ORIGINAL

RECEIVED
AUG 21 2014
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARSHA JANET SELPH,

APPELLANT

APPELLATE CASE NO. 2014-000115

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 (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) 6

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) 6

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 third degree arson when the State failed to present any substantial evidence beyond a reasonable doubt that appellant was the person who started the fire?

STATEMENT OF THE CASE

Appellant was convicted of arson in the third degree after a jury trial held before the Honorable Roger L. Couch in Cherokee County on January 8, 2014. A sentence of six (6) years suspended to two (2) years, with five (5) years' probation thereafter was imposed. Matt Kendall, Esquire, was the assistant solicitor. Don Thompson, Esquire, was defense counsel.

This appeal follows.

ARGUMENT

The trial court erred in refusing to grant a directed verdict to the charge of third degree arson when the State failed to present any substantial evidence beyond a reasonable doubt that appellant was the person who started the fire.

On October 15, 2011, a mobile home owned by Lida Bradshaw caught on fire. Her son, Buddy Earls, was renting the home. He was dating appellant. After partying and drinking with friends that day, Earls and appellant got into an argument. To avoid any further arguing, Earls decided to leave and go hunting. Appellant was the only one left at the home. (R. p. 52, lines 6 – 20).

Carlee Cantrell lived across the street. She testified that when Mr. Earls left to go hunting, appellant came over and asked if she could borrow a lighter. Cantrell told her she did not have one she could borrow, but she let her use it to light her cigarette and she left. About thirty minutes later, appellant came back. She was upset and asked if she could see her "house glow, go up in smoke." Cantrell asked her what she was talking about and appellant said "I can't do it anymore." About this time, a police officer was driving down the road and appellant tried to come inside Cantrell's home. Cantrell told her she could not come inside and appellant took off and ran around the house. (R. p. 75, line 1 – p. 77, line 16). Two experts testified that human involvement caused the fire to occur. (R. p. 174, line 24 – p. 175, line 1; R. p. 195, lines 6 – 9).

At the conclusion of the State's case, defense counsel moved for a directed verdict to the charge of third degree arson. The trial court denied the motion. (R. p. 202, line 9 – p. 205, line 4). 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 form 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 the present case, there was insufficient circumstantial evidence to prove appellant was the person who caused the fire. It was only speculation.

CONCLUSION

A directed verdict should be granted to the charge of third degree arson.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of August, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
AUG 21 2014
SC Court of Appeals

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

THE STATE,

RESPONDENT,

V.

MARSHA JANET SELPH,

APPELLANT

APPELLATE CASE NO. 2014-000115

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Marsha Janet Selph 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 January 8, 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 Marsha Janet Selph.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of August, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

AUG 21 2014

SC Court of Appeals

Appeal from Cherokee County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARSHA JANET SELPH,

APPELLANT

APPELLATE CASE NO. 2014-000115

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 (January 7 – 8, 2014)

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

August 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 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 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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

RESPONDENT,

V.

MARSHA JANET SELPH,

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 Marsha Janet Selph, #358360 at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 21st day of August, 2014.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

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

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