

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

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JUL 09 2015

THE STATE,

SC Court of Appeals

RESPONDENT,

V.

RICHARD TODD CULBERSON,

APPELLANT

APPELLATE CASE NO. 2014-001390

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred by failing to direct a verdict of acquittal on the charge of attempted armed robbery, where there was no direct or substantial circumstantial evidence introduced at trial that Appellant had the intent to steal the victim's purse and permanently deprive her of the purse, where the purse was found next to the victim and nothing was missing from it?

ARGUMENT

On March 29, 2013, a Spartanburg County Grand Jury indicted Appellant for assault and battery, first degree, kidnapping, attempted armed robbery, and assault with intent to commit criminal sexual conduct, first degree. R. 442 – R. 449. Appellant's case proceeded to a jury trial before the Honorable Roger L. Couch and a jury on June 16, 2014. R. 1. Matthew Shealy represented Appellant. R. 1. Barry Barnette represented the State. R. 1.

After a three-day trial, Appellant was found guilty on all four indictments. R. 138. Judge Couch sentenced Appellant to ten years imprisonment for the assault and battery, first degree, and twenty years imprisonment for the kidnapping, attempted armed robbery, and assault with intent to commit criminal sexual conduct, first degree, charges. R. 146. All four sentences were to run concurrent. R. 146.

Appellant appealed his convictions and sentences. This brief follows.

STATEMENT OF FACTS

The trial judge erred by failing to direct a verdict of acquittal on the charge of attempted armed robbery, where there was no direct or substantial circumstantial evidence introduced at trial that Appellant had the intent to steal the victim's purse and permanently deprive her of the purse, where the purse was found next to the victim and nothing was missing from it.

The Charge of Attempted Armed Robbery

To prove attempted armed robbery, the State must show that a person “had the specific intent to commit armed robbery.” State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007); State v. Nesbitt, 346 S.C. 226, 550 S.E.2d 864 (Ct. App. 2001) (“Attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime.”). There must be “acts toward the commission of robbery, and with such intent, but falling short of actual perpetration of the completed offense.” State v. Hiott, 276 S.C. 72, 80, 276 S.E.2d 163, 167 (1981).

Robbery is “the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another in his presence by violence or by putting such person in fear.” State v. Bland, 318 S.C. 315, 317, 457 S.E.2d 611, 612 (1995). Armed robbery is “when a person commits a robbery while armed with a deadly weapon.” S.C. Code Ann. § 16-11-330 (1976). See Broome v. State, 351 S.C. 219, 221, 569 S.E.2d 336, 337 (2002) (“[T]he intent to permanently deprive is . . . implicit in the definition of armed robbery.”).

Relevant Facts

On January 24, 2013 at 7:05 am, Donna Pruitt arrived at the Carolina OB-GYN in Spartanburg, South Carolina, where she worked as a nurse manager. R. 142, lines 9 – 16. After Pruitt parked her car, she walked to the door to go into the building. R. 146, lines 11 – 12. As she opened the door, she “felt a tug on [her] coat, and [she] turned around.” R. 146, line 14. Pruitt stated as she turned around, a man stabbed her on the right shoulder with a screwdriver. R. 146, lines 15 – 17. The man then touched her breast and pushed her against the glass partition. R. 146, lines 19 – 23. Pruitt slid down the glass onto the ground. R. 147, lines 1 – 3.

According to Pruitt, while she was on the ground, the man tried to pull her pants down. R. 147, lines 3 – 4. She started kicking him, but he stabbed her again on the right side under her rib. R. 147, lines 7 – 9. The last thing Pruitt remembered was the man running away into a field. Her pocketbook was found on the ground across from where she was lying. R. 147, line 23 – R. 148, line 1. Pruitt admitted that her attacker never demanded her purse or any of her belongings. R. 175, lines 2 – 21. In fact, nothing was missing from her purse that was found across from her. R. 175, lines 2 – 21.

An elderly man and woman came over to help Pruitt and called 9-1-1. R. 147, lines 12 – 13. Officers from the Spartanburg County Sheriff’s Department responded to the scene and dispatched to other officers on patrol the description Pruitt gave of her attacker. R. 195, lines 1 – 8. She described the man who attacked her as “a white male” around “six feet” tall. R. 147, line 3. He had “bad teeth” and a “scruffy face with . . . beard and a mustache, and his hair was kind of longish.” R. 147, lines 5 – 7. Pruitt also told officers that he had on a “gray hoodie.” R. 147, lines 7 – 8. She stated that she thought the man had on another

coat as well. R. 147, lines 13 – 15. However, Pruitt never gave a written statement. R. 175, line 23 – R. 177, line 4.

Officers with the Spartanburg Police Department encountered Appellant at the QT Convenience Store in Spartanburg, South Carolina, hours after Pruitt's attack. R. 195, lines 9 – 14. However, the city officers "didn't quite put it together and let him leave" after checking his identification. R. 195, lines 14 – 17. After receiving information from city police that a man fitting the description of the suspect was at the QT, county officers responded to the convenience store. R. 196, lines 12 – 20. After obtaining Appellant's name and address, a six-person photographic lineup with Appellant's picture was created. R. 196, lines 12 – 20. Pruitt was shown the lineup and picked out Appellant as the man who attacked her. R. 156- 157.

Motion for Directed Verdict of Acquittal

After the State presented its case, defense counsel moved for a directed verdict of acquittal on the charge of attempted armed robbery. R. 285, line 19. Counsel argued that the State failed to establish the intent to commit an armed robbery. R. 286, lines 4 – 6. Specifically, argued counsel, there was no evidence presented that "there was a demand for goods or money" and Pruitt stated she "dropped her purse" during the attack. R. 286, lines 7 – 12. Further, there was no claim that her attacker "tried to take [the purse] away with him" and that the "tug" was on her shirt, not the purse. R. 286, lines 12 – 13; R. 287, lines 10 – 11.

The solicitor argued that Pruitt's attacker used a screwdriver and that her purse was removed as she was fighting back. R. 286, line 22 – R. 287, line 1. He argued that the

attempted robbery ended when Pruitt “resisted.” R. 287, lines 2 – 3. The trial judge denied defense counsel’s motion. R. 288, line 17.

Discussion

The trial judge erred by failing to direct a verdict of acquittal on the charge of attempted armed robbery. There was no direct or substantial circumstantial evidence introduced at trial that Appellant had the intent to steal Donna Pruitt’s purse, which was found on the ground across from where she was assaulted.

A criminal defendant is entitled to a directed verdict when the State fails to present evidence of the offense charged. State v. McCombs, 368 S.C. 489, 493, 629 S.E.2d 361, 362-63 (2006); State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). When reviewing the trial judge’s denial of a directed verdict, an appellate court must review the evidence presented at trial in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. Buckmon, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001). An appellate court is concerned with the existence or non-existence of evidence. State v. Green, 327 S.C. 581, 491 S.E.2d 263 (Ct. App. 1997).

Where the State relies “exclusively” on circumstantial evidence, such evidence must be “substantial” before the judge submits the case to a jury. State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2001). When the evidence merely raises a suspicion that the defendant is guilty, the trial judge should grant a directed verdict motion. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001).

Here, Pruitt admitted that her attacker never demanded her purse or her belongings. She stated that her attacker stabbed her with a screwdriver and grabbed her breast. She said

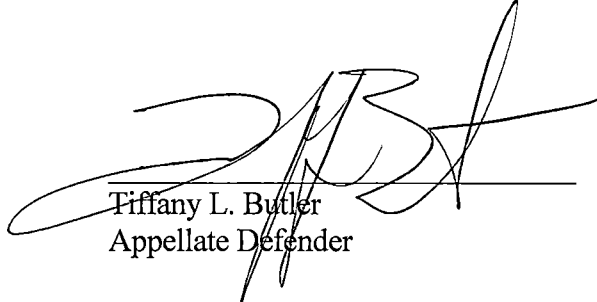
nothing about her attacker grabbing her purse or trying to take anything else from her person. In fact, her purse was lying on the floor across from where she was attacked. Pruitt never informed the police that anything was taken from her purse or her person. Rather, she admitted that the purse fell off during the struggle with her attacker.

There is absolutely no evidence of any intent to rob Pruitt of her purse or any other possessions she may have had. The specific intent to commit armed robbery is a key element of attempted armed robbery. State v. Nesbitt, 346 S.C. 226, 550 S.E.2d 864 (Ct. App. 2001) (“A person is guilty of attempted armed robbery if the person has the specific intent to commit armed robbery.”). Because there was no evidence introduced at trial that Appellant had the specific intent to rob Pruitt, the trial judge should have granted a directed verdict of acquittal on that charge.

CONCLUSION

For the grounds argued, Appellant Richard Culberson respectfully requests this Court to direct a verdict of acquittal on the charge of attempted armed robbery.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to be 'T. Butler', is written over a horizontal line.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of July, 2015.

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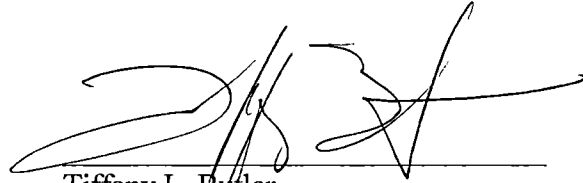
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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

July 9, 2015

A handwritten signature in black ink, appearing to read 'Tiffany L. Butler', written over a horizontal line.

Tiffany L. Butler
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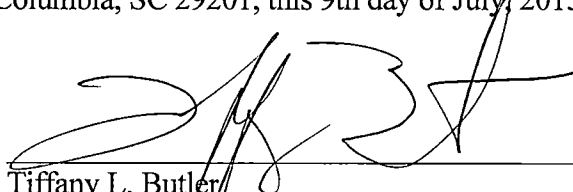
V.

RICHARD TODD CULBERSON,

APPELLANT

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Susannah R. Cole, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of July, 2015.



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of July, 2015.



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