

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 29 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL WILSON PEARSON,

APPELLANT

APPELLATE CASE NO. 2012-212430

Appeal from Clarendon County

R. Ferrell Cothran, Jr., Circuit Court Judge

Opinion No. 5251

RETURN TO RESPONDENT'S PETITION FOR REHEARING

On July 30, 2014, this Court, in a published opinion, reversed the convictions for first degree burglary, armed robbery, grand larceny kidnapping and possession of a weapon during the commission of a violent crime because the State failed to present substantial circumstantial evidence of Appellant's involvement in any of the crimes charged. State v. Pearson, Op. No. 5251 (S.C.Ct.App. filed July 30, 2014). On August 12, 2014, Respondent filed a petition for rehearing submitting that this Court misapprehended or overlooked the standard of review in regard to the trial court's denial of a motion for directed verdict. On August 19, 2014, this Court asked Appellant to

file a return to Respondent's petition for rehearing. This Court applied the correct standard of review on appeal from the denial of a directed verdict motion. Viewing the evidence in the light most favorable to the State, this Court correctly found that the State failed to present substantial circumstantial evidence reasonably tending to prove the guilt of the accused. The petition for rehearing should be denied.

On appeal to this Court Appellant argued that the trial judge erred in refusing to direct a verdict of acquittal for burglary first degree, armed robbery, grand larceny, kidnapping and possession of a weapon during the commission of a violent crime when the only evidence linking Appellant to the crime scene was a fingerprint found on the victim's vehicle that was stolen at the time of the incident and the fact that Appellant denied knowing the victim and where he lived despite testimony that Appellant had helped with landscaping work for the victim and his son.

On May 15, 2010, at approximately 6:20 in the morning three masked black males assaulted and robbed Edward "Slick" Gibbons in his garage as he was leaving for work. Gibbons owned a local auto parts store. Gibbons testified that during the attack the men put tape across his face. (R. p. 42, line 22 – p. 43, lines 1-8). The three men fled the scene in Gibbons' 1987 El Camino vehicle. Gibbons testified that two of the men got inside the El Camino and the third man got in the back in the flatbed. (R. p. 50, lines 7-21).

A local farmer, Cecil Eaddy, found the El Camino about twenty minutes later abandoned in the road with the keys in the ignition. (R. pp. 113-117). Eaddy knew Gibbons and recognized the car. (R. p. 113, lines 18-25). Eaddy called Gibbons' auto parts store, learned of the incident and agreed to bring the keys to the store and bring an employee back to drive Gibbons' car to the store. (R. pp. 116 – 117). Officer Ricky Richards with the Clarendon County Sheriff's Department processed the vehicle for fingerprints. (R. pp. 122-133). Richards testified that he lifted prints

from the door jamb on the driver's side and the rear quarter on the driver's side. (R. p. 126, line 19 – p. 127, lines 1-6). Richards found no fingerprints inside the car. (R. p. 134, line 23 – p. 135, lines 1-10). Marie Hodge, a fingerprint examiner with the Sumter Police Department, testified that one of the latent fingerprints found on the outside of the car submitted matched Appellant Pearson. (R. p. 170, lines 10-15).

According to Investigator Thomas Ham with the Clarendon County Sheriff's Department, Appellant denied knowing Gibbons, or where he lived and denied ever being at Gibbons' house or place of business. (R. p. 150, lines 5-17). Richard Gamble, however, testified that Appellant Pearson helped him with landscaping work at both Gibbons' house and Gibbons' son's house next door. (R. p. 268, line 1 – p. 269, lines 1-25). Gamble, however, was unsure what year Appellant helped with landscaping at Gibbons' house. (R. p. 273, lines 18-25; p. 278, lines 1-19; p. 269, line 24 – p. 270, line 1).

Gibbons was taken to the hospital where Investigator Ham assisted a nurse in removing the tape from Gibbons' head. (R. p. 142, lines 6-25). The tape was submitted to the South Carolina Law Enforcement Division [SLED] for DNA testing. SLED agent Catherine Leisy testified that DNA from the tape matched the co-defendant, Weldon. (R. p. 291, lines 18-24). According to Investigator Clark with the Clarendon County Sheriff's Department, Appellant Pearson and Weldon denied knowing one another. (R. p. 222, lines 8-10). Records from the South Carolina Vocational Rehabilitation Center show that from December 9 -12, 2008, seventeen months before the incident in Gibbons' garage, Appellant Pearson and Weldon were both assigned to the wood shop as part of a job readiness training program. (R. p. 280, line 11 – p. 281, lines 1-15).

The State's case against Appellant was based entirely on circumstantial evidence: 1.) the fingerprint found on the outside of the car; 2.) evidence that Appellant denied knowing

Gibbons and denied being at his house despite evidence that he did landscaping work for Gibbons and his son in the past and 3.) evidence that Appellant denied knowing the co-defendant despite the fact that seventeen months prior they at both been at vocational rehabilitation. The fingerprint is insufficient to place Appellant at the scene of the crime at the time of the crime. The fingerprint could have been placed on the outside of the car before or after the incident and fails to place Appellant at the scene of the incident. (R. p. 134, lines 6-9). The fact that Appellant denied knowing Gibbons or where he lived fails to place Appellant at the scene of the incident. The fact that Appellant and the co-defendant were in vocational rehabilitation at the same time seventeen months earlier fails to establish that the two knew one another or acted together at the scene of the incident. The evidence fails to place Appellant at the scene of the burglary, robbery, kidnapping, and larceny. This Court, viewing the evidence in the light most favorable to the State, correctly found that the State failed to introduce any substantial circumstantial evidence which reasonably tends to prove the guilt of Appellant or from which is guilt may be fairly and logically deduced.

In the petition for rehearing Respondent first argues that this Court relied information not introduced in evidence, defense counsel's argument that Appellant lived a block from the victim's place of business. In the opinion this Court wrote:

Here, the most damaging evidence was Pearson's fingerprint on the rear of Gibbons' vehicle. However, there was other evidence showing Pearson may have had an opportunity to come in contact with the vehicle before the crimes occurred. For instance, Pearson lived only a block away from Gibbons' store and there was testimony that Gibbons regularly parked his vehicle in a public lot adjacent to his store. Moreover, even assuming Pearson lied about working at Gibbons' residence, no evidence indicated Pearson did not have the opportunity to come in contact with the vehicle during the five-day landscaping project.

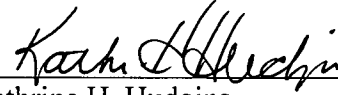
The lead investigator, Investigator Clark, testified that Gibbons parked his car in front of his store, out in the open, where people walked by all the time on their way to the China Buffet. (R. p. 261,

line 4 – p. 262, line1). This Court properly relied on evidence that Gibbons' vehicle was commonly parked in a public place where anyone could have touched the outside of the car in finding that the fingerprint evidence failed to place Appellant at the scene of the crime when the crime happened.

Respondent then asserts that the Court determined that in order to survive the direct verdict motion the State had to disprove other possibilities in regard to the finger print. Respondent argues, "Despite this Court's determination otherwise, the State was not required to disprove the possibility that appellant had come in contact with the vehicle during the landscape project for the jury to make the rational conclusion that Appellant left his print on the vehicle during the commission of the crimes." (Petition for Rehearing p. 6). This Court made no such determination. In discussing other possibilities in regard to the fingerprint, this Court simply determined that the State's evidence failed to place Appellant at the scene of the crime when the crime took place. While the State may not be required to disprove other possibilities, the State must prove that Appellant was present at the scene of the crime when the crime occurred. The State's evidence in this case failed.

Respondent also argues that in considering other reasonable explanations for the presence of the fingerprint this Court "seems to conflate the standard of review for directed verdict with the standard jury charges for direct versus circumstantial evidence." (Petition for Rehearing p. 8). This Court applied the correct standard of review, viewing the evidence in the light most favorable to the State, in finding that the State's evidence, consisting of the fingerprint, the fact that Appellant denied knowing Gibbons or where he lived and the fact that that Appellant denied knowing the co-defendant failed to place Appellant at the scene of the crime at the time of the crime. This Court correctly found that the State failed to present substantial circumstantial evidence reasonably tending to prove the guilt of the accused. The petition for rehearing should be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kathrine H. Hudgins", written over a horizontal line.

Kathrine H. Hudgins
Appellate Defender

This 29th day of August, 2014.

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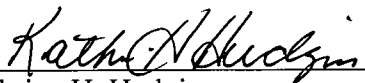
V.

MICHAEL WILSON PEARSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Jennifer Ellis Roberts, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this Mr. Michael Wilson Pearson, #238921, Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, 29th day of August, 2014.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 29th day
of August, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.