

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Abbeville County
Frank R. Addy, Circuit Court Judge

RECEIVED

JUL 07 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

QUENTIN STEPFON DEAN,

APPELLANT

APPELLATE CASE NO. 2013-001784

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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

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Other Authorities

Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended. 5, 6

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to direct a verdict of acquittal for conspiracy when the State failed to produce sufficient evidence of an agreement to commit burglary?

STATEMENT OF THE CASE

In March of 2011, the Abbeville County Grand Jury indicted Dean for conspiracy, burglary first degree, grand larceny, malicious injury to real property and possession of a weapon during the commission of a violent crime, indictments #11-GS-01-82, 83, 84, 85, 86. On July 29, 2013, Dean proceeded to jury trial before the Honorable Frank R. Addy, Jr. Caroline Horlbeck represented Dean at trial. C. Yates Brown and Cam Morrow prosecuted the case. The jury returned not guilty verdicts for burglary first degree, malicious injury to real property and possession of a weapon during the commission of a violent crime. The jury returned guilty verdicts for conspiracy and grand larceny. Judge Addy sentenced Dean to five years for conspiracy and a consecutive five years for grand larceny. A timely notice of intent to appeal was filed on August 9, 2013. This appeal follows.

ARGUMENT

The trial judge erred in refusing to direct a verdict of acquittal for conspiracy when the State failed to produce sufficient evidence of an agreement to commit burglary.

Appellant Dean was indicted for conspiracy. The indictment alleges, "That Quentin Stepfon Dean, along with another person or persons, did in Abbeville County, state aforesaid, on or about the 7th day of October, 2010 willfully and unlawfully unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other or with other persons whose names are unknown to the Grand Jurors, for the purpose of committing the act of Burglary-First Degree, in violation of Section 16-17-410 of the South Carolina Code of Laws, 1976, as amended." At trial a co-defendant, James Brandon Williams testified that another co-defendant, Edward Thompson, called, "asking me if I wanted to make any money or whatever that day. So I said, yeah, I agreed to it. And I went and picked him up. And we ended up in Abbeville and that's when --" (R. p. 104, lines 18-22). Williams testified that he picked up Thompson and Appellant Dean and they were riding around scouting out houses. (Tr. p. 105, lines 4-14). When asked about any understanding Williams testified, "that the other two was going to go into a house while I drove or whatever. And that was pretty much it." (Tr. p. 105, lines 15-21). Williams did not testify about any agreement with appellant Dean to commit burglary and did not testify about any agreement between Thompson and Appellant Dean to commit burglary.

At the close of the State's case Appellant Dean moved for a directed verdict. (Tr. p. 149, lines 2-10). The judge denied the motion. Appellant Dean then called co-defendant Thompson as a witness. Thompson testified that Appellant Dean had no part

in the burglary and did not want to come with Thompson and Williams to break into a house. (Tr. p. 161, lines 6-25).

The judge erred in refusing to direct a verdict of acquittal for the conspiracy charge. In State v. Cope, 405 S.C. 317, 348, 748 S.E.2d 194, 210 (2013), the South Carolina Supreme Court wrote:

Criminal conspiracy is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object or a lawful object by unlawful means. S.C.Code Ann. § 16-17-410 (2003). The gravamen of conspiracy is an agreement or combination. State v. Gunn, 313 S.C. 124, 134, 437 S.E.2d 75, 80 (1993). "To establish the existence of a conspiracy, proof of an express agreement is not necessary, and direct evidence is not essential, but the conspiracy may be sufficiently shown by circumstantial evidence and the conduct of the parties." State v. Buckmon, 347 S.C. 316, 323, 555 S.E.2d 402, 405 (2001). The Court must exercise caution in its analysis, however, to ensure the proof is not obtained "by piling inference upon inference." Gunn, 313 S.C. at 134, 437 S.E.2d at 81.

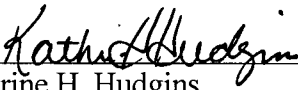
The circumstantial evidence and conduct of the parties fails to establish an agreement between Appellant Dean and anyone else to commit burglary first degree, as alleged in the indictment.

On appeal from the denial of a motion for a directed verdict, the Court views the evidence in the light most favorable to the State. State v. Buckmon, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001). To survive a directed verdict motion, the State must provide direct or substantial circumstantial evidence reasonably tending to prove the defendant's guilt, or from which the defendant's guilt can be fairly and logically deduced. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In the present case the State failed to provide direct or substantial circumstantial evidence reasonably tending to prove the existence of an agreement to commit burglary first degree.

CONCLUSION

Based on the above argument the conviction and sentence for conspiracy should be reversed.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2014.

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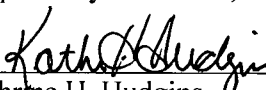
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quentin Stepfon Dean 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 Frank R. Addy, which was held on July 30, 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 Quentin Stepfon Dean.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of July, 2014.

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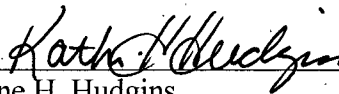
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments and sentencing sheets;
- (2) Entire trial transcript;
- (3) State's Exhibit #49 – Audio of statement – to be transported
- (4) Defense Exhibit #2- Audio of statement – to be transported.

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

July 7th, 2014



Kathrine H. Hudgins
Appellate Defender

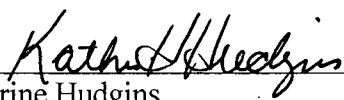
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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 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."

July 7, 2014.



Kathrine Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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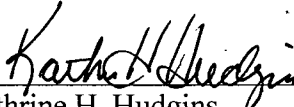
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APPELLATE CASE NO. 2013-001784

CERTIFICATE OF SERVICE

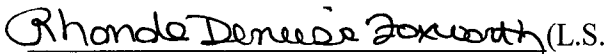
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Quentin Stepfon Dean, #356443 at Allendale Correctional Institution, P.O. Box 1151, Hwy. 47, Fairfax, SC 29827, this 7th day of July, 2014.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of July, 2014.



Rhonda Demaria Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021