

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HALDEN LAMONT HOLLMAN,

APPELLANT

APPELLATE CASE NO. 2013-000477

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

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Division of Appellate Defense
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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	10
PETITION TO BE RELIEVED AS COUNSEL	11

TABLE OF AUTHORITIES

Cases

<i>In re Winship</i> , 397 U.S. 358, 90 S.Ct. 1068 (1970)	7
<i>State v. Bostick</i> , 392 S.C. 134, 708 S.E.2d 774 (2011)	8
<i>State v. Brown</i> , 360 S.C. 581, 602 S.E.2d 392 (2004)	8
<i>State v. Buckmon</i> , 347 S.C. 316, 555 S.E.2d 402 (2001)	8
<i>State v. Lollis</i> , 343 S.C. 580, 541 S.E.2d 254 (2001)	8
<i>State v. Mitchell</i> , 341 S.C. 406, 535 S.E.2d 126 (2000)	8
<i>State v. Odems</i> , 395 S.C. 582, 720 S.E.2d 48 (2011)	8

Statutes

S.C. Code Ann. § 16-11-311(A)(3)	7
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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in failing to direct a verdict of not guilty on the charge of first degree burglary committed during the nighttime where the only evidence relating to when the victim's television and computer were stolen was his testimony that he went to bed at 10:00 p.m. and that the next morning he did not see the property in the den?

STATEMENT OF THE CASE

On October 18, 2012, the Colleton County Grand Jury indicted Appellant Halden Hollman on a charge of first degree burglary. R. 198 – R. 199. On February 25, 2013, Appellant proceeded to trial before the Honorable Perry M. Buckner, III and a jury. Tr. 1. Harris S. Beach represented Appellant and Steve Knight represented the State.

On February 26, 2013, the jury found Appellant guilty as charged. Tr. 186, l. 25 – Tr. 187, l. 5. The trial court sentenced Appellant to twenty five years imprisonment. Tr. 196, ll. 5-11.

ARGUMENT

THE TRIAL COURT ERRED IN FAILING TO DIRECT A VERDICT OF NOT GUILTY BECAUSE TANNER NEVER TESTIFIED TO WHEN HE LAST SAW HIS TELEVISION, AND THEREFORE THE STATE'S EVIDENCE MERELY RAISED A SUSPICION THAT APPELLANT STOLE IT DURING THE NIGHTTIME.

STATEMENT OF FACTS

The State alleged that at some point on the night of August 8, 2012 and the following morning, Appellant broke into a private residence and stole a fifty to sixty inch television and other items. Tr. 65, l. 20 – Tr. 67, l. 15. Billy Lyn Tanner, a Walterboro resident, testified that he went to bed at 10:00 or 10:30 p.m. on the night in question. The following morning, he got out of bed at around 5:00 a.m. Upon entering the living room, Tanner saw his television was missing, along with his son's laptop computer and his wife's wallet and cellular phone. Tr. 70, l. 2 – Tr. 73, l. 11. Tanner also testified that the vehicles outside the house had been broken into and a house key that was in one of the vehicles appeared to have been dropped on the steps to the back door, which was unlocked. Tr. 75, l. 16 – Tr. 76, l. 7.

The State produced as a witness Lieutenant Jason Chapman from the Colleton County Sheriff's Office. He stated that he interviewed Appellant at the Walterboro Public Safety office on September 4, 2012. Tr. 79, l. 2 – tr. 87, l. 21. Appellant denied any involvement in the theft, but Chapman implied he already had "a lot of evidence" connecting him. Chapman said Appellant then told him he "entered Tanner's residence" through the side door and took a television, laptop, and cellular phone. Tr. 85, l. 12 – Tr. 86, l. 5. Chapman said Appellant could not give the address of the house and could only give

some general directions to the house from the nearby apartment complex where Appellant lived. Tr. 85, l. 18 – Tr. 87, 1.

Appellant called his girlfriend to testify that law enforcement had also filed a charge against her for receiving stolen goods in connection with the theft. She was incarcerated for a few days and nights, and her sister had to look after her two children until she was released and the charges was dropped. Tr. 150, l. 15 – Tr. 151, l. 4. Appellant took the witness stand and explained that he had been dishonest during the interrogation:

Q: What did you tell them?

A: Oh, I just told them what they wanted to hear because I was trying to get my old lady out.

* * *

Q: Okay. What was [her] situation?

A: Oh, they had her charged with receiving stolen goods.

Q: Was she still charged when you talked to the police?

A: Yes, sir.

Q: Was she later – did they later drop the charges against her?

A: Yes, sir.

* * *

Q: Was [what you told the police] true?

...

A: Oh, no, sir.

Q: Okay. And tell me again, tell the jury again, why you told the police that.

A: Oh, I told them I did the stuff to get my old lady out – I mean, my girlfriend.

Tr. 136, l. 19 – Tr. 138, l. 8.

Other than Appellant's statements to Chapman, the State did not produce any direct evidence linking Appellant to the crime. The police did not recover the stolen television or computer. Tr. 90, ll. 2—24. The State called a witness to testify Appellant sold him a computer similar to Tanner's in early August of 2012. Tr. 100, l. 21 – Tr. 101, l. 25. The parties stipulated that investigators lifted a fingerprint from Tanner's home, but it was insufficient for identification. Tr. 77, l. 12 – Tr. 78, l. 18.

After the close of its case, Appellant moved for a directed verdict. The court denied the motion, stating sufficient evidence existed in the record to support the burglary charge. Tr. 105, ll. 7-23.

DISCUSSION

The trial court erred in failing to direct a verdict of not guilty because Tanner never testified to when he last saw his television, and therefore the State's evidence merely raised a suspicion that Appellant stole it during the nighttime. S.C. Code Ann. § 16-11-311(A)(3) defines first degree burglary to include entering a dwelling during the nighttime, without consent, and with intent to commit a crime therein. The accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. *See In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) ("Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."); *see also State v. Brown*,

charged.”); *see also State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004).

When considering a motion for directed verdict of acquittal, “the trial court is concerned with the existence or non-existence of evidence, not its weight.” *Brown*, 360 S.C. at 586, 602 S.E.2d at 395.

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) (emphasis added). In *Odems*, the 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 (emphasis added) (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) (citing *Lollis*, 343 S.C. 580, 541 S.E.2d 254). Therefore, a case based solely upon circumstantial evidence should be submitted to the jury only “if there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.” *Bostick*, 392 S.C. at 139, 708 S.E.2d at 776-777 (citing *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)).

In this case, the State failed to produce substantial circumstantial evidence that Tanner’s home was broken into during the nighttime. Tanner testified that he went to bed at

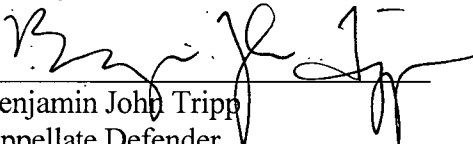
10:00 or 10:30 p.m. on the night in question and that the television, computer, and phone were missing from the den when he woke up the following morning at around 5:00 a.m. However, Tanner never testified to the last time on the first day that he saw the missing property in the den. Additionally, although he went to bed at night, no testimony or other substantial evidence in the records supports the inference that Tanner saw the property shortly before going to bed or even that he was home long enough before bed to have an opportunity to observe the property in the den.

Even considering Appellant's statement to police, the State did not adduce any direct evidence of the time at which the theft occurred either. The police did not recover and produce the computer, the usage history of which could have established that Tanner or his son had possession of it on the evening in question. The State did not call Tanner or his son or his wife to testify directly as to when either last saw the property. In a criminal case, the State has the burden to prove every element of the crime charged beyond a reasonable doubt. Here, the State simply failed to adduce sufficient evidence to meet that burden. Rather, it cast nothing more than a suspicion on Appellant and the circumstances of the theft from Tanner's home. Accordingly, Appellant was entitled to a directed verdict of not guilty, and the trial court erred in denying his motion.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the decision of the trial judge and issue an order of acquittal.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of November, 2013.

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IN THE COURT OF APPEALS

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Perry M. Buckner, Circuit Court Judge

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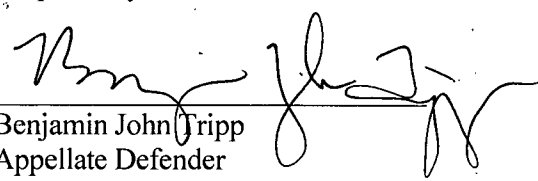
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Halden Lamont Hollman states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Perry M. Buckner, which was held on February 26, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Halden Lamont Hollman.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of November, 2013.

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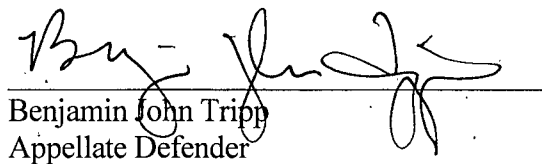
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (February 25 – 26, 2013)

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

November 27th, 2013


Benjamin John Tripp
Appellate Defender

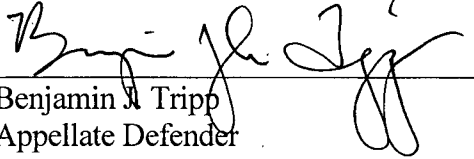
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(803) 734-1343

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 27, 2013


Benjamin A. Tripp
Appellate Defender

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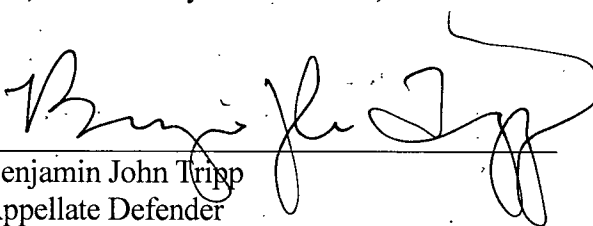
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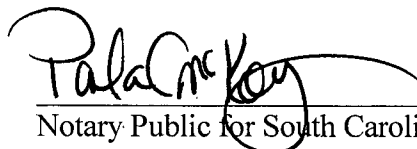
CERTIFICATE OF SERVICE

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 Halden Lamont Hollman, #354491 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 27th day of November, 2013.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of November, 2013.



Notary Public for South Carolina
My Commission Expires: July 24, 2022.