

Statement of Issue on Appeal

Whether the Court erred by denying Appellants
motion For directed verdict

And

Whether the Court erred by allowing the Appellants
mail-man to remain on the Jury

Legal References

South Carolina Rules of Court Rule 19
South Carolina Criminal law digest 51(5) & 328 (1980)
US Const. Amend 6 & 14
STATE v JOHNSON 512 SE2d 795
STATE v PEARSON 764 SE2d 706

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JUN 29 2015
SC Court of Appeals

STATEMENT OF CASE

A Dorchester County Grand Jury indicted Appellant on May 5 2014 term of General Session for two counts First degree criminal sexual conduct with minor and at July 7 2014 for an additional count of First degree Criminal sexual conduct. The case was called to order and heard by Judge Maite Murphy July 14-16 2014 where the Appellant was found guilty by a jury and sentenced to life in prison on all three counts.

The Court erred by not granting the Appellant's motion for directed verdict R 393 L 34

Upon the close of evidence at the trial Appellant's counsel motioned for Directed Verdict R 393 L 34 Initially he argued for indictment 2013-GS-18-1410 but made reference to the others but was seemingly cut short R 393 L 21, 22

While the photo evidence alleged to have been recovered from Appellant's phone. Shows the crime taking place It does not prove when nor whom committed it. The victim in this crime minor did not testify R 193 L 7 - R 194 L 14. The only connection between the Appellant and the individual in the image was a tie-dye shirt worn by the person in the image, which only part can be seen, And a photo of the Appellant wearing a "similar shirt" According to officers R 386 L 20-25

Even if it was the same shirt it does not mean that the Appellant was wearing it It's only an assumption "it's his shirt, it has to be him!" is a suspicion of guilt not proof. In accordance with Rule 19 of South Carolina Rules of Court "... The Trial Judge should grant a directed verdict motion when the evidence merely raises a suspicion that the Accused is guilty. The State has the burden of Proving beyond any reasonable doubt the identity of the defendant as the Person who committed the crime charged ...

Suspicion however strong does not suffice to sustain a Conviction. STATE v Pearson 764 SE2d 706

Inditement 2013-GS-18-1409 is a charge for criminal sexual conduct first claiming minor 1 to be the victim. Minor 1 did not testify and the state presented no evidence to support this charge.

According to Rule 19 of South Carolina Rules of Court "A defendant is entitled to a Directed Verdict when the STATE fails to produce evidence of the offence charged."

Inditement 2013-GS-18-1408

Is a charge for Criminal sexual conduct first involving minor 2
Dr. Bush the medical expert as well as the Doctor who performed
physical exams on minor 2 within hours of the Alleged
Attack. Her Findings of No Trauma, and nothing concerning
in regards to physical trauma, marks, or bruises R250 L7-8
and R260 L10-16 That her exam does not stand alone
in forming her opinion and is based on Patient history
R267 L6-13 And that the same physical Findings
on a patient who had played at the beach (as they had R173 L6-9)
And who had the same physical symptoms would cause no
Alarm R267 L18-R268 L15

Along with DNA Expert Amanda Webb Testifying that From
swabs taken From minor 2 within hours of the Alleged Attack
No DNA Foreign to minor 2 was Found R342 L6-10 And
that YSTR DNA is not unique to an individual R342 L19-22
That within the time of the Alleged Attack and these swabs
being taken she would not expect to see degradation of DNA
R350 L23-R351 L21 And that secondary transfer of
DNA is possible R349 L4-13

Finally with minor 2 Failure to identify the Appellant at the
trial and her inability to give a proper and accurate physical
description at the trial or in the Forensic interview
R173 L19-23 and R190 L20-24 Minor 2 also claimed her
grand mom (Audrey Hagenow) came into the room during the
Attack but the Appellant left the room R169 L6-11

She also said that she was not crying or upset R187 L8-12 and L17-21 at that time

Audrey Hagenow testimony corroborated that she came into the room and saw both children on the couch and they seemed fine R202 L13-23.

"If the Prosecution fails to complain at a time, place and to a person that complaint would naturally be made to, Calcutt v. Calcutt suspicion on testimony South Carolina law digest 51 (5)

In her testimony and forensic interview minor 2 claimed she was chased through the house forced to the couch her clothing forcibly removed, with grand mom and her Aunt in the same small house. Grand mom came into the room but somehow the Appellant snuck past her and she said nothing did not go to her grand mom. There were no marks at all on her she did not bleed. Her only physical complaint was it hurt when she peed R187 L3-7

The only DNA found was trace amounts not enough for a full profile. YSTR is not unique to an individual. They cannot say this is the Appellant's DNA and it got there during the alleged attack and not from secondary transfer from using the same toilet or from some other contact through normal cohabitation.

"The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the crime State v. Pearson 764 SE2d 706

The State must present Credible evidence establishing each element of the crime charged SC Digest 328 (1980)

Statement is not sufficient evidence of intrusion
Physical exams show no sign of Sexual battery

State v Johnson 512 SE2d 795

In a motion for Directed verdict, the trial court is concerned with the existence of evidence rather than its weight and evidence is viewed in the light most favorable to the State to determine whether there is any evidence, either direct or circumstantial, which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced Rule 19 Rules of Court

While evidence was presented on this charge, The State did not prove the sexual battery from the evidence, guilt of the accused could not be fairly or logically deduced and a Directed Verdict should have been given

The Appellant respectfully request that based on these foregoing arguments, the Court reverse his Conviction and Sentence.

The Appellant also wishes to bring to the attention of the Court. An issue with Juror #220 Timothy Wright R293 L5- R294 L12 The Juror came forward during the trial and said that he was the mail man for the defendant

That he had a Preexisting relationship with him.
The 6th & 14th Constitutional Amendments guarantee a person
to a Fair non bias trial from a Jury of Peers. The
Appellants contention is that the State allowing some
one who knew him and the victims and had such potential
contact and influence by Friends, Family and neighbours
of the victim, that it's just unfair for him to have been
Allowed to remain on the Jury

Based on this Forgoing Argument the Appellant
request the Court reverse his conviction and sentence
and remand for a new trial

Dear Ms Kitchings

Please find enclosed my Pro Se brief in
reference to Appellate Case No 2014-001534

Sincerely
Jonathan
Brown

Jonathan M Brown N 360 660
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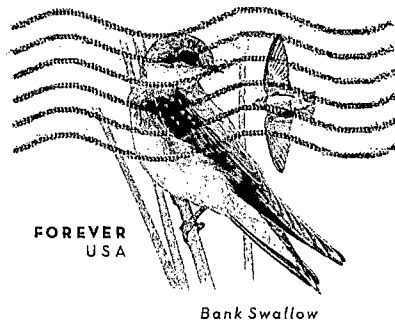
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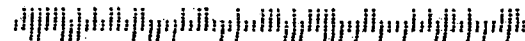
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