

 ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUL 08 2015

RESPONDENT SC Court of Appeals

THE STATE,

V.

CHRISTOPHER MILLER,

APPELLANT

APPELLATE CASE NO. 2011-197146

Appeal from Georgetown County

Steven H. John, Circuit Court Judge

Opinion No. 2015-UP-310

PETITION FOR REHEARING

On June 24, 2015, this Court affirmed Appellant Christopher Miller's conviction for criminal conspiracy in an unpublished opinion. Miller respectfully petitions the Court for a rehearing of its Unpublished Opinion No. 2015-UP-310 pursuant to Rule 221(a), SCACR, based upon the following points overlooked or misapprehended by the Court:

On appeal, Miller argued that the trial court erred in denying his motion for directed verdict on the charge of criminal conspiracy where the State failed to prove any facts that would reasonably support an agreement between himself and co-defendant Keri Pope or anyone else to commit murder and where the evidence presented by the State raises a mere suspicion of Miller's alleged guilt.

As this Court will recall, this case involved a joint trial of Miller and co-defendant, Keri Pope, who was the wife of the decedent Joey Pope. The trial court granted directed verdict in favor of Keri Pope as to both murder and criminal conspiracy, but denied Miller's directed verdict motions. The jury found Miller not guilty of murder, but convicted him of criminal conspiracy. Miller was sentenced to the maximum possible sentence of five years incarceration.

In this case, the State presented no direct or substantial circumstantial evidence that Miller was part of any agreement with Keri Pope or any other person to commit the murder of Joey Pope. At trial, the solicitor focused on a purported agreement between Miller and Keri Pope. In this Court's opinion, it focused instead upon an alleged agreement between Miller and Nick Lambert. The Court pointed to the statement of a jailhouse snitch, Bruce Richardson, who testified at trial that Appellant asked for his help with some legal research and told him "he only shot and killed the dog; he couldn't be guilty of murder." R. 534, ll. 7-13. Richardson testified that he then asked Miller what the evidence was against him, to which Miller allegedly replied:

[H]e was driven over to Joey Pope's house by a guy named Nick Lambert; that he was supposed to go in and shoot Mr. Pope. When he got inside Mr. Pope -- when he got inside he saw Mr. Pope lying in bed asleep, and he couldn't shoot him. He said he backed down and shots were fired, and as a result of that the dog charged him from the bed, and he shot and killed the dog.

R. 534, ll. 14-24. This Court found the alleged statement consistent with the co-defendant, Keri Pope's statement, that one intruder shot her husband and the other intruder shot the dog and expert testimony that different guns were used to shoot the victim and the dog. Lastly, this Court cited the testimony of James Goude, who claimed that he saw Miller and a person he thought was Lambert entering the door of the Pope home at approximately 9:30-9:45 p.m. on the night of the shooting. R. 229, ll. 1-16.

A defendant is entitled to directed verdict when the State fails to provide evidence of the offense charged. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011). A circuit judge should grant a directed verdict motion when the evidence raises merely a suspicion the accused is guilty. State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-52 (1984).

S.C. Code Ann. § 16-17-410 defines a conspiracy as “a combination between two or more persons for the purpose of accomplishing an unlawful object or lawful object by unlawful means.” Proof of a conspiracy is often necessarily by circumstantial evidence alone. State v. Miller, 223 S.C. 128, 133, 74 S.E.2d 582, 585 (1953). Nevertheless, “the law calls for an objective, rather than subjective, test in determining the existence of a conspiracy.” State v. Crocker, 366 S.C. 394, 406, 621 S.E.2d 890, 897 (Ct. App. 2005). The appellate courts, in viewing the sufficiency of the evidence to support a charge of conspiracy, “must exercise caution to ensure the proof is not obtained ‘by piling inference upon inference.’” State v. Gunn, 313 S.C. 124, 134, 437 S.E.2d 75, 81 (1993) (quoting Direct Sales Co. v. U.S., 319 U.S. 703, 711 (1943)).

Bruce Richardson’s testimony, if believed by the jury, did not establish an unlawful combination between Miller and anyone else to commit murder in order to sustain a guilty verdict on the criminal conspiracy charge. Even if Richardson’s testimony were believable, it only showed that Nick Lambert drove Miller over to the Pope home. It did not show that Lambert ever even got out of the vehicle or, even if he did, that he had any idea what Miller’s intentions were in going to the Pope home. Further, the phrase “supposed to” was not evidence of any conspiracy, as a person can easily impose an expectation upon themselves without having any agreement with anyone else. Additionally, even if the jury believed Richardson’s testimony that Miller backed out of shooting decedent Joey Pope and only shot the dog when it charged from the bed after shots were fired by someone else, such was not evidence that Miller had any agreement with anyone to commit the

murder of Joey Pope. Someone that wanted Joey Pope dead, perhaps because of Joey's drug dealing activities or his stint as a confidential informant, could have walked in and shot Joey Pope even if Miller was allegedly there at the same time. It was not disputed that Joey Pope was involved in drug dealing activities and that there were persons who may have wanted to seek retaliation against Joey Pope. July 28, R. 663, l. 7 – 664, l. 1; 667, l. 10 – 678, l. 9. As our State's Supreme Court observed in State v. Ameker, if two people assault another person at the same time, that is an unlawful act but not a conspiracy where there is no agreement between the two assailants to do the act prior to doing it. 73 S.C. 330, 339, 53 S.E. 484, 487 (1906).

This Court's reliance on the testimony of James Goude as placing Miller and Lambert at the scene of the crime was also in error. Goude's testimony was far from unequivocal. On direct examination, Goude testified:

And I'll say around 9:30, maybe 9:45, something like that, I think we was going to stop by Joey's and my wife was already saying it was late and everything, and I slowed down to turn into the driveway and I seen, you know, that they had somebody out front, and the headlights was on and all, and it was Chris's car, and as I – Angel said, well, there's people here, it's late anyway, let's just go home, so as I start to roll off again, I mean, I seen Keri at the door, and Chris, and I -- I thought for sure it was Nick Lambert that was walking behind him, but you know – that's who had been hanging out with Chris a good bit. I just assumed it wasn't nothing unusual,...

229, ll. 6-17; and

I seen Keri at the door, and that would have been with her left arm holding the door, and Chris and me assuming it was Nick, walking in.

230, ll. 11-13. On cross-examination, Goude admitted that he provided a statement to the police that he had only seen Chris' car with its headlights on at the Pope house and that he had not specifically seen Chris walking into the Pope house. R. 275, l. 7 – 277, l. 11. Further, Goude's wife, Angel Goude, who also knew the Popes and Chris Miller, said that on the night of May 27, 2003 when they drove by the Pope house after eating dinner, her husband told her that Chris' car was there. R.

279, 1. 18 – 281, 1. 8. She did not mention Lambert. This cannot possibly meet the substantial circumstantial evidence required to submit the case to a jury.

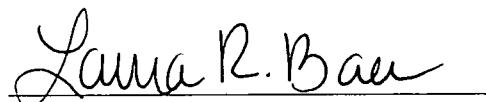
The scant evidence the State presented against Miller as to whether he combined with another person to commit the murder of Joey Pope barely even raises a suspicion that Miller was guilty of criminal conspiracy. The Trial Court should have granted Miller a directed verdict on the criminal conspiracy charge, just as it did for co-defendant Keri Pope, where the evidence only raised a mere suspicion that Miller was guilty.

Thus, the trial judge and this Court erred in concluding that the State presented substantial circumstantial evidence that Miller engaged in a criminal conspiracy. Therefore, Miller was entitled to a directed verdict.

CONCLUSION

For the reasons set forth herein, Appellant Christopher Miller respectfully requests that the Opinion of the Court of Appeals be withdrawn and that this Court enter a directed verdict of acquittal.

Respectfully submitted,



Laura R. Baer
Appellate Defender

This 8th day of July, 2015.

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CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mary S. Williams, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Christopher Miller, 577 West Virginia Road, Georgetown, SC 29440, this 8th day of July, 2015.



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 8th day
of July, 2015.



Notary Public for South Carolina

My Commission Expires: October 24, 2021.