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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FURMAN EUGENE TAYLOR, JR.

APPELLANT

APPELLATE CASE NO. 2015-000066

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying the motion for a directed verdict to the charges of burglary in the first degree and petit larceny when the State failed to present any substantial evidence beyond a reasonable doubt that appellant participated in the crimes?

STATEMENT OF THE CASE

Appellant was convicted of burglary in the first degree and petit larceny after a jury trial held before the Honorable D. Garrison Hill on January 5-7, 2015, in Greenville County. Appellant was sentenced to life imprisonment for burglary and to 30 days for petit larceny. Alex Kornfield, Esq. was trial counsel. Matthew L. Wallace, Esq. was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in denying the motion for a directed verdict to the charges of burglary in the first degree and petit larceny because the State failed to present any substantial evidence beyond a reasonable doubt that appellant participated in the crimes.

Appellant was accused of committing a burglary and petit larceny with a co-defendant, Amanda Caldwell, at a residence off White House Road in Greenville County on May 19, 2012. Renna Taylor who lived at the residence testified that she was out of town visiting friends. She said there was a horseshoe driveway in front of the house. There was a main front door and a side door. She called T.R. Perry to come pick up the trash while she was gone. When she got to North Carolina, T.R. called her and asked if she knew anybody with a blue and white van. She said, no. He asked her if anybody was supposed to be at her house. She said, no. He said a man and a woman were coming out of her door and the man had a bag in his hand. She called the sheriff's office and headed back home. When she got home T.R. and his brother were there along with an officer. She noticed a storm door on the small back porch was pried open. She then saw that the door that leads into the kitchen was pried open and split and glass was broken out. (Tr. p. 62, l. 4- p. 67, l. 10)

T.R. Perry testified that a male and female came running out of the house but he did not get a good look at them. (Tr. p. 89, l. 7- p. 91, l. 1) He did not get a license plate number for the van. (Tr. 95, l. 16-18) The police showed him photo line-ups but he could not pick out either a male or female. (Tr. p. 96, l. 5-10)

David Perry, T.R.'s brother, testified that he also saw a male and female exit the house but he, too, did not get a good look at them. (Tr. p. 124, l. 2- p. 125, l. 18)

Officer Kretschman testified that he was in forensics. He went to the house and dusted for prints but was not able to remove any. (Tr. p. 134, l. 15- p. 135, l. 18)

After the State presented all of its evidence, defense counsel moved for a directed verdict to the charges because the State failed to prove beyond a reasonable doubt the identity of the male that was seen leaving the house. The trial court denied the motion. (Tr. p. 256, l. 10- p. 257, l. 20) 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 from 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).

In this case, neither T.R. Perry nor David Perry could identify appellant as the male leaving the house. The only person to implicate appellant was Amanda Caldwell who was the female at the scene by her own admission. Her testimony implicating appellant was not credible.

CONCLUSION

A directed verdict should be granted to the charges of first degree burglary and petit larceny.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of July, 2015.

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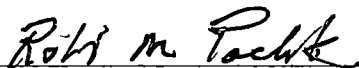
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Furman Eugene Taylor Jr. 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 D. Garrison Hill, which was held on January 5-7, 2015, 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 Furman Eugene Taylor Jr..

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of July, 2015.

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**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial Transcript
- (2) Indictment

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

July 1st, 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."

July 1, 2015

Robert M. Pachak

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Appellate Defender

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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 a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Furman Eugene Taylor, Jr., #198161 at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 1st day of July, 2015.


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of July, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.