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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LONDON A. KELLEY,

APPELLANT

APPELLATE CASE NO. 2014-002412

ANDERS BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUE ON APPEAL

Did the court err by failing to direct a verdict of acquittal for accessory after the fact of murder where the only evidence against Appellant was the testimony of three witnesses who claimed Appellant confessed to them since the contents of the alleged confessions were inconsistent with each other and inconsistent with the evidence collected by law enforcement thereby only raising a mere suspicion of Appellant's guilt that was insufficient to withstand a directed verdict motion?

STATEMENT OF THE CASE

A Sumter County Grand Jury indicted Appellant at the August 21, 2014 term of General Sessions for murder, accessory after the fact of murder, and conspiracy. R. 905-906. Her case was called to trial on October 27, 2014 before the Honorable George C. James, Jr., and a jury. R. 1. Assistant Solicitor William Jason Corbett represented the state, and Charlie J. Johnson, Jr. represented Appellant. R. 1.

On October 31, 2014, the jury acquitted Appellant of murder and conspiracy, but found her guilty of accessory after the fact of murder. R. 861, ll. 1-17. Judge James sentenced Appellant to twelve years imprisonment. R. 875, ll. 18-22.

This appeal follows.

ARGUMENT

The court erred by failing to direct a verdict of acquittal for accessory after the fact of murder where the only evidence against Appellant was the testimony of three witnesses who claimed Appellant confessed to them since the contents of the alleged confessions were inconsistent with each other and inconsistent with the evidence collected by law enforcement thereby only raising a mere suspicion of Appellant's guilt that was insufficient to withstand a directed verdict motion.

Relevant Facts

The state alleged at trial that Appellant and her boyfriend, Quinton Brown, murdered Darrell Epps on the night of April 9, 2011. Epps' car was discovered shortly after midnight on the morning of April 10, 2011. R. 257, l. 15 – 258, l. 4. The passenger compartment had been deliberately set on fire and the interior of the vehicle was destroyed. R. 303, l. 24 – 306, l. 4. The following afternoon, Epps' body was found about a mile and a half away in the grass between two mobile homes in Gem Mobile Home Park. R. 292, l. 2 – 293, l. 21. He had been shot eight times in the foot, thighs, abdomen, and chest with a handgun, and once to the back of the head at close range with a shotgun. R. 484, ll. 1-11.

Appellant and Quinton Brown shared a mobile home in Gem Mobile Home Park where Epps' body was found.[1] They were some of the first people to discover his body and report it to law enforcement on the afternoon of April 10, 2011. Terrell Hudson, who lived in a mobile home behind Appellant and Quinton, testified that he was driving Appellant, Quinton, and a man named "Tank" from Appellant's home to Tank's home located at the

[1] Appellant and Quinton Brown lived at Lot 9 in Gem Mobile Home Park. Epps' body was discovered in the grass between Lot 13 and Lot 15. R. 649, ll. 6-20.

back of the neighborhood when Tank spotted the body. R. 386, l. 14 – 390, l. 25. Hudson said Tank "acted like he knew it [the body] was there," but Hudson, Appellant, and Quinton were "shocked" by what they saw. R. 409, l. 18 – 411, l. 1. While they did not immediately report the discovery to law enforcement, shortly thereafter Tank told an officer they encountered in a nearby neighborhood about the body. R. 393, l. 20 – 394, l. 1; R. 411, l. 18 – 413, l. 3.

After the body was discovered, Appellant cooperated with the police and consented to a search of her car. Law enforcement found nothing of evidentiary value in the vehicle. R. 4502, l. 19 – 505, l. 10. After months of investigation, the police had no leads and eventually the investigation went cold. In early 2013, Investigator Jennifer Thomas of the Sumter County Sheriff's Office became involved in the investigation. R. 655, ll. 10-21. On December 31, 2013, she interviewed Edward ("Bubba") Brown, who was incarcerated at Wateree Correctional Institution and serving a sentence for armed robbery. R. 509, ll. 12-19; R. 514, l. 15 – 515, l. 7.

Brown gave a statement to Thomas claiming Appellant told him sometime during the summer of 2011 that she "felt bad for setting Darrell [Epps] up to get robbed" by Quinton Brown and Christopher Lovely. R. 512, ll. 4-18; R. 513, ll. 10-15. According to Brown, Appellant told him that on the night of April 9, 2011, she left Club Miami in Sumter with Epps, drove him to her home in Gem Mobile Home Park, and then went inside. According to Brown's statement, Appellant said that while she was inside, "the shooting happened." R. 516, ll. 18-23; R. 891.

Interestingly, Brown testified that Investigator Thomas contacted him at the Sumter-Lee Regional Detention Center before he was transferred to the Department of Corrections

and told him that if he provided a statement, then he "would go home sooner." Brown said he did not know how Investigator Thomas "found" him, but that she reached out to him first. He admitted Thomas's statement that he "would go home sooner" was the only reason he provided a statement and testified against Appellant at trial. R. 520, l. 7 – 521, l. 15.

Investigator Thomas admitted law enforcement had absolutely no evidence that Appellant left Club Miami the night of April 9, 2011 with Epps or that Epps was even at Club Miami that evening as Brown's statement claimed. R. 675, l. 18 – 676, l. 5. No part of Brown's statement containing Appellant's alleged confession could be corroborated and, moreover, it was not supported by the evidence gathered throughout the course of the investigation.

However, based on Brown's statement alone, Thomas obtained arrest warrants for Appellant and Quinton Brown. Appellant was subsequently arrested on January 2, 2014, two days after Edward Brown gave his statement. R. 650, l. 25 – 651, l. 20. After Appellant was arrested, Investigator Thomas obtained statements from Shaniaqua Oaks and her mother Suzie Oaks Thomas. Both women were allegedly housed with Appellant at different times at the Sumter-Lee Regional Detention Center in early 2014 and claimed Appellant confessed to them.[2]

Shaniaqua Oaks testified that she spent a weekend in the same cell with Appellant and that the two exchanged stories about why they were incarcerated. R. 541, l. 2 – 542, l. 1. According to Shaniaqua, Appellant told her "she was talking to a young boy that sold

[2] Both Shaniaqua Oaks and Suzie Oaks Thomas have lengthy criminal records consisting mainly of property offenses such as shoplifting and forgery, and driving offenses such as driving without a license and failure to stop for a blue light. R. 539, l. 16 – 540, l. 20; R. 557, l. 15 – 558, l. 4; R. 604, l. 20 – 605, l. 12. Moreover, Suzie admitted she has lied under oath in court before. R. 605, ll. 13-17.

drugs and she was planning on meeting with him so her boyfriend could [rob] him and it went bad. Her boyfriend end[ed] up killing the other guy, took what he had and [left] him in a path in her back yard. The next morning she call[ed] and told the police that she found a body in her back yard." R. 892; R. 542, l. 2 – 543, l. 1; R. 551, l. 17 – 553, l. 4. Shaniaqua maintained that the two never discussed actual "guilt or innocence." Instead, Appellant was merely telling her what she was charged with or what the state alleged occurred. R. 548, l. 6 – 549, l. 3.

Shaniaqua also admitted that she did not reach out to law enforcement. Instead, Investigator Thomas visited her one day while she was incarcerated at the Sumter-Lee Regional Detention Center and asked her whether Appellant had ever talked to her about her case. R. 553, l. 22 – 554, l. 22. It was only then that Shaniaqua provided a statement.

Like Edward Brown's statement, the details contained in Shaniaqua's statement describing Appellant's alleged confession were also inconsistent with the evidence. For example, Epps' body was not found in Appellant's backyard and it was not found in a path. Instead, Epps' body was found in the grass between Lots 13 and 15 and Appellant lived several homes over at Lot 9. See R. 649, ll. 6-20. Additionally, Appellant did not call the police and report finding the body. Rather, Appellant, Quinton Brown, Terrell Hudson, and "Tank" reported the discovery to an officer they encountered on the street in a nearby neighborhood shortly after finding the body. See R. 412, l. 6 – 411, l. 3.

Lastly, Suzie Oaks Thomas claimed she was housed in the same cell with Appellant from January 22, 2014 until February 26, 2014 when Suzie was ultimately transferred to the Department of Corrections. R. 558, l. 7 – 559, l. 4. Suzie contacted Investigator Thomas on

February 6, 2014 and ultimately gave an eleven page statement to Thomas on February 7, 2014. R. 596, ll. 10-13; R. 652, ll. 1-6.

In her statement, Suzie alleged Appellant told her that her boyfriend, Quinton Brown, found out she was having an affair with Epps, became angered, and "told her he would let her live if she . . . made it possible for him to rob Darrell [Epps]." R. 565, ll. 4-12. According to Suzie, Appellant said Epps showed up at her home unexpectedly on the night of April 9, 2011. Appellant allegedly saw Epps pull up and told Quinton, who lived with Appellant, that Epps was outside. Quinton supposedly told Appellant "she know what to do" and Appellant went outside to speak with Epps. Suzie testified that Appellant said while she was talking to Epps at the driver side window of his car, Quinton came outside and asked Epps to take him to the store. R. 565, l. 17 – 566, l. 12. Because Epps was in the process of "rolling a blunt," Epps agreed to move to the front passenger seat and allow Quinton to drive. When Quinton got into the driver's seat, Appellant supposedly got into the backseat. R. 896.

According to Suzie, Appellant told her that instead of stopping at the store, Quinton continued to drive and eventually stopped "somewhere in a wooded area" a few miles away. R. 566, l. 15 – 567, l. 3. Once parked, Quinton allegedly said to Epps, "Nigger, I know you are f'ing London [Appellant]," and before Epps could even respond, Quinton shot him in the head at close range. R. 598, l. 20 – 600, l. 5. Suzie claimed Appellant told her that after Quinton shot Epps in the head, he drove back to Gem Mobile Home Park where the couple lived and Appellant helped him remove the body from the car. While they were removing the body, Appellant supposedly got blood all over her clothes. According to Suzie, Appellant told her that she immediately changed clothes and showered while Quinton went

to get rid of Epps' car. Quinton allegedly returned to the home hours later and claimed he had burned the vehicle. R. 567, l. 22 – 568, l. 7. After Quinton returned, Appellant supposedly put both her clothing and his clothing in a trash bag and burned them. R. 574, l. 17 – 576, l. 9; R. 589, l. 17 – 590, l. 25.

The details contained in Suzie's statement describing Appellant's alleged confession were also inconsistent with the evidence. Most significantly, based on the condition of the body and the physical evidence located where the body was found, it was impossible Epps was shot in the head while he was in the car. The physical evidence showed he had to have been shot in the head while he was lying on the ground in Gem Mobile Home Park. R. 368, l. 13 – 369, l. 19. Moreover, the evidence showed the injury to the head was inflicted by a shotgun and it would have been impossible for Quinton Brown to hide the shotgun from Epps while they were driving. Also, it is unlikely Quinton would have killed Epps in the car while parked in a dark wooded area and then decide to dispose of the body in the mobile home park where he lived.

Investigator Thomas admitted that law enforcement had no probable cause to arrest Appellant and Quinton Brown based on physical or forensic evidence. Instead, the only evidence against Appellant was the statements given by Edward Brown, Shaniaqua Oaks, and Suzie Oaks Thomas. R. 721, l. 21 – 722, l. 9.

The jury deliberated for over six hours. See R. 834, l. 23 and R. 858, l. 1. On two separate occasions, it requested to be recharged on the offense of murder. R. 838, l. 12-14; R. 845, ll. 23-25. It also requested to be recharged on conspiracy. R. 835, ll. 2-4. Significantly, during its deliberations, the jury asked the court what would happen if it could not reach a unanimous decision. R. 846, ll. 1-2. It eventually told the court that it was in

fact deadlocked. R. 856, ll. 20-21. However, before the court gave the jury an Allen charge, it informed the court that it had reached a verdict. R. 857, ll. 11-19. It ultimately acquitted Appellant of murder and conspiracy, but found her guilty of accessory after the fact of murder.[3] R. 861, ll. 1-15.

Motion for a Directed Verdict and Ruling

The assistant solicitor admitted during the course of the trial that there was no physical or forensic evidence linking Appellant to this murder or connecting her to Mr. Epps in any way. R. 666, l. 2 – 667, l. 13. Investigator Jennifer Thomas, the lead investigator assigned to the case, also admitted that the only evidence against Appellant were the statements she obtained from Edward Brown, Shaniaqua Oaks, and Suzie Oaks Thomas. R. 721, l. 21 – 722, l. 9.

At the conclusion of the state's case in chief, defense counsel moved for a directed verdict on the offense of accessory after the fact of murder. He emphasized the lack of physical evidence connecting Appellant to the offense and the fact that the entire case was based on three witnesses who claimed Appellant confessed. Counsel argued the alleged confessions were not only inconsistent with each other, but also with the physical evidence collected by law enforcement. He maintained that one could not be charged with an offense "that could not have been completed as they confessed." As an example, he argued that based on the physical evidence, it was impossible Epps was shot in the head while in the car

[3] The jury was instructed that it could not find Appellant guilty of both murder and accessory after the fact of murder. It was told it may only consider the charge of accessory after the fact of murder if it found Appellant not guilty of murder. R. 829, l. 15 – 830, l. 11.

yet Suzie Oaks Thomas claimed Appellant told her this detail during her alleged confession. R. 724, l. 14 – 727, l. 12.

In making its ruling, the court emphasized that there were portions of the alleged confession where Appellant supposedly admitted she helped move the body and dispose of both her and Quinton Brown's clothing. The judge found this was evidence of accessory after the fact of murder and refused to grant a directed verdict. R. 731, ll. 5-9.

Discussion

The trial court erred by refusing to grant Appellant's motion for a directed verdict for accessory after the fact of murder where the only evidence against Appellant was the testimony and statements of Edward Brown, Shaniaqua Oaks, and Suzie Oaks Thomas, who all claimed Appellant confessed to them, particularly where the details of the alleged confessions were inconsistent with each other and with the evidence collected by law enforcement. This evidence merely raised a suspicion of Appellant's guilt and was therefore insufficient to withstand a directed verdict motion.

A defendant is entitled to a directed verdict when the prosecution fails to provide evidence of the offense charged. State v. Pearson, 410 S.C. 392, 764 S.E.2d 706 (Ct. App. 2014) (*cert. granted* March 4, 2015) (citing State v. Lane, 406 S.C. 118, 121, 749 S.E.2d 165, 167 (Ct. App. 2013)); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001) (citing State v. Brown, 103 S.C. 437, 88 S.E.21 (1916)) . "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, 584, 541 S.E.2d 254, 256 (2001); State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (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, 139, 708 S.E.2d 774, 776 (2011); State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Likewise, a directed verdict is proper when the evidence produced "merely raises a suspicion the accused is guilty." Lollis, 343 S.C. at 584, 541 S.E.2d at 256; State v. Arnold, 361 S.C. 386, 389-390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-452 (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 (citing 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. Lane, 406 S.C. at 121, 749 S.E.2d at 167 (citing Gibbs v. State, 403 S.C. 484, 496, 744 S.E.2d 170, 176 (2013)).

In Lollis, the 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 circumstantial evidence against Lollis included 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. The Court found this evidence insufficient. Lollis, 343 S.C. at 584-585, 541 S.E.2d at 256-257.

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. The Court found that, although Odems was in a car with other individuals who admittedly burglarized a home, the state failed to provide substantial circumstantial evidence that Odems was present during the home invasion. The witness who saw individuals at the home claimed she saw two, not three as were found in the car. Moreover, fingerprints collected from the stolen goods did not match Odems, but matched the other individuals in the car, and one of the individuals who admitted his involvement claimed Odems was picked up after the burglary at a gas station. Id. at 588, 720 S.E.2d at 51.

In Bostick, the Court held the prosecution failed to present substantial circumstantial evidence of Bostick's guilt finding instead that the state's evidence was capable of producing only a suspicion of Bostick's guilt. Id. at 141, 708 S.E.2d at 778. Although the police found items belonging to the murder victim in a burn pile behind a house belonging to 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. In addition to this evidence, the state also presented evidence that gasoline was used to start the fire at the victim's home and Bostick had a chemical pattern on his shoes that matched gasoline and, DNA from blood on Bostick's jeans excluded ninety-nine percent of the population, but the expert could not testify the DNA matched the victim. Id. at 142, 708 S.E.2d at 778.

In this case, the state failed to present any direct evidence or substantial circumstantial evidence tending to prove Petitioner's guilt. Not only were the three witnesses who testified Appellant confessed to them not credible, but the contents of the alleged confessions were inconsistent with the evidence collected by law enforcement

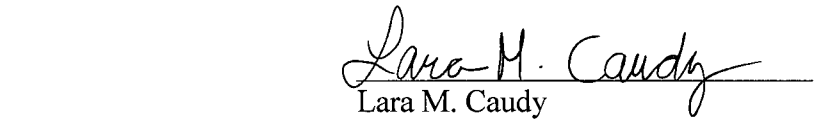
throughout the course of its investigation. For example, as emphasized above, based on the condition of the body and the physical evidence located where the body was found, it was impossible Epps was shot in the head while he was in the car as Suzie Oaks Thomas claimed Appellant stated. See R. 368, l. 13 – 369, l. 19. Moreover, there was no evidence Appellant left Club Miami the night of April 9, 2011 with Epps or that Epps was even at Club Miami that evening as Edward Brown's statement claimed. See R. 675, l. 18 – 676, l. 5. Lastly, Epps' body was not found in a path in Appellant's backyard and Appellant did not call the police and report finding the body as Shaniaqua Oaks claimed Appellant stated. See R. 649, ll. 6-20 and R. 412, l. 6 – 413, l. 3. Because of the inconsistencies, at most, these alleged confessions merely raised a suspicion Appellant was involved in the murder of Darrell Epps.

Respectfully, because of the lack of sufficient evidence presented by the state at trial, this Court should hold the trial court erred by denying's Appellant's motion for a directed verdict and direct a verdict of acquittal in Appellant's favor.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court direct a verdict of acquittal in her favor.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of November, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LONDON A. KELLEY,

APPELLANT

APPELLATE CASE NO. 2014-002412

PETITION TO BE RELIEVED AS COUNSEL

Counsel for London A. Kelley states:

1. She is an Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.

2. She has reviewed the record of Appellant's trial before the Honorable George C. James, Jr. that was held on October 27-31, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She 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, she asks the Court to relieve her as counsel for London A. Kelley.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of November, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPELLATE CASE NO. 2014-002412

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;
(2) Entire Trial Transcript dated October 27-31, 2014;
(3) Court's Exhibit No. 1 (Defendant's Requested Voir Dire);
(4) Court's Exhibit No. 3 (Jury Note);
(5) Court's Exhibit No. 4 (Jury Note);
(6) Court's Exhibit No. 5 (Jury Note);
(7) Court's Exhibit No. 7 (Jury Note);
(8) Court's Exhibit No. 8 (Jury Note);
(9) State's Exhibit No. 11 (Statement of Tiffany Witherspoon);
(10) State's Exhibit No. 32 (Photograph);
(11) State's Exhibit No. 49 (Statement of Edward Brown);
(12) State's Exhibit No. 51 (Statement of Shaniaqua Oaks);
(13) State's Exhibit No. 52 (Statement of Suzie Oaks Thomas).

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

November 4th, 2015

Lara M. Caudy

Lara M. Caudy
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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."

November 4, 2015

Lara M. Caudy

Lara M. Caudy
Appellate Defender

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STATE OF SOUTH CAROLINA
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APPELLATE CASE NO. 2014-002412

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 that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served upon London A. Kelley, #362015, at Graham Correctional Institution, 4450 Broad River Road, Columbia, SC 29210, this 4th day of November, 2015.

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of November, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.