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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRICE DRIGGERS,

APPELLANT

APPELLATE CASE NO. 2014-002293

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

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying the motion for a directed verdict to the two charges of unlawful carrying of a pistol when the state failed to present any substantial evidence beyond a reasonable doubt that appellant was in possession of the pistols?

STATEMENT OF THE CASE

Appellant was convicted of two (2) counts of unlawful carrying of a pistol after a jury trial in his absence before the Honorable Robert E. Hood on June 11, 2014, in Richland County. He was found guilty on both counts. The sealed sentence was opened and read in court on October 20, 2014, in appellant's presence. He was sentenced to two (2) one year consecutive sentences. Megan Eigenbrot, Esquire and Alicia Dyar, Esquire were the trial attorneys. John Conrad, Esquire, and Ramie Shalabi, Esquire were the assistant solicitors.

ARGUMENT

The trial court erred in denying the motion for a directed verdict to the two charges of unlawful carrying of a pistol when the state failed to present any substantial evidence beyond a reasonable doubt that appellant was in possession of the pistols.

Linda Henderson testified that on July 26, 2011, she worked part-time at check out of a Dollar General. Appellant came inside with a young lady. They seemed to be having an argument. They came in the store; they went out. They came in; they went back out. She saw appellant pull a gun from a backpack. She dialed 9-1-1 for the police. (R. p.98, line 4 – p. 101, line 24).

Officer Smith with the Forest Acres Police Department testified that he was dispatched to the Dollar General store. He approached appellant inside. Appellant went to reach inside his backpack and Officer Smith thought he was reaching for a gun so he put handcuffs on appellant. (R. p.128, line 5 – p. 133, line 28.) He patted appellant down and did not find a gun. He looked inside the backpack and only found a magazine for a gun. (R. p.134, lines 9-23.) When backup arrived, Officer Smith went outside and found guns by the left hand side of the wall that goes toward the back of the store. (R. p.135, line 15 – p. 136, line 5.)

At the conclusion of the state's case, defense counsel moved for a directed verdict to the charges of unlawful carrying of a gun because appellant was not found in possession of the gun so he could not be guilty of carrying them unlawfully. (R. p. 175, line 5 – p. 176, line 10.) The trial court denied the motion. (R. p. 178, lines 9-16.) 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.

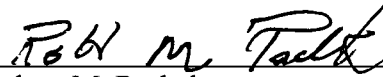
1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

In this case, the jury was only invited to speculate as to whether appellant was unlawfully carrying pistols since he was not found in possession of them.

CONCLUSION

A directed verdict should be granted to the charges of unlawfully carrying a pistol.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of February, 2015.

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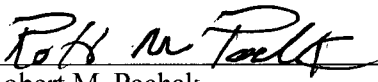
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brice Driggers 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 Robert E. Hood, which was held on October 20, 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 Brice Driggers.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

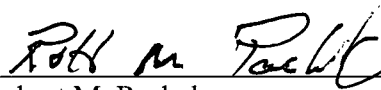
ATTORNEY FOR APPELLANT

This 17th day of February, 2015.

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."

February 17, 2015



Robert M. Pachak
Appellate Defender

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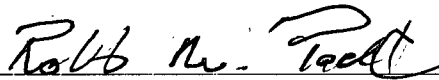
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Transcript;
- (2) True-billed indictment(s).

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

February 17th, 2015



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Attorney for Appellant

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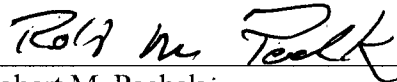
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CERTIFICATE OF SERVICE

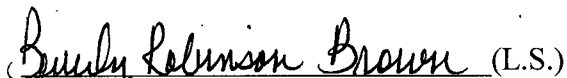
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Brice Driggers, #361784 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210 this 17th day of February, 2015.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of February, 2015.



Notary Public for South Carolina
My Commission Expires: December 9, 2024