

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 27 2014

SC Court of Appeals

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRIAN HENRY DAVIS,

APPELLANT

APPELLATE CASE NO. 2014-001107

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 CONTENTS1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT5

CONCLUSION.....8

PETITION TO BE RELIEVED AS COUNSEL9

TABLE OF AUTHORITIES

Cases

Evans-Smith v. Taylor, 19 F.3d 899 (4th 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)..... 6

State v. Turner, 117 S.C. 470, 109 S.E. 119 (1921) 6

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

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

Constitutional Provisions

U.S. Const. amend. XIV 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to grant a directed verdict to the charge of trafficking in crack cocaine when the State failed to present any substantial evidence beyond a reasonable doubt that appellant was in actual or constructive possession of the drugs that were found?

STATEMENT OF THE CASE

Appellant was convicted of trafficking in crack cocaine after a jury trial held before the Honorable John C. Hayes, III, on May 14 – 15, 2014, in York County. A six (6) year sentence was imposed. Ashley Anderson, Esquire, was defense counsel. Marina Hamilton, Esquire, was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charge of trafficking in crack cocaine when the State failed to present any substantial evidence beyond a reasonable doubt that appellant was in actual or constructive possession of the drugs that were found.

On June 27, 2013, the Rock Hill Police Department was conducting surveillance at the Executive Inn because of concerns over drug activity there. Lt. Culbreath said he was parked across the street in a parking lot in his white, unmarked Tahoe. Investigator Vreeland was behind the inn in the tree line. (R. p. 57, line 7 – p. 58, line 8).

Investigator Vreeland saw appellant open the door to his room. He saw the short portion of a clear bag and appellant was motioning as he was sticking something in his pants. Appellant shut the door to his room and walked to the breezeway. He stopped at an ice machine. Vreeland heard the ice machine get banged and then he saw appellant going into the front of his pants and come back out again. He saw a clear bag and he saw the bag get placed in the vicinity of the ice machine. (R. p. 88, line 2 – p. 90, line 1). Vreeland kept his eye on the machine until Detective Thomas walked up to it and recovered the bag. (R. p. 95, lines 11 – 21). Initially, Detective Thomas checked the bottom part where the ice would come through. There was debris in that area. Then he went to the side of the encasement and he pulled the bag out. (R. p. 96, lines 1 – 7). The clear plastic bag was tested for fingerprints, but none were recovered. (R. p. 108, lines 14 – 20; R. p. 110, lines 12 – 17).

Detective Thomas testified next. He said Vreeland told him that he witnessed a male stash a white bag near an ice machine. Detective Thomas went to the ice machine and

started searching for the white bag. Eventually, he found the white bag. (R. p. 112, line 14 – p. 113, line 18). Later, he said it was a white like grocery bag. (R. p. 117, lines 4 – 7).

At the conclusion of the State’s case, defense counsel moved for a directed verdict because the State failed to prove appellant was in possession of the crack cocaine. The trial court denied the motion. (R. p. 161, line 12 – p. 162, line 16). 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 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th 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 (4th Cir 1994).

In this case, the State failed to show proof of possession by appellant of the white like grocery bag. He was only seen with a clear plastic bag. Thus, the white like grocery bag belonged to someone else.

CONCLUSION

A directed verdict should be granted to the charge of trafficking in crack cocaine.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of August, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
John C. Hayes, III, Circuit Court Judge

RECEIVED

AUG 27 2014

SC Court of Appeals
RESPONDENT,

THE STATE,

V.

BRIAN HENRY DAVIS,

APPELLANT

APPELLATE CASE NO. 2014-001107

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brian Henry Davis 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 John C. Hayes, III, which was held on May 15, 2014, 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 Brian Henry Davis.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of August, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

RECEIVED

AUG 27 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRIAN HENRY DAVIS,

APPELLANT

APPELLATE CASE NO. 2014-001107

**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 (May 14. - 15, 2014)

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

August 27th, 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 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."

August 27, 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

AUG 27 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 27 2014

Appeal from York County
John C. Hayes, III, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

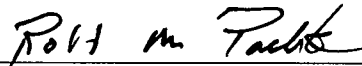
V.

BRIAN HENRY DAVIS,

APPELLANT

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 Brian Henry Davis, #332518 at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512, this 27th day of August, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of August, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.