

ORIGINAL

RECEIVED

APR 21 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

JUSTIN DARNELL REYNOLDS,

APPELLANT

APPELLATE CASE NO. 2013-002637

---

ANDERS BRIEF OF APPELLANT

---

ROBERT M. PACHAK  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

**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 ..... 8

PETITION TO BE RELIEVED AS COUNSEL ..... 9

**TABLE OF AUTHORITIES**

**Cases**

Evans-Smith v. Taylor, 19 F.3d 899 (4<sup>th</sup> Cir 1994)..... 7

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979)..... 6

State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976) ..... 7

State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied,  
493 U.S. 895, 110 S.Ct. 246 (1989)..... 6

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955)..... 6

State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974)..... 7

State v. Totherow, 263 S.C. 275, 210 S.E.2d 228 (1974)..... 7

State v. Turner, 117 S.C. 470, 109 S.E. 119 (1921) ..... 7

United States v. Ortiz, 445 F.2d 1100 (10<sup>th</sup> Cir 1971) ..... 7

United States v. Varoz, 740 F.2d 772 (10<sup>th</sup> Cir. 1984) ..... 7

**Constitutional Provisions**

U.S. Const. amend. XIV ..... 6

**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in denying defense counsel's motion for a directed verdict to the charges of kidnapping and armed robbery when the victim testified that another person committed those crimes?

## STATEMENT OF THE CASE

Appellant was convicted of attempted murder, armed robbery, kidnapping, grand larceny, and possession of a weapon after a jury trial held before the Honorable Roger L. Couch on December 2 – 4, 2013, in Spartanburg County. Respective sentences of thirty (30) years, thirty (30) years, thirty (30) years, five (5) years, and five (5) years were imposed. Mary Stuart Lyall, Esquire, was the defense attorney. Jennifer Jordan, Esquire, and Abel Gray, Esquire, were the assistant solicitors.

This appeal follows.

## ARGUMENT

The trial court erred in denying defense counsel's motion for a directed verdict to the charges of kidnapping and armed robbery when the victim testified that another person committed those crimes.

Joshua Barrineau, the victim in this case, testified that on April 7, 2012, he was on his way to his parent's home to get ready for Easter Sunday services the next day. He ended up not staying that evening because a friend, Andre, called and told him he had some beer and two girls that wanted to meet him. Andre gave the girls Joshua's phone number. They called him and he went to meet them at an apartment complex. It was after midnight. Inside the apartment, he met Stephanie and Megan. Andre was supposed to meet him there but he did not show up. Joshua said he had some crack cocaine, his cell phone, the keys to his truck, and about \$280.00. While at the apartment, someone knocked on the front door. When he opened it, someone grabbed him from behind and put a gun to the back of his head. He was walked outside. They took his phone, his keys, his drugs, and his wallet. The man who robbed him got in Joshua's truck. Another black male got up from the porch, went over to appellant and shot him in the back of the neck. (R. p. 246, line 16 – R. p. 254, line 10).

Joshua was paralyzed from the gunshot. He could hear his vehicle take off. The next thing he remembered was waking up in the intensive care unit. (R. p. 256, lines 5 – 14). While in the hospital, he looked at a photograph lineup and picked out appellant as the person who shot him. (R. p. 261, line 13 – R. p. 262, line 13). He then identified appellant in the courtroom. (R. p. 263, lines 2 – 12).

On cross-examination, Joshua made it clear that it was the co-defendant, Jason Tolison, who grabbed him inside the apartment, moved him outside and robbed him. (R. p. 266, lines 10 – 25).

At the conclusion of the State’s case, defense counsel moved for a directed verdict to the charges of kidnapping and armed robbery because Joshua identified Jason Tolison with respect to those crimes, not appellant. The trial court denied the motion. (R. p. 320, line 9 – R. p. 325, line 13). That ruling was in error.

Due process as guaranteed by the Fourteenth Amendment requires “that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.” Jackson v. Virginia, 443 U.S. 307, 316, 99 S.Ct. 2781, 2787 (1979).

Our Court has held:

[T]he trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced. [Emphasis added].

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924, 926 (1955); State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989), cert. denied, 493 U.S. 895, 110 S.Ct. 246 (1989).

In applying this standard, our Court has held that evidence which is “sufficient to raise a strong suspicion of the guilt of the accused” is not sufficient to constitute “any evidence from which the guilt of the accused may be fairly and logically deduced.” State

v. Totherow, 263 S.C. 275, 210 S.E.2d 228, 230 (1974). See, also, State v. Turner, 117 S.C. 470, 109 S.E. 119, 120 (1921). The motion for a directed verdict should be granted, therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10<sup>th</sup> Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10<sup>th</sup> Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4<sup>th</sup> Cir 1994).

In this case, the State failed to prove that the identity of the kidnapper and armed robber was appellant. The victim’s own testimony proved it was Jason Tolison.

CONCLUSION

A directed verdict should be granted on the charges of kidnapping and armed robbery.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of April, 2014.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Spartanburg County  
Roger L. Couch, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

JUSTIN DARNELL REYNOLDS,

APPELLANT

---

PETITION TO BE RELIEVED AS COUNSEL

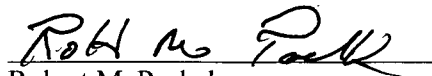
---

Counsel for Justin Darnell Reynolds 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 Roger L. Couch, which was held on December 4, 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 Justin Darnell Reynolds.

Respectfully submitted,



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of April, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

**RECEIVED**

APR 21 2014

**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

JUSTIN DARNELL REYNOLDS,

APPELLANT

APPELLATE CASE NO. 2013-002637

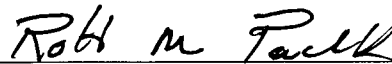
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (December 2 – 4, 2013)

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

April 21, 2014



Robert M. Pachak  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(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."

April 21, 2014

*Robert M. Pachak*

Robert M. Pachak  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

**RECEIVED**

APR 21 2014

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

APR 21 2014

SC Court of Appeals

Appeal from Spartanburg County  
Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

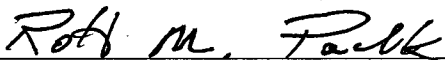
JUSTIN DARNELL REYNOLDS,

APPELLANT

APPELLATE CASE NO. 2013-002637

CERTIFICATE OF SERVICE

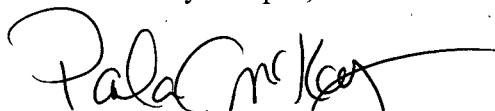
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Justin Darnell Reynolds, #344698 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 21st day of April, 2014.



Robert M. Pachak  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 21st day of April, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.