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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions

Steven H. John, Circuit Court Judge

C.A. No. 2012-GS-26-2938

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SC Court of Appeals

Appellate Case No.: 2013-000336

The State of South Carolina. .....Respondent,

v.

Kareem S. Harry .....Appellant.

INITIAL REPLY BRIEF OF APPELLANT KAREEM S. HARRY

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ARGUMENT

The trial court erred in refusing to grant a directed a verdict of acquittal in favor of Harry where the State failed to present any substantial evidence that Harry was guilty of murder under the "hand of one is the hand of all" theory of accomplice liability.

This Court should reverse Kareem S. Harry's conviction because the State could not meet its burden of proving Harry guilty of the crime for which he was charged. The State wholly failed in presenting direct or substantial circumstantial evidence that Harry was guilty of murder under the hand of one hand of all theory of accomplice liability.

While the State would like the Court to believe this appeal can be boiled down to the single issue of whether or not the State must present evidence of an explicit agreement between Harry and Saire Castro regarding the tragic death of Kevin Bowens, Harry has never alleged this to be the legal requirement. Instead, Harry has remained consistent in arguing the well-established law that the presentation of evidence of mere suspicion of guilt is insufficient to submit a case to a jury for determination. Here, the State presented no direct evidence and only presented scant circumstantial evidence amounting to mere suspicion in support of Harry's guilt of the crime for which he was convicted. It is well-established under South Carolina law, that mere suspicion of guilt is insufficient to send a case to a jury for deliberation. Accordingly, the trial court erred in denying Harry's motion for directed verdict.

"'A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged.'" *State v. Lane*, 406 S.C. 118, 121, 749 S.E.2d 165, 167 (Ct. App. 2013) (quoting *State v. Brannon*, 388 S.C. 498, 501, 697 S.E.2d 593, 595 (2010)). "Evidence must constitute positive proof of facts and circumstances which

reasonably tends to prove guilt." *State v. Bostick*, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011).

> Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. Under accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act. In order to be guilty as an aider or abettor, **the participant must be chargeable with knowledge of the principal's criminal conduct**.

State v. Mattison, 388 S.C. 469, 479-80, 697 S.E.2d 578, 584 (2010) (internal citations and quotation marks omitted) (emphasis added).

In explaining the extent of "knowledge" required to convict a defendant of murder under an accomplice liability theory, the South Carolina Supreme Court has noted that:

> For a person who has not actually committed the homicidal act to be regarded as a participant in a homicide, he or she must have aided, abetted, assisted, encouraged, or advised the killing. Also, the courts have required that the **alleged accomplice must have acted with the intention of encouraging and abetting the commission of the homicide**, or, at least that the commission of the murder by the principal must have been a reasonably foreseeable consequence of the defendant's actions.

State v. Mattison, 388 S.C. 469, 484, 697 S.E.2d 578, 586 (2010) (quoting 40 Am. Jur. 2d Homicide § 26 (2010)) (emphasis in original).

"The lower court should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty." *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). Instead, "[t]he trial court should grant the directed verdict motion . . ., as suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable

hypothesis." *State v. Hepburn*, 406 S.C. 416, 429, 753 S.E.2d 402, 408–09 (2013) (citations and internal quotation marks omitted).

The State asserts that it presented both direct and substantial circumstantial evidence to support Harry's conviction. Resp. Br. At p. 19. However, it is all too telling that the State devoted a significant portion of its brief in response to continuing its focus on unsupported, speculative theories of why Kareem Harry could have possibly wanted to commit this murder without ever mentioning any direct or substantial circumstantial evidence of Harry's intentional participation in or knowledge of the actual crime.

Specifically, while on one hand the State alleges in its brief that Harry was angry that his ex-girlfriend had given his television to another man and was desperate for money to pay his probation fees, the record supports a different set of facts. During trial, Ashley Bledsoe testified that she gave Harry's television to Kevin Bowens and that Harry had a probation appointment scheduled for the day following Bowens' death. However, Bledsoe never testified that Harry was angry with Bowens for having the television. Instead, the record reflects that Bledsoe mislead both Harry and Bowens regarding the arrangement for the television and that Harry did not know that Bowens possessed his television until shortly before meeting Bowens about the television. Prior to meeting Bowens, Harry had no heated exchanges with Bowens – only Bledsoe participated in such communications. (Tr. pp. 91-93; 104-05; 110-11; 113-14). If Harry was angry with anyone in this situation, it was Bledsoe, not Bowens. Also, the State argues in its brief that Harry was a cocaine-dealing kingpin with a supply of sellable cocaine that he was allegedly giving away. Yet, on the eve of a probation hearing where he was required to pay fees, instead of selling this alleged cocaine supply, the State argues that he was so

concerned with recovering a television or money for a television that he would resort to deadly force to do so. The record does not support an adversarial relationship between Harry and Bowens, but rather the whole case is base on a fabrication invented to suit the narrative of the State's theory of motive.

But, more importantly, although the State implied that Harry should have known Saire Castro carried a handgun at the time of Bowens' homicide, the State has failed to provide any evidence during the trial or provide this Court with any citation in the record to support any claim that Harry actually knew that Castro had a weapon when they went to recover the television from Bowens. During the trial, the State could only present evidence that Castro was a person in the community commonly associated with weapons. Not one witness could testify that Harry had any knowledge that Castro had a weapon on the day of Bowens' killing. A review of the record actually indicates the opposite.

In the State's case, Thomas Byrne testified only that it was common knowledge that Castro was known to carry a gun. (Tr. p. 182). He further testified that, on the day of the shooting, Harry did not see Castro retrieve any weapon. (Tr. pp. 195-96). Sage McPhail testified that he knew Castro very well, but that he was not aware of Castro to regularly carry a weapon on his person. (Tr. p. 286). Simply put, the State showed no evidence that Harry had any knowledge that Castro was carrying a weapon the night Bowens was shot. This Court recently reaffirmed the propositions that "suspicion, however strong, does not suffice to sustain a conviction," and that "a defendant is entitled to a judgment of acquittal . . . where the evidence is such as to permit the jury to merely conjecture or to speculate as to the accused's guilt." *See State v. Pearson*, Op. No. 5251,

(Ct. App. Filed July 30, 2014) (Shearouse Adv. Sh. No. 30 p. 41) (internal citations and quotation marks omitted).

The law is clear that the State carries a burden of establishing more than mere suspicion guilty, but must present evidence of every element of the crime. The State all but concedes its failure to meet this burden in prosecuting Harry for Bowens' murder, and therefore, the trial court should have granted his motion for directed verdict.

CONCLUSION

For the reasons stated above, it is clear that the trial court abused its discretion when it denied Harry's motion for a directed verdict. The State presented no direct of substantial circumstantial evidence of Harry's guilt of the crime for which he was charged; particularly failing to demonstrate the Harry had any knowledge that Castro was armed on the day of the shooting and failing to demonstrate the existence of a plan or scheme to accomplish an illegal purpose involving Harry. Therefore, this Court should reverse Kareem S. Harry's conviction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel for Appellant certifies that Appellant's Initial Reply has been served upon other counsel of record addressed as follows:

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September 2, 2014

SWORN TO BEFORE ME this 2nd day of September, 2014

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