State of South Carolina
In The Court of Appeals

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SC Court of Appeals

Appeal from Horry County
Court of General Sessions

Edward B. Cottingham, Circuit Court Judge

State of South Carolina, Respondents,

v.

Dayton Carondo Prinks, Appellant.
Appellate Case No. 2013-001627

PRO SE BRIEF OF APPELLANT

Dayton Carondo Prinks
Pro Se Appellant

S.C.D.C. No. 00355560
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STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Judge err in failing to suppress Appellant's statement to law Enforcement, as the statement was not given freely, knowingly, and intelligently?

II. Did the Trial Judge err in failing to direct a verdict of acquittal in Appellant's favor on the charge of Burglary in the first Degree, where the State failed to introduce any direct or substantial circumstantial evidence that Appellant entered the dwelling without consent?

III. Did the Trial Judge err in failing to direct a Judgment Notwithstanding the Verdict of guilty rendered by the Jury on the grounds of insufficiency of the evidence?

IV. Did the Trial Judge err in failing to grant a New Trial in Appellant's favor on the charge of Burglary in

the first Degree and Kidnapping, where the State failed to introduce any direct or substantial circumstantial evidence that did not prove Appellant's guilt?

STATEMENT OF THE CASE

On January 31, 2013, the Horry County Grand Jury indicted the Appellant for Burglary in the first Degree (2013-GS-26-00190) and Kidnapping (2013-GS-26-00189). On May 16, 2013, the Appellant proceeded to trial before the Honorable Judge Edward B. Cottingham and a Jury. The Appellant was represented by Assistant Public Defender, James Galmore, of the Horry County Public Defender's Office. The Respondents was represented by Assistant Solicitor, Candace Livesay, of the Fifteenth Judicial Circuit Solicitor's Office. The Jury found the Appellant guilty of Burglary in the first Degree and not guilty of Kidnapping. Judge Cottingham sentenced the Appellant to fifteen (15) years imprisonment.

The Appellant filed a timely Notice of Appeal. This Appeal follows.

ARGUMENT

I. The trial Judge erred in failing to Suppress Appellant's statement to Law Enforcement, as the statement was not given freely, knowingly, and intelligently.

The Appellant was getting off a school bus when Law Enforcement detained him. The Appellant was in the eleventh (11th) grade when approached and detained by Law Enforcement at a Bus Stop. During a Pre-Trial Evidentiary Suppression Hearing, Law Enforcement stated that there were no attempts made in contacting the Appellant's parents to accompany the Appellant to the Horry County Police Department. The Appellant was being audio and video recorded during the course of the custodial interrogation. Law Enforcement Officer Damon Vescovi, stated during cross examination that the Appellant was not afforded an opportunity to write anything except for signing

an Advisory of Rights form, a form that does not require a defendant to read or write on its contents. Nor did Officer Vescovi attempt to inquire about having Appellant explain the advisements back to him to verify if Appellant actually understood his Miranda Rights. It was further stated that the Appellant was not free to leave the North Precinct Station because "he was being arrested". Even in the event that a Statement was not given, the Appellant was still being arrested.

"Exculpatory or inculpatory statement obtained as a result of a custodial interrogation is inadmissible unless the person giving the Statement was advised of and voluntarily waived his Miranda Rights." State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998). "In determining whether a defendant underwent a custodial interrogation so as to require a Miranda warning, the totality of the circumstances, including the individual's freedom to leave

the scene, and the purpose, place, and length of the questioning, must be considered; the relevant inquiry is whether a reasonable man in the suspect's position would have understood himself to be in custody." Bradley v. State, 316 S.C. 255, 449 S.E.2d 492 (1994).

"Custodial interrogations implicate two competing concerns. On the one hand, 'the need for police questioning as a tool for effective enforcement of criminal laws cannot be doubted.' Admissions of guilt are more than merely 'desirable,' they are essential to society's compelling interest in finding, convicting, and punishing those who violate the law. On the other hand, the Court has recognized, that the interrogation process is 'inherently coercive' and that, as a consequence, there exists a substantial risk that the Police will inadvertently traverse the fine line between legitimate efforts to elicit admissions and constitutionally

impermissible compulsion. Miranda attempted to reconcile these opposing concerns by giving the defendant the power to exert some control over the course of the interrogation." Moran v. Burbine, 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986). "Any lawyer worth his salt will tell the suspect in no circumstances or uncertain terms to make no statement to the Police under any circumstances." Watts v. Indiana, 338 U.S. 49, 69 S.Ct. 1347, 93 L.Ed.2d 1801 (1949). "The inquiry is whether a waiver is coerced has two distinct dimensions." Moran v. Burbine, supra. "first, the relinquishment of the right must have been voluntary in the sense that it was a product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness, both of the nature of the right being abandoned, and the

consequences of the decision to abandon it. Only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension, may a court properly conclude that the Miranda rights have been waived.' Fare v. Michael, 442 U.S. 707, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979); Moran v. Burbine, Supra.

In the present case, Appellant has been in Learning Disability Classes while going through the course of school over the years. Appellant's level of comprehension is that of a person diagnosed with Borderline Mental Retardation with the Intelligence Quotient of at or below 70. While the Appellant may have been in the eleventh (11th) grade in High School and may have been eighteen years of age at the time of interrogation, however, Appellant's free will was overly borne by the

officer interrogating him. It was stated that there was no need for Appellant to provide a voluntary statement based upon the fact that the Appellant was clearly under arrest and in custody. In reviewing the totality of the circumstances, the Appellant was not free to leave based on being arrested; the purpose of the questioning was to discuss the reasons of his Arrest Warrants; the place of interrogation was Horry County Police Department located at the North Precinct Suboffice, a Law Enforcement Building and not the School Bus stop; and the length of the interrogation is undetermined. The Appellant was placed in custody at the Bus Stop after getting off a School Bus. The Appellant could not and did not understand himself to be in custody until after the interrogation process had begun. See Bradley v. State, 316 S.C. at 256, 449 S.E.2d at 493. Law Enforcement went as far as to not contacting the

Appellant's parents regardless of his age or grade level. The record during the Suppression Hearing clearly supports that the Appellant did not knowingly, freely, voluntarily, and intelligently waive his *Miranda* rights, based upon the Video and Audio Recording of Appellant's Statement during interrogation. It become apparent that Appellant lacked the requisite level of comprehension. Therefore, the trial judge erred in failing to suppress the Appellant's Statement as being unfree, unknowing, involuntary, and unintelligently provided.

ARGUMENT

II. The trial judge erred in failing to direct a verdict of acquittal in Appellant's favor on the charge of Burglary in the First Degree where the State failed to introduce any direct or substantial circumstantial evidence that Appellant entered dwelling without consent.

"A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged." State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916); State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001); State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the trial judge may deny the motion for directed verdict." State v. Lollis, 343 S.C. 580, 541 S.E.2d 254 (2001); State v. Pinckney, 339 S.C. 346, 529 S.E.2d

526 (2000); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000). "When the prosecution relies exclusively on circumstantial evidence, the trial judge must direct a verdict in the defendant's favor unless there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the defendant or from which his guilt may be fairly and logically deduced." State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). "Likewise, a directed verdict is appropriate when evidence produced 'merely raised a suspicion that the accused is guilty.'" Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984); State v. Muhammed, 338 S.C. 22, 524 S.E.2d 637 (Ct. App. 1999). "Our courts define suspicion as 'a belief or opinion as to

guilt based upon facts or circumstances which do not amount to proof." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963).

"The prosecution must prove the identity of the defendant as the person who committed the charged crime beyond a reasonable doubt." State v. Lane, 406 S.C. 118, 749 S.E.2d 165 (Ct. App. 2013) (Citing Gibbs v. State, 403 S.C. 484, 744 S.E.2d 170 (2013). "To determine the admissibility of an identification, the court must determine (1) whether the identification process was unduly suggestive, and (2) if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." State v. Cheesboro, 346 S.C. 526, 552 S.E.2d 300 (2001). "Where the identification procedure is unduly suggestive, courts considered the following factors in

evaluating the totality of the circumstances to determining the likelihood of a misidentification: (1) the witnesses's opportunity to view the perpetrator at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. Cheeseboro; State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000).

In Mitchell, 341 S.C. at 409, 535 S.E.2d at 127, the South Carolina Supreme Court held the lower Court erred in failing to direct a verdict where the only evidence presented against the defendant was his fingerprint at the scene of the Burglary. The Court noted the prosecution's case was entirely circumstantial, and the only evidence linking Mitchell to the burglary was

the fingerprint. Concerning the screen, the Court explained the prosecution presented no evidence that the screen was on the window at the time the window was broken or when the screen was removed. Mitchell's fingerprint on the screen simply did not prove entry. Id. at 409, 535 S.E.2d at 127.

Likewise, the Lollis Court directed a verdict of acquittal in the defendant's favor where the State presented no direct evidence that Lollis was involved in setting fire to his home. The only circumstantial evidence against Lollis was that his wife admitted to the arson, he had placed valuables in storage prior to the fire, he possessed a key to the storage unit, and he allegedly had financial troubles. Our State Supreme Court found this evidence insufficient. Id. at 584, 541 S.E.2d at 256.

In State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2012), the Court held

the defendant was entitled to a directed verdict based upon a lack of substantial circumstantial evidence that the defendant was involved in the Burglary. As explained by the Odems Court, although our courts have abandoned the traditional circumstantial evidence jury charge, the language of the charge is instructive in making a directed verdict determination. The traditional charge provided:

> Every circumstance relied upon by the State be proven beyond a reasonable doubt; and . . . all of the circumstances proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.

Id. at 590, 720 S.E.2d at 52 (quoting State v. Hernandez, 382 S.C. 620, 677 S.E.2d 603 (2009)).

In *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011), the Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt. Although the police found items belonging to the victim in a burn pile behind the home of Bostick's mother, the Court held no evidence linked Bostick to the evidence in the burn pile and the prosecution presented no testimony that Bostick had control over the burn pile. *Id.* at 137-141, 708 S.E.2d at 775-778. Rather, the State's evidence was capable of producing only a suspicion of Bostick's guilt.

In South Carolina, "a person is guilty of Burglary in the first Degree if the person enters a dwelling without consent and with the intent to commit a crime in the dwelling, and . . . he or another participant in the crime is armed with a deadly weapon or explosive; or . . . the entering or remaining occurs in the

nighttime." South Carolina Code Annotation, Section 16-11-311. Pursuant to South Carolina Code Annotation, Section 16-11-310(2), a dwelling "means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person" and the definition found in Section 16-11-10 of the Code. According to Section 16-11-10 of the South Carolina Code, a dwelling is "any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property." The definition also includes "all houses, outhouses, buildings, sheds and erections which are within two hundred yards of it and are appurtenant to it or to the same establishment of which it is an appurtenance." In State v. Stone, 350 S.C. 442, 567 S.E.2d 244 (2002), the South Carolina Supreme Court held a

porch was part of the dwelling where the porch was completely enclosed and was utilized for the protection of the property.

In the present case, the trial judge erred in failing to direct a verdict in the Appellant's favor on the charge of Burglary in the first Degree where the prosecution failed to prove that the Appellant entered the dwelling. The fingerprint on the glass window, of which was on the exterior of the home, simply could not prove that the Appellant made entry of the residence. There was no testimony as to how long the fingerprint of the Appellant was on the window. However, there was testimony by Elias Michaels, the homeowner, whom stated that there was a pond in the backyard where people in surrounding neighborhoods would often swim and fish. That after Elias moved into the home, he repeatedly ran off teenagers who were fishing and swimming there because they did not

live in Long Bay Golf Club. R. 75, line 13. Unfortunately, when questioned by police, the Appellant admitted that he lived in a neighborhood within walking distance of Elias's home. The Appellant further admitted that he had been swimming in the pond behind Elias's home. R. 145, line 20 - R. 147, line 6; R. 152, lines 17-21; R. 153, lines 2-8. See Mitchell, supra. Elias's testimony that the Appellant entered the garage while armed with a deadly weapon was simply preposterous as demonstrated by the Jury's verdict finding the Appellant Not Guilty of the kidnapping charge. Had the Jury believed Elias's testimony, the Jury would have found the Appellant guilty of kidnapping. However, the Jury clearly discredited Elias's testimony by finding the Appellant not guilty of that charge. Additionally, the Jury's note indicated the Jury did not believe Elias. R. 231. Clearly, the Jury did not believe the

Appellant entered the garage, then the Jury would not have been concerned with whether physical damage to the screen was sufficient to satisfy the entry element of Burglary in the first Degree. In light of the Jury's verdict and questions, it is clear the jury discredited Elias's testimony concerning entry. Thus, the Trial Judge erred in failing to direct a verdict of acquittal in Appellant's favor on the Charge of Burglary in the first Degree.

ARGUMENT

III. The Trial Judge erred in failing to direct a Judgment Notwithstanding the Verdict of guilty rendered by the Jury on the grounds of insufficienty of the evidence.

"A motion for a directed verdict is a prerequisite for a subsequent motion for a Judgment notwithstanding the verdict" State v. Hinson, 253 S.C. 607, 172 S.E.2d 548 (1970); State v. Criddle, 125 S.C. 264, 118 S.E. 424 (1923). "The rule is that unless there is a failure of competent evidence tending to prove the charge in the indictment, the trial court should deny such motions." State v. Foxworth, 269 S.C. 496, 238 S.E.2d 172 (1977). See State v. Taylor, 348 S.C. 152, 558 S.E.2d 917 (2002).

Counsel moved the trial court in Arrest of Judgment after the jury returned its verdict of guilty based on the location of a fingerprint of the Appellant

on the outside of Elvis's home. Again, the Trial Court erred in failing to grant the motion in Arrest of Judgment. Therefore, trial Judge committed reversible error in denying the motion

ARGUMENT

IV. The Trial Court erred in failing to grant a New Trial in Appellant's favor on the charge of Burglary in the First Degree and Kidnapping, where the State failed to introduce any direct or substantial circumstantial evidence that did not prove Appellant's guilt.

On May 16, 2013, the Appellant was on Trial, where the Appellant's attorney (Galmore) moved for a Motion for a New Trial based on the lack of evidence provided by the State. R. 182, line 4-5. The State's Opening Statement clearly represented an explanation defining the charges of Burglary in the first Degree and Kidnapping. R. 48, line 18-25. While proving Opening Statement, the State advises the jury with the following: "this is a who did it case". R. 51, line 16-17. In reviewing the State's case, evidence revealed that the Appellant's fingerprint was located on a glass window in the rear of the victim's residence. R. 51, line 19 - R. 52,

line 7.

The victim, Elias Michaels, claimed that on the night of the incident he seen the perpetrator reach for the door as he was closing it. But no fingerprint of the Appellant were found in the garage where the victim alleged that he was held against his will. Then Michaels begun describing the physical build of the perpetrators, along with visible portions of the perpetrators face. R. 62, line 23 - R. 63, line 16. Michaels stated that when the perpetrator put his finger to his lips to shush him, he claimed that he could tell what color the perpetrator was (Black) and that he was a male, of whom wore no gloves. However, Michaels never stated if there was anything distinctive about the perpetrator's face, hands, or anything about his body or its build until the Appellant's trial date. Appellant's guilt was not proven by this statement. The Appellant relied upon State v. Mitchell,

341 S.C. 406, 535 S.E.2d 126 (2000).

The responding police officer searched the porch area of the incident location for fingerprint but found none. R. 94, line 22 - R. 97, line 3. When the Appellant was questioned by police, the Appellant admitted that he lived in a neighborhood within walking distance from Michaels residence. The Appellant further admitted that he had been swimming in the pond at Michaels residence before the incident date. R. 145, line 20 - R. 146, line 24; R. 152, line 17-21; R. 153, line 2-8.

"Standard for determining admissibility of both out-of-court and in-court identifications is whether identification procedure was so impermissibly suggestive as to give rise to very substantial likelihood of irreparable misidentification." State v. Gambrell, 274 S.C. 587, 266 S.E.2d 78 (1980). "To determine the

CONCLUSION

Appellant respectfully request this Honorable Court, as to Argument One, REVERSE the decision of the trial Court and order the Appellant's Statement to Law Enforcement to be Suppressed; as to Argument Two, REVERSE the decision of the trial Court and Direct a Verdict of Acquittal, in the Appellant's favor; as to Argument Three, REVERSE the decision of the trial Court and order the Verdict of Not Guilty based upon Judgment Notwithstanding the Verdict; and as to Argument four, REVERSE the decision of the trial Court and REMAND the Appellant's Conviction for a New Trial.

Respectfully Submitted,

[signature]

Dayton C. Pinks, Jr.
PRO SE Appellant

September 10, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

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Edward B. Cottingham, Circuit Court Judge

STATE OF SOUTH CAROLINA, RESPONDENTS,

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Appellate Case No. 2013-001127

DESIGNATION OF MATTER TO
BE INCLUDED IN THE RECORD OF
APPEAL

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

(1) Transcript of Jury Selection

(2) Entire Trial Transcript
(3) True-Billed Indictment(s)
(4) Sentencing Sheet for Burglary
(5) Court's Exhibit #1 (Jury Note)

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

[signature]

Dayton C. Finklea, Jr.
PRO SE Appellant

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