STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED
[illegible] 2015
SC Court of Appeals

Appeal from Darlington County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANNON JAISEL BRYANT, JR.,

APPELLANT

APPELLATE CASE NO. 2014-001693

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

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 8

PETITION TO BE RELIEVED AS COUNSEL 9

TABLE OF AUTHORITIES

Cases

Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994) 7

Jackson v. Virginia, 443 U.S. 307, 99 S.Ct 2781 (1979) 6

State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976) 7

State v. Edwards, 298 S.C. 272, 379 S.E.2d 888 (1989) 6

State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955) 6

State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974) 7

State v. Totherow, 263 S.C. 275, 210 S.E.2d 228 (1974) 7

State v. Turner, 117 S.C. 470, 109 S.E. 119 (1921) 7

United States v. Ortiz, 445 F.2d 1100 (10th Cir 1971) 7

United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984) 7

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying defense counsel's renewed motion for a directed verdict on the charges of murder and possession of a weapon when the State failed to present any substantial evidence beyond a reasonable doubt that appellant committed the acts?

STATEMENT OF THE CASE

Appellant was convicted of murder and possession of a weapon after a jury trial held before the Honorable Michael G. Nettles on July 28 – 31, 2014, in Darlington County. Respective sentences of forty (40) years and five (5) years were imposed. Rick Jones, Esquire and Paul Neely, Esquire represented him. John Holt, Esquire and Patti Parker, Esquire were the assistant solicitors.

This appeal follows.

ARGUMENT

The trial court erred in denying defense counsel's renewal motion for a directed verdict to the charges of murder and possession of a weapon because the State failed to present any substantial evidence beyond a reasonable doubt that appellant committed the acts.

On June 8, 2012, Officer Fortin was dispatched around 4:40 a.m. to 305 South 8th Street in Hartsville. He found the victim's body on a small porch or stoop. Appellant was standing over her body and told the police that he just found her there. He said he was coming back from a party at Hartwood Village and saw two people running and heard a girl scream. (Tr. p. 79, l. 22 – p. 83, l. 24). A forensic pathologist testified that the victim had two stab wounds, one of which was fatal. (Tr. p. 282, ls. 21-25). A forensic toxicologist testified that the victim had a blood alcohol level above 0.30 and she had THC in her system. (Tr. p. 314, l. 2 – p. 315, l. 15).

After sentencing, defense counsel renewed his motion for a directed verdict with the following comments:

> I honestly don't believe that Solicitor Holt and the State barely made it past directed verdict the first time. I think they had barely more than a scintilla of evidence, let alone enough to meet the burden of, beyond a reasonable doubt. You gave a mere presence charge and Brannon Bryant was merely at the scene. The DNA wasn't visible to the naked eye The testimony was from both Investigator Anderson and Investigator Cusack, that the blood stain on the back of that shirt was not visible to them when he was in the interrogation room. It wasn't until a black light was used by a

SLED agent that her DNA was found on the back of his shirt. There's three that were presented by the State. None of them had his DNA or her DNA on them. I believe Investigator Anderson testified that Brannon Bryant was wearing white tennis shoes and white socks on the night, on the night the incident occurred and there was no blood found on them.

Your Honor, I think there's plenty of room for reasonable doubt in this case, and so at this time, we would renew our motion for a directed verdict. (Tr. p. 556, l. 1 – p. 557, l. 19).

The trial court denied the motion. (Tr. p. 558, ls. 22-24.) 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 form 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).

The evidence in this case only raised a suspicion of guilt.

CONCLUSION

A directed verdict should be granted in appellant's favor.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of February, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

FEB 0 2 2015

SC Court of Appeals

Appeal from Darlington County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANNON JAISEL BRYANT,

APPELLANT

APPELLATE CASE NO. 2014-001693

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brannon Jaisel Bryant states:

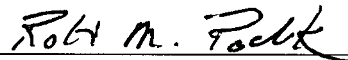
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Michael G. Nettles, which was held on July 31, 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 Brannon Jaisel Bryant.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of February, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

FEB 0 2 2015

SC Court of Appeals

Appeal from Darlington County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANNON JAISEL BRYANT,

APPELLANT

APPELLATE CASE NO. 2014-001693

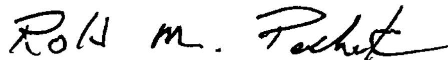
DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) True–billed indictment(s);
(2) Transcript

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

February 2, 2015



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

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 2, 2015

Robert M. Pachak
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
FEB 02 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
FEB 02 2015
SC Court of Appeals

Appeal from Darlington County
Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANNON JAISEL BRYANT,

APPELLANT

APPELLATE CASE NO. 2014-001693

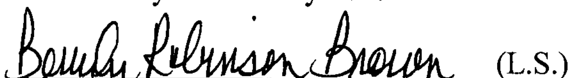
CERTIFICATE OF SERVICE

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 Donald J. Zelenka, 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 Brannon Jaisel Bryant, #282842 at Lee Correctional Institution, this 2nd day of February, 2015.

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of February 2015

 (L.S.)

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