

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM R. PEARSON,

APPELLANT

APPELLATE CASE NO. 2013-000098

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to direct a verdict of acquittal on the burglary indictment since there was no direct or substantial circumstantial evidence appellant participated in the burglary committed by his son?

STATEMENT OF THE CASE

Appellant was indicted by the Aiken County Grand Jury for the offense of burglary in the first degree. R. 165. His case was called to trial on October 15, 2012 before the Honorable Doyet A. Early, III, and a jury. Barry Thomas and Andrew Smith represented appellant. David Miller and Samuel Grimes were the assistant solicitors. R. 1.

On October 16, 2012, the jury found appellant guilty of burglary in the first degree. R. 155, ll. 15-19. Judge Early sentenced appellant to fifteen years imprisonment R. 162, ll. 19- 24.

This appeal follows.

ARGUMENT

The court erred by refusing to direct a verdict of acquittal on the burglary indictment since there was no direct or substantial circumstantial evidence appellant participated in the burglary committed by his son.

Relevant Facts

In his opening statement defense counsel Thompson argued that appellant's son, James Pearson, committed the burglary because he had already pled guilty to it. Defense counsel said appellant "probably committed a crime" but not the crime for which he was indicted (instead he was guilty as an accessory after the fact of burglary). R. 45, l.15- 46, l. 13.

Officer Detroit Spires with the New Ellenton Police Department testified that on May 28, 2012 around noon he went to "a disturbance call" at the home of James Pearson. He did not notice anything unusual when he saw Pearson's car parked there. R. 47, l. 9- 48, l.24.

Later in the day, about forty-five minutes later, Spires saw James Pearson's vehicle coming in the other direction. This time the vehicle was full, and "the truck was propped open with an item hanging out the back of it, when I passed the vehicle as it came forward on Old Whiskey Road." R. 49, l. 7 - 50, l. 6"

Spires testified that "vehicle was loaded down. I noticed that James was sitting in the center of the front of the vehicle and Mr. Ralph Pearson [appellant] was driving the vehicle." Spires clarified that James was "sitting on the center console." R. 50, ll. 13 – 17.

Spires testified he found this strange since “the vehicle was empty the first time I saw it and now it was loaded down full of stuff. So I turned around and followed the vehicle as it proceeded back towards the residence . . . ” R. 50, l. 7- 51, l. 4.

Spires said that “the vehicle actually drove in behind the residence and parked, which was another odd thing to me.” R. 51, ll. 14- 17. Spires said he saw appellant “pulling a charcoal grill smoker out of the trunk of the vehicle and Mr. James Pearson was just attempting to get out of the vehicle.” R. 51, ll. 14- 23. When he asked about the grill, Spires recalled: “Mr. Ralph Pearson didn’t really say much. He didn’t say anything at all. Mr. James Pearson kind of stammered and stuttered and advised me that it came from a guy.” R. 52, ll. 3 – 7.

Spires remembered he was also contacted that by Chief Rushton from the Jackson Police Department about a suspected burglary on another street. R. 52, l. 15- 53, l. 18. ; R. 54, l. 16 – 23. Spires said he contacted the renters of that residence who were out of town. Spires was informed that no one had permission to go inside their house or to remove any property from their house. R. 56, l. 9 - 57, l. 13.

Appellant and his son were arrested for burglary. Spires testified he noticed a cut on appellant’s hand when he arrested him. Spires said the cut got his attention since a window at the burglarized residence “was broken out.” R. 65, ll. 4-25.

Appellant’s son, James Pearson, testified he committed the burglary and he claimed appellant was involved in the burglary with him. R. 68, ll. 3 – 13. Pearson said appellant drove the vehicle to the house and he claimed “the door was unlocked.” “My dad went in and there was some stuff right there at the door ... we took the stuff and put it in the car.” R. 70, ll.3-19. Pearson nodded his head in agreement when the solicitor asked him if appellant

was taking property inside the house to the front door so Pearson could load it into the car. R. 70, l. 20 - 71, l. 19.

Pearson said Spires was able to find out where the property came from because "My Dad [appellant] brought them back to the house." R. 72, l. 25- 73, l. 4. Pearson acknowledged he pled guilty to the burglary and provided the state with a statement to use against appellant. R. 73, ll. 5- 23.

On cross-examination, Pearson acknowledged he was in jail for DUI, DUS, and drug charges at the time of appellant's trial. R. 75, ll. 2- 76, l. 23. Pearson admitted he had been charged twice for giving false information to the police, and he received probation. He had a long criminal record for stealing and lying offenses. R. 76, ll. 9 -24.

Pearson acknowledged he talked to appellant on the telephone while appellant was in jail, and told him: "I'm going to tell the truth, I'm going to tell them this is my fault." R. 78, ll. 1-4. Pearson then backtracked and claimed: "I don't remember every conversation. I talked to him a lot." Pearson also admitted he used appellant's debit card without his permission to purchase things for himself while appellant was in jail. R. 78, ll. 7- 11.

Andy Sikes testified he met James Pearson in a holding cell and Pearson told him "that his father had nothing to do with it and he was going to take the rap for everything cause his father was in the car the whole time." R. 94 l. 7- 95 l. 5.

Appellant took the stand in his own defense. He testified he did not participate in the burglary. Appellant only went to the house because it was up for rent, and his son was considering renting it. Appellant drove to the rental house because he had taken six Xanax tablets that day. Appellant said his son had a severe drug problem. R. 101, ll. 9- 18.

Appellant testified he was inspecting the backyard of the house and talking to his mother on the cell phone while his son was supposed to be looking at the house. When he came back around the house he saw a window was broken. Appellant said he yelled at his house: "What are you doing?" R. 103, l. 10 – 105, l. 24.

Appellant testified he was scared because he had been convicted of prior burglaries and he was on probation. "I can't afford to get in no trouble. I mean I just – didn't know what to do." R. 103, l. 10 – 105, l. 24.

Appellant never went into the house, and he never took anything out of the house. He was merely present at the time his son burglarized the house. R. 106, l. 19- 107, l. 21.

Defense counsel moved for a directed verdict "nunc pro tunc" as the judge had earlier requested. R. 117, l. 10 – 121, l. 18. The judge denied the directed verdict motion. R. 121, ll. 17- 18. The judge agreed to charge "mere presence" was not sufficient to convict a defendant under the theory of accomplice liability. R. 123, l. 11 -125, l. 7.

Discussion

"Mere suspicion" of guilt is insufficient to take the case to the jury, and beyond a directed verdict motion. State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001). James Pearson admitted that he lied to the police. Pearson nodded his head in agreement when the solicitor asked him if appellant handed him property from inside the rental house to load into the car. Another witness, Sikes, testified Pearson admitted that appellant was only present when he stole property from inside the rental home. Appellant also testified he was "merely present" when his son burglarized the house, and stole property from it.

The Supreme Court granted a directed verdict in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011) where Odems was arrested with an abundance of property that had been stolen in a burglary very recently committed. Odems was in a car with the stolen property, he fled from the police, and lied to attempt to have a woman cover from him. The Court nonetheless held this very suspicious behavior was not sufficient for either the burglary or damaging the burglarized property offenses to go to the jury.

Here also appellant was in possession of stolen property from a burglary his son had just committed. Defense counsel correctly argued the correct charge against appellant was probably accessory after the fact of burglary to protect his son.

In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the Supreme Court held the state failed to produce substantial circumstantial evidence Bostick killed his neighbor, Ms. Polite, and set her house on fire. The state's case was that Ms. Polite worked at her church and always brought the collection proceeds home on Sunday afternoon.

The state presented evidence that investigators found the decedent's personal items, burned by an accelerant, including a watch and two sets of car keys belonging to Ms. Polite in a burn pile on Bostick's *next door property*. Bostick's mother testified she never used accelerants in the family burn pile.

The Supreme Court noted that the evidence above as well as the fact Bostick had a pattern of gasoline on his shoes and *gasoline was the accelerant used to start the fire* at the Polite home. The Court held this evidence raised a suspicion that Bostick may have been guilty but it was not sufficient for the case to have gone to the jury.

Earlier, and similarly, in State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000) the Supreme Court held that the state's circumstantial evidence against Martin was insufficient

to take the case to the jury. In Martin the defendant borrowed his girlfriend's car which was later placed near the scene of the murder.

On the morning after the murder the manager of a restaurant found several bags of garbage near the bar where defendant Martin and co-defendant Wilson picked up Martin's girlfriend late the prior night. Inside the trash were items belonging to the victim. Also found were inside were latex gloves similar to those Martin's girlfriend used to clean her dogs.

When Martin girlfriend's asked him why he and co-defendant Wilson were so late in picking her up from the bar, defendant Martin replied "some shit happened" and co-defendant Wilson added "someone may have died tonight."

The Supreme Court held that this circumstantial evidence was not substantial circumstantial evidence, and it was insufficient to take the case to the jury. The Court in Martin cited State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984) which was a case which provided a strong suspicion of the defendant's guilt.

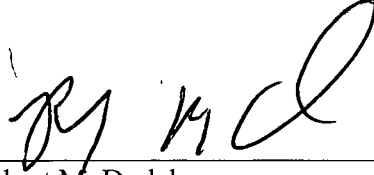
In State v. Schrock, Schrock admitted to the police that he smoked Marlboro brand cigarettes – the same brand as the cigarette butts found at the murder scene. However, a saliva test could not match a cigarette butt to the defendant. A similar footprint to Schrock's was found at the scene and nearby the scene. Schrock apparently later disposed of the clothes and shoes he had been wearing and he did not present an alibi. The Supreme Court held this evidence only raised a suspicion of Schrock's guilt and that he was entitled to a directed verdict. See, also, State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004); State v. Mitchell, 341 S.C. 406, 409 535 S.E.2d 126 (2000).

Appellant placed himself at the scene of the burglary but he denied he participated in the burglary and asserted his mere presence at the scene. Appellant testified he was scared when his son burglarized the property because he was on probation. His conduct in attempting to protect his son subjected him to prosecution for being an accessory after the fact of burglary. However, the court should have granted a directed verdict on the burglary charge. See State v. Odems, State v. Bostick, State v. Schrock; supra.

CONCLUSION

By reason of the foregoing argument, a verdict of acquittal should be issued.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. M. Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of January, 2014.

STATE OF SOUTH CAROLINA

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THE STATE,

RESPONDENT,

V.

WILLIAM R. PEARSON,

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APPELLATE CASE NO. 2013-000098

PETITION TO BE RELIEVED AS COUNSEL

Counsel for William R. Pearson states:

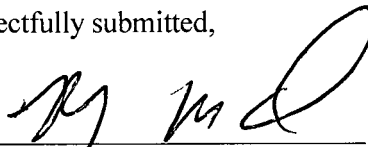
1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Doyet A. Early, III, which was held on October 16-17, 2012, 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 William R. Pearson.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of January, 2014.

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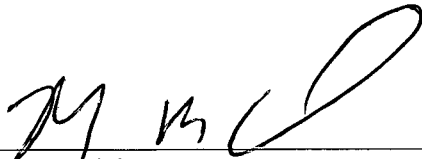
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment;
- (2) Entire trial transcript.

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

January 24th, 2014



Robert M. Dudek
Chief Appellate Defender

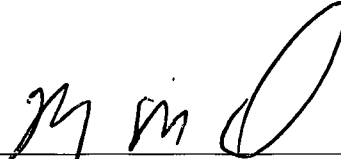
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Attorney for Appellant

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."

January 24, 2014

A handwritten signature in black ink, appearing to read 'R M Dudek', is written over a horizontal line.

Robert M Dudek
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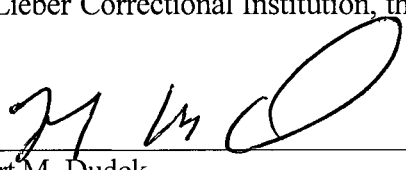
WILLIAM R. PEARSON,

APPELLANT

APPELLATE CASE NO. 2013-000098

CERTIFICATE OF SERVICE

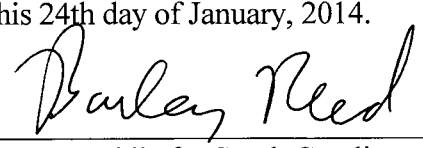
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on William R. Pearson, #336210 at Lieber Correctional Institution, this 24th day of January, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of January, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021