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STATE OF SOUTH CAROLINA **RECEIVED**

IN THE COURT OF APPEALS

JAN 20 2016

Appeal from Lancaster County

SC Court of Appeals

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

COY LAMAR KNIGHT JR.,

APPELLANT

APPELLATE CASE NO. 2015-002183

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

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying defense counsel's motion for a directed verdict to the arson charge when the evidence was insufficient beyond a reasonable doubt to prove the identity of the person starting the fire?

STATEMENT OF THE CASE

Appellant was convicted of third degree arson after a jury trial held in absentia on October 6-7, 2015, before the Honorable Michael Nettles in Lancaster County. Appellant was sentenced to fifteen (15) years suspended upon service of ten (10) years with five (5) years probation thereafter. Brandon Steen, Esquire was trial counsel. Luke Knight, Esquire was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in denying defense counsel's motion for a directed verdict to the arson charge because the evidence was insufficient beyond a reasonable doubt to prove the identity of the person starting the fire.

Appellant was tried for setting the Old Mill Grocery in Lancaster on fire on October 22, 2014. After the close of the State's case, defense counsel moved for a directed verdict because the State did not produce any direct evidence to show that the individual on the surveillance tape of the incident was appellant. (R. p.153, lines 19-25). The following discussion appeared between the court and the assistant solicitor:

MR. KNIGHT: Yes, Your Honor. I believe given the light most favorable to the State in the directed verdict motion we produced enough circumstantial evidence to get us to that point to deny the motion for a directed verdict. We have put up surveillance video from the night in question showing what appears to be defendant putting some sort of accelerant on the side of the building - -

THE COURT: You would certainly concede that the video in and of itself does not affirmatively identify him as anybody, you can't really tell what race he is.

MR. KNIGHT: That's correct, Your Honor. But we would assert that given the proximity of the location of the defendant's house, the fact that the same person on the video - - it looks like the same clothing on the 10/21 video which he was identified on, and the 20 or 30 minutes before the fire in which he's walking the dog, it looks like the same clothing of the defendant, in addition to the search warrants that were performed on the defendant's residence within walking distance to the store, that the clothing is similar to what the defendant was wearing in the video. We would say given all of that and the fact that two people identified the defendant in all three

videos, I think Mr. Johnson said he had the same walk, the same kind of way about him and that - -

THE COURT: Of course, He said he couldn't distinguish between that or his son or father - - and son also?

(R. p. 154, line 2 – p. 155, line 2).

Ultimately, the trial court denied the directed verdict motion. (R. p.155, lines 3-23). 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,

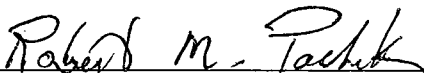
therefore, “where evidence merely raises a suspicion of guilt, or is such to permit the jury to merely conjecture or to speculate as to the accused’s guilt.” State v. Brown, 267 S.C. 311, 227 S.E.2d 674, 677 (1976), citing State v. Matarazzo, 262 S.C. 662, 207 S.E.2d 93, cert. denied, 420 U.S. 945 (1974). “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 State v. Lane, 406 S.C. 118, 749 S.E.2d 165 (Ct. App. 2013) the court wrote: “The State has the burden of proving beyond a reasonable doubt the identity of the defendant as the person who committed the charged crime or crimes.” 406 S.C. at 121, 749 S.E.2d at 167. In this case the State failed to prove the identity of the person who set the Old Mill Grocery on fire.

CONCLUSION

A directed verdict should be granted to the charge of arson.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of January, 2016.

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IN THE COURT OF APPEALS

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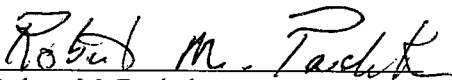
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Coy Lamar Knight 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 Michael G. Nettles, which was held on October 9, 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 Coy Lamar Knight Jr.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of January, 2016.

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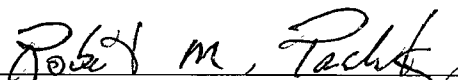
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment; Sentence Sheet
- (2) Transcript of October 6-7, 2015
- (3) Transcript of October 9, 2015

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

January 20th, 2016



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."

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January 20, 2016

JAN 20 2016

Robert M. Pachak

SC Court of Appeals

Robert M. Pachak
Appellate Defender

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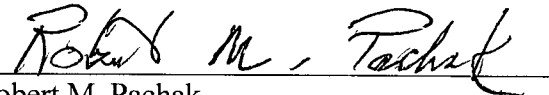
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CERTIFICATE OF SERVICE

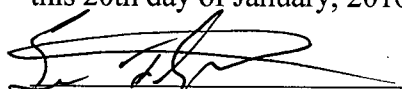
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Coy Lamar Knight, Jr., #162287 at Ridgeland Correctional Institution, this 20th day of January, 2016.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of January, 2016.



(L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.

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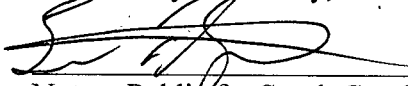
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Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 20th day of January, 2016.


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