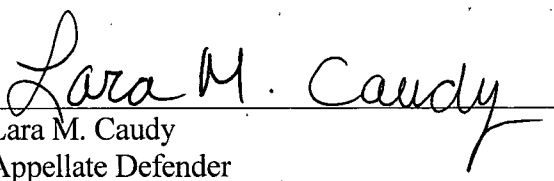
V.

CHARLES DAVIS,

APPELLANT

CERTIFICATE OF SERVICE

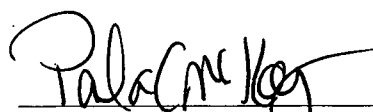
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Charles Davis, #299511 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 22nd day of November, 2013.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of November, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.