

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

James R. Barber, III, Circuit Court Judge

RECEIVED
MAY 21 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

ANNIE JACKSON,

APPELLANT

APPELLATE CASE NO. 2014-002547

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
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 7

PETITION TO BE RELIEVED AS COUNSEL 8

TABLE OF AUTHORITIES

Cases

In re Jeremiah W., 353 S.C. 90, 576 S.E.2d 185 (Ct. App. 2003)..... 6

In re Winship, 397 U.S. 358, 90 S.Ct. 1068 (1970)..... 6

State v. Brown, 360 S.C. 581, 602 S.E.2d 392 (2004)..... 6

State v. Buckmon, 347 S.C. 316, 555 S.E.2d 402 (2001) 6

State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2011). 6

STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in failing to enter a directed verdict of acquittal on the charge that Appellant knowingly resisted an arrest where an officer accosted Appellant after a minor argument with a store clerk about returning some shoes and where the officer engaged her in lengthy conversation and told her that she was merely trespassing and needed to step outside the store.

STATEMENT OF THE CASE

On August 21, 2014, the Spartanburg County Grand Jury indicted Appellant Annie Jackson for resisting arrest. R. 91-92. On November 18, 2014, Appellant proceeded to trial before The Honorable James R. Barber, III and a jury. Mary Frances Dassell represented Petitioner and Megan Lynn Moricle represented the State. R. 1. The jury found Appellant guilty, and Judge Barber sentenced her to ninety days' incarceration. R. 82, lines 17-25; R. 89, lines 4-16.

ARGUMENT

THE TRIAL JUDGE ERRED IN FAILING TO ENTER A DIRECTED VERDICT BECAUSE THE STATE ONLY OFFERED CIRCUMSTANTIAL EVIDENCE RAISING A MERE SUSPICION THAT APPELLANT KNOWINGLY RESISTED AN ARREST.

STATEMENT OF FACTS

The State alleged that on September 28, 2013, Appellant attempted to return a pair of shoes at a shoe store on South Church Street. An employee, refusing to make the return, argued with Appellant and called the police. An officer arrived and told Appellant she could not return the shoes and ordered her to leave the store. He then physically grappled with her in attempting to make her leave. R. 25, line 16—R. 27, line 4. The State called Officer Bryan Shaw, who testified that when he arrived at the store, the employee wanted Appellant to leave. He asked the employee “if she wanted [Appellant] trespassed, and she stated she did.” R. 29, line 17—R. 31, line 9. Appellant, the employee, and Officer Shaw continued arguing, and Shaw told her if she did leave, she was “going to jail” for trespassing. R. 31, line 23—R. 32, line 2. Shaw continued arguing with Appellant, and he stated two or three more times that he would take her to jail if she did not leave. He then “grabbed her left wrist with [his] left hand across the body and attempted to turn her. . . . [He] tried to softly taker her down pulling her hand and placing [his] forearm against the bony portion of her jaw.” R. 32, lines 3-19.

At the close of the State’s case, counsel for Appellant moved for a directed verdict. The trial judge denied the motion. R. 50, line 11—R. 51, line 18.

DISCUSSION

The trial judge erred in failing to enter a directed verdict because the State only offered circumstantial evidence raising a mere suspicion that Appellant knowingly

resisted an arrest. South Carolina Code section 16-9-320 makes it a misdemeanor to “knowingly and wilfully . . . resist an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not.”

An accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. *See State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); *In re Jeremiah W.*, 353 S.C. 90, 93-94, 576 S.E.2d 185, 187 (Ct. App. 2003) (*rev'd on other grounds*, 361 S.C. 620, 606 S.E.2d 766 (2004)); *see also In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) (“Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.”). Where an element must be proven by circumstantial evidence, to justify denial of a directed verdict the circumstantial evidence must be substantial; in other words, the evidence must do more than “merely raise a suspicion that the accused is guilty.” *State v. Odems*, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). “Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *See State v. Buckmon*, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (citing *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001)).

In this case, the State relied solely on circumstantial evidence raising a mere suspicion that Appellant knowingly resisted an arrest. The circumstances led Appellant to believe that Officer Shaw was only trying to remove Appellant from the store, not arrest her. The argument arose from a minor situation not warranting an arrest. Appellant was merely trying to return some shoes. The store employee was responsible

for the situation as much as Appellant was. Officer Shaw did not realistically signify to Appellant that he would arrest her because he engaged her in conversation, did not follow through on his empty threats, and repeatedly told her that she was merely trespassing. This circumstantial evidence only raised a mere suspicion that Appellant was aware Officer Shaw intended to arrest her and knowingly resisted the arrest. Accordingly, the trial judge erred in failing to direct a verdict based on the insufficiency of the evidence.

CONCLUSION

For the foregoing reasons, Appellant requests that the Court reverse her conviction and enter a directed verdict of acquittal.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of May, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANNIE JACKSON,

APPELLANT

APPELLATE CASE NO. 2014-002547

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Annie Jackson 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 James R. Barber, III, which was held on November 18, 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 Annie Jackson.

Respectfully submitted,


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of May, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

James R. Barber, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANNIE JACKSON,

APPELLANT

APPELLATE CASE NO. 2014-002547

**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) Transcript of November 18, 2014.

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

May 21st, 2015


Benjamin John Tripp
Appellate Defender

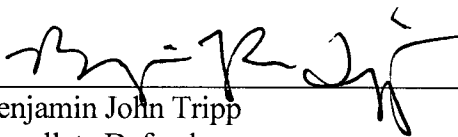
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

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."

May 21, 2015


Benjamin John Tripp
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

RECEIVED
MAY 21 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

James R. Barber, III, Circuit Court Judge

RECEIVED
MAY 21 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANNIE JACKSON,

APPELLANT

APPELLATE CASE NO. 2014-002547


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 Annie Jackson, at 8706 Donaldson Common Ct., Charlotte, NC 28216, this 21st day of May, 2015.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of May, 2015.



Notary Public for South Carolina

(L.S.)

My Commission Expires: May 12, 2025.