

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

v.

BENJAMIN LAVON SMALLS,

APPELLANT,

APPELLATE CASE NO. 2014-001539

Pro se Brief of APPELLANT

TABLE OF AUTHORITIES

Cases

State v. Williams, 321 S.C. 327, 468 S.E. 2d 626, (1996)

State v. Williams, 321 S.C., at 332-33, 468 S.E. 2d at 629

State v. Irvin, 270 S.C. 539, 243 S.E. 2d, 195 (1978)

STATEMENT OF ISSUE ON APPEAL

Did the trial court err by not granting a directed verdict at the conclusion of the state case based on a failure to produce substantial evidence of defendant's guilt?

STATE OF THE CASE

On September 12, 2011, the Charleston County Grand Jury indicted Benjamin Lavon Smalls on charges of arm robbery (AR) and possession of a firearm during the commission of a violent crime. On July 7, 2014, Smalls proceeded to trial before the Honorable Debra L. Jefferson and a jury. Smalls was represented by Robert L. Gilliard, and the state was represented by David Osborne and Greg Voit. R. 1. The jury returned verdicts of guilty on both charges and indicted. R. 324, 11.18 - R. 325, 11.20. Judge Jefferson sentenced Smalls to five years on the gun charge and twelve years on the A.R. The sentences were to run concurrent with each other. R. 337, 11.11-24. Smalls' attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial Court has a duty to Submit the case to the jury where the evidence is circumstantial, if there is Substantial Circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt maybe fairly and logically deduced. The trial judge should grant a directed verdict motion when the evidences merely raises a suspicion that the accused is guilty. In reviewing the appeal, of a refusal to grant a direct verdict of not guilty, this Court must ~~not~~ look at the evidence in the light most favorably to the state. By not granting a direct verdict would be prejudicial due to the fact it was no circumstantial evidence.

.....

Ronzell Olds, who was an eighteen year old young man, lived with his mother, two sister, and niece in Charleston. On May 25, 2011, when his mother left for work, she gave him the rent money of 600 dollars to pay the landlord when he come to collect it. Ronzell was also to watch his younger sister. When his older sister came, Ronzell left to meet his friend, Brandon Nelson. He took the \$600 rent money with him because the land lord did not come. R.93, 11, 1-R.94, 11, 23.

Ronzell and Brandon went to the home of another friend, Montez Dozier, where they played cards and video games. They were gambling with Ronzell's thirty dollars. He said he did not gamble with the \$600. Montez's sister, Ashley, came out and learned they were playing cards and had money. R.94, 11, 22-R.96, 11, 22

Ronzell and Brandon began walking around to the front to leave, and they met Smalls and Capers known as T.A. Capers called Brandon a snitch and Brandon ran. Smalls then grabbed Ronzell's arm, and both Smalls and Capers pulled guns and stuck them to Ronzell's head. They wanted everything in Ronzell's pockets. Ronzell gave them \$200 at first but then gave them all of the \$600. Smalls and Capers then jumped in Ashley's car, as she was parked in the front yard preparing to leave, and they left. R.97, 11, 1-R.103, 11, 25.

Olds talked to the police that night but only because his mother told him he had to leave her house if he did not give the police someone name. At first he told them he did not know the men who robbed him. After his mother told him he had to give the police somebody name in order to come back in here house, then that's when he said he will cooperate with the police. He knew Smalls and Capers from the neighborhood, and told the police they were the men who robbed him. He confirm this through a Photo lineup identification. R. 104, 11.1 - R. 108, 11.8.

Appellant Smalls was arrested May 31, 2011 on Applebee Way in West Ashley. Later that evening after the arrest, a gun was recovered from Applebee way. In a effort to link Smalls to the gun, Sergeant George Bradley of the Charleston police Department obtain a search warrant to collect a buccal swab of DNA from Smalls at the detention center. He collected the DNA sample from as soon as he obtained the warrant. R. 185, 11.10 - R. 188, 11.20.

⊗ The DNA that was taken from the gun did not have enough DNA to make a conclusive statement in comparing it to anyone. The gun was also tested for fingerprints, but none was recovered from the gun. R. 229, 11.13 - R. 235, 11.8

The trial judge should only deny the directed verdict if there was circumstantial evidence which reasonable tends to prove the guilt of the accused. State v. Williams 321 S.C., 327, 468 S.E. 2d 626 (1996). A direct verdict should be granted when the evidence merely raises a suspicion that the accused is guilty. State v. Irvin 270 S.C. 539, 243, S.E. 2d 195 (1978)

In reviewing the Appeal, of a refusal to grant a directed verdict of not guilty, the court must look at the evidence in the light most favorable to the state. v. Williams, 321 S.C., at 332-33, 468 S.E. 2d At 629

The trial judge erred in not granting the directed verdict for Smalls because the circumstantial that was use were prejudicial to Smalls. It was only two people that actually witness the crime and that's the victim Ronzell Olds and the witness Brandon Nelson. Both Ronzell and Brandon are friends. Ronzell says Smalls and Capers rob him while his friend Brandon says it wasn't Smalls and Capers but instead he says it was two light skin men. They had no evidence beyond a reasonable doubt.

The judge said her reasons for not granting a directed verdict is because of the substantial circumstantial evidence in the nature of the testimony of the victim Ronzell Olds and the Sled Analysis, Jennifer Bartman. The Judge also said that substantial circumstantial corroborative evidence existed from the testimony by Ashley Green and Montez Dozier.

Now I'm going to explain why the judge should have granted a directed verdict due to the weakness of the evidence use against Appellant Smalls.

The judge said it was substantial circumstantial evidence in the nature of the testimony of the victim Ronzell Olds. In that case it was also a witness Brandon Nelson, who actually saw the robbery took place. Brandon Nelson stated that it was not Appellant Smalls who he saw robbed Ronzell but instead he said that it was two light skin men that he didn't know.

The judge also said it was substantial circumstantial evidence in the nature of the testimony from the Sled Analysis, Jennifer Bartman, that Appellant Smalls cannot be excluded from the combined DNA sample left on the gun. The Sled Analysis also said that it was a mixture of one or two people and my lawyer Robert Billiard, ask the Sled Analysis was she able to conclusively connect the DNA sample from the gun to the DNA sample from Appellant Smalls and her answer was no, she was not able to connect it.

The judge said that it was substantial circumstantial evidence in the nature of the testimony from Ashley Green and Montez Dozier. Ashley said she didn't witness the robbery but Smalls and Capers did ask her for a ride. Montez said that he never saw no one attack Ronzell Olds. Based on the above there's no Burden of Proof and her reasons for not granting the directed verdict was prejudicial to Appellant Smalls.

Conclusion

Based on the above information that I provided should be enough for the case to be set for a new trial.

Benjamin Lavon Smalls #337071
Evans Correctional Institution
610 Hwy #9 West
Bennettsville SC 29512

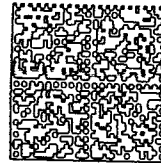
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