

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Calhoun County

Maite Murphy, Circuit Court Judge

RECEIVED

MAR 28 2016

SC Court of Appeals

The State of South Carolina, Respondent

v.

Bryant McKnight, Respondent

APPELLATE CASE NO. 2015-000569

INITIAL ANDERS BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF THE CASE.....	3
STATEMENT OF ISSUE ON APPEAL.....	4
ARGUMENT.....	5
CONCLUSION.....	14
PETITION TO BE RELIEVED.....	15

TABLE OF AUTHORITIES

Cases

<u>State v. Arnold</u> , 351 S.C. 302, 569 S.E.2d 379 (Ct. App. 2002).....	6,7,8,12
<u>State v. Ballington</u> , 346 S.C. 262, 551 S.E.2d 280 (Ct. App. 2001).....	6
<u>State v. Bostic</u> , 392 S.C. 134, 708 S.E.2d 774 (2011).....	6,8,9,12
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004).....	6
<u>State v. Irvin</u> , 270 S.C. 539, 243 S.E.2d 195 (1978).....	6
<u>State v. Martin</u> , 403 S.C. 19, 742 S.E.2d 42 (Ct. App. 2013).....	6
<u>State v. Mitchell</u> , 341 S.C. 406, 535 S.E.2d 126 (2000).....	6,7
<u>State v. Odems</u> , 385 S.C. 399, 684 S.E.2d 573 (Ct. App. 2009).....	6
<u>State v. Odems</u> , 395 S.C. 582, 720 S.E.2d 48 (2012).....	8,9,12,13

STATEMENT OF THE CASE

Appellant, Bryant McKnight, was indicted on January 5, 2015 for the murder and kidnapping of Kymarra Randolph.

Appellant's case was tried before the Honorable Maite Murphy during the March 2-6, 2015 term of court. Appellant was tried with co-defendant, Jerry McKnight, and both were convicted by a jury on all counts, and sentenced to life imprisonment.

There were no objections to the jury charges. Tr. 825, ll.1-4. There were no pre-trial or post-trial motions. Appellant did not testify. Tr. 635, ll. 11-12.

STATEMENT OF ISSUE ON APPEAL

- I. DID THE COURT ERR IN DENYING THE DIRECTED VERDICT MOTION OF DEFENDANT WHEN THE CASE WAS BASED ALMOST ENTIRELY ON CIRCUMSTANTIAL EVIDENCE AND THE PROSECUTION DID NOT PRESENT DIRECT OR SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO PROVE GUILT BEYOND A REASONABLE DOUBT, BUT RATHER ONLY RAISED A MERE SUSPICION OF DEFENDANT'S GUILT?

ARGUMENT

- I. THE COURT ERRED IN DENYING THE DIRECTED VERDICT MOTION OF DEFENDANT BECAUSE THE PROSECUTION'S CASE WAS BASED ALMOST ENTIRELY ON CIRCUMSTANTIAL EVIDENCE AND THE PROSECUTION DID NOT PRESENT DIRECT OR SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE SUFFICIENT TO PROVE GUILT BEYOND A REASONABLE DOUBT, BUT RATHER ONLY RAISED A MERE SUSPICION OF DEFENDANT'S GUILT.

RELEVANT FACTS

On February 2, 2014, Defendant's mother's home was invaded and robbed. Tr. 686-687. Subsequently, on February 13, 2014, Defendant met with his girlfriend¹, Kymarra Randolph, the victim, to hang out. Tr. 156, ll. 4-13. The victim was last seen or heard from on or about 6:00 p.m. on the afternoon of February 13, 2014. Tr. 89, ll. 3-15. After a missing person search by her mother and subsequent police investigation, witnesses gave information and statements regarding the victim and the location of her body.

As a result of this information, Defendant and his brother, co-defendant, Jerry McKnight, were arrested for the Murder and Kidnapping of the victim.² Defendant was subsequently indicted on January 5, 2015. Defendant pled Not Guilty. The case was tried during the week of March 2-6, 2015 before the Honorable Maite Murphy. Defendant made motions for a Directed Verdict at the conclusion of the State's case and the trial. Defendant was convicted on both charges and sentenced to life imprisonment. This appeal followed.

¹ Victim is alleged to be Defendant's girlfriend at the time. Or, at least they were "knowing each other".

² Jerry McKnight was also a Defendant. However, for purposes of this brief, Defendant shall mean Bryant McKnight, Appellant. Jerry McKnight was charged with Murder, Kidnapping, and Possession of a Weapon by a Felon.

DISCUSSION OF LAW

When the State relies exclusively on circumstantial evidence and a motion for directed verdict is made, the circuit court is concerned with the existence or non-existence of evidence, not with the weight. See State v. Arnold, 351 S.C. 302, 569 S.E.2d 379 (Ct. App. 2002). On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the State. See State v. Martin, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000). "A case should be submitted to the jury when the evidence is circumstantial 'if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced.'" State v. Bostic, 392 S.C. 134, 139, 708 S.E.2d 774, 776 (2011); see State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000). A trial court must submit the case to the jury if any direct or substantial circumstantial evidence has been presented that reasonably tends to prove the Defendant's guilt or from which his guilt may be fairly and logically deduced. State v. Odems, 385 S.C. 399, 684 S.E.2d 573 (Ct. App. 2009); State v. Ballington, 346 S.C. 262, 271-72, 551 S.E.2d 280, 285 (Ct. App. 2001). However, the trial court should grant a directed verdict motion when the evidence presented *merely raises a suspicion of guilt*. State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004) (emphasis added). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not in error." State v. Irvin, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978).

In State v. Arnold, the court was faced with a conviction based on evidence that was entirely circumstantial. There, the victim never returned from his dental appointment, and his body was eventually found on the side of an access road in Colleton County. Arnold, 351 S.C.

302 at 304. There was no eye-witness to the murder. When the car was located, police found a plastic tab from a coffee cup lid. The defendant's fingerprints were found on the lid. Id. The defendant had been in a sexual relationship with the victim. Id. at 305.

The Court reviewed the case under the standard that "the circuit court should not refuse to grant directed verdict motion when the evidence merely raises a suspicion that the accused is guilty. The trial judge is required to submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may fairly and logically be deduced." Id. See State v. Mitchell, 341 S.C. 406, 535 S.E.2d 126 (2000). Because the case was entirely circumstantial, the court was concerned with the existence or non-existence of evidence. Arnold, 351 S.C. at 304. The court examined the evidence in the light most favorable to the State. Id. at 305. The court found that the defendant knew the victim and had access to him. The court also recognized that there was evidence that the defendant possessed a gun that *could* have been used to kill the victim. Finally, the court found that the defendant was in the area on the day of the homicide and that there was a reasonable basis that he drove the car to Tennessee. Id. at 307 (emphasis added). Despite the circumstantial evidence, the court found that there was no evidence of where the death occurred. There was no evidence of bullets in the car. Further, the only evidence the victim had been shot were the bullet wounds on the victim. Id. at 306.

The court held that "[b]y bringing the case, the State assumes the burden of proving that the accused was at the scene of the crime when it happened, and that he committed the criminal act." Id. at 308. In reversing Arnold's conviction, the court held that "the evidence presented by the State does not rise to the level of substantial evidence which reasonably

tended to prove Arnold's guilt or from which his guilt may fairly and logically be deduced." Id. at 309.

In 2011, the South Carolina Supreme Court reversed another conviction based solely on circumstantial evidence. In State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011), the victim was found dead in her home after a fire. Bostick, 392 S.C. at 136. The defendant was her neighbor, and after her death some of her belongings were found in a burn barrel at the defendant's house. Blood was found on the defendant's jeans. However, that blood could not and was not matched to the victim. Finally, there was trace pattern on the defendant's clothes and shoes of the accelerant used to start the fire. Id. Witnesses for the defendant testified that the victim's son, Rudy, had argued with her that same day. Id. at 139.

As in Arnold, the court held that even viewing the evidence in the light most favorable to the State, no direct evidence linked Bostick to the crime scene or the items found in the burn pile. Id. at 141. Moreover, there was no evidence that established that Bostick had control over the burn pile. Id. The evidence against the defendant was purely circumstantial, and "raised, at most, a mere suspicion that Bostick committed this crime." Id. Thus, because there was not substantial evidence reasonably tending to prove guilt, the court reversed the conviction.

Likewise, in State v. Odems, 395 S.C. 582, 720 S.E.2d 48 (2012), the South Carolina Supreme Court reversed the defendant's conviction because there was a lack of substantial circumstantial evidence. In Odems, the defendant was charged with first degree burglary, grand larceny, criminal conspiracy, and malicious injury. Odems, 395 S.C. at 584. Police pulled over a brown Cadillac in which defendant was a passenger. Defendant and another passenger

fled the scene. Shortly thereafter, defendant was arrested at a neighboring house. Id. at 585. A subsequent search of the car revealed several items reported stolen from a house earlier. Id.

The court relied on previous cases, including Bostick, "in explaining the proof required in cases built wholly on circumstantial evidence." Id. at 586. The court noted, "[t]his court has repeatedly affirmed the principle that when the State fails to produce substantial circumstantial evidence that the defendant committed a particular crime, the defendant is entitled to a directed verdict. Id. The evidence demonstrated that defendant was found in the getaway car, fled from police, and asked a person to lie for him. Id. at 588. Further, the evidence showed that the only eyewitness only identified two men at the scene, none of the fingerprints at the scene matched defendant, and testimony elucidated that defendant had asked for a ride in the car, but not participated in the burglary. Id.

The court found that the "traditional circumstantial evidence" definition provides that "if the State relies on circumstantial evidence to prove its case, the jury may not convict the defendant unless:

Every circumstance relied upon the State be proven beyond a reasonable doubt; and ... all of the circumstances proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.

Id. at 590.

The court held that while "[p]etitioner's overall actions may appear suspicious ... mere suspicion is insufficient to support a guilty verdict." Id. Therefore, the court held that the directed verdict should have been granted, and reversed the defendant's conviction. Id. at 592.

In the instant case, the State presented almost solely circumstantial evidence that merely raised a suspicion of Bryant McKnight's guilt and did not prove him guilty beyond a

reasonable doubt. Therefore, the denial of the directed verdict motion and his conviction should be reversed.

With only one exception, no evidence submitted by the State proved that Defendant was present at the scene of the crime or had anything to do with the victim's murder and kidnapping.

With one exception, the State presented no direct evidence of the Defendant's involvement in the kidnapping and murder of the victim. The State only presented evidence of in the form of witnesses that testified that they saw Defendant with a gun similar to the one alleged to have been used in the crime, that a hoodie was found that was similar to the one worn by the Defendant, and witnesses who testified that the Defendant had admitted to being involved and being present at the crime scene.

Jamaal Pearce testified that he drove Defendant to pick up the victim. ROA ____, Tr. 156, ll. 1-18. He also testified that the defendant came to his house and told him "I had to smoke that girl." ROA ____, Tr. 161, l. 23. Pearce then testified that he saw Defendant with the gun used in the murder. ROA ____, Tr. 166, ll. 1-24. Finally, Pearce testified to recognizing the hoodie as the Defendant's and the one he was wearing on February 13, 2014. ROA ____, Tr. 168, ll. 1-11.

Next, the State presented the testimony of Stephon Green. Green was with Defendant when he found out that his mother's house had been robbed, and heard him say that he would kill anyone involved. ROA ____, Tr. 290, l. 4. Green further testified that the Defendant texted him, stating "[h]im and a girl was just chilling, and he was thinking about killing her." ROA ____, Tr. 293, ll. 17-18. Green testified that he had seen the Defendant with a

black and white revolver, and that the Defendant told him that was the gun used to kill the victim. ROA ___, Tr. 300, ll. 14-24. Green also testified that Defendant asked him to help dispose of the body. ROA ___, Tr. 302, ll. 1-4. Finally, Green stated that Defendant has the victim's phone with him in the car, "because somebody kept texting it, asking where she at and all that." ROA ___, Tr. 302, ll. 21-25, Tr. 303, ll. 1-2.

Derrick Sumter testified to the fact that the Defendant carried a .22 revolver after the February 2nd break-in. The gun was black with a white handle. Further, Sumter gave the gun to the Defendant. ROA ___, Tr. 332, ll. 20-25, Tr. 333, ll. 1-5. Sumter helped get rid of the bag Defendant gave him. As part of this, Sumter identified the Defendant's jacket/hoodie as one he had seen him wear before. ROA ___, Tr. 337, ll. 15-25, Tr. 338, ll. 1-9. Sumter was also the person who drove the co-defendant, Jerry McKnight, to the swamp to pick up victim's body. ROA ___, Tr. 341, ll. 1-25, Tr. 342, ll. 1-12. Sumter then drove Jerry McKnight to Four Holes Swamp and saw Jerry McKnight throw the victim's body over the bridge. ROA ___, Tr. 344, l. 25, Tr. 345, ll. 1-18.

The State also presented testimony of the Defendant's girlfriend, Sandra Hughes. Hughes identified the jacket/hoodie in evidence, Exhibit 18, as the Defendant's jacket. ROA ___, Tr. 393, ll. 23-25, Tr. 394, ll. 1-17.

The State further presented testimony from Jonathan McKnight, the Defendant's cousin. ROA ___, Tr. 215, ll. 4, 13-15. Jonathan testified that he picked up the Defendant and the victim, identified from State's Exhibit 9, after the Defendant called him and asked him for a ride. ROA ___, Tr. 218, ll. 5-8, 20-22. Jonathan drove the Defendant to his grandmother's house where they picked up the co-Defendant, Jerry McKnight, and a bag. ROA ___, Tr. 219, ll.

4, 19-21. On the way to what he believed to be Jerry McKnight's girlfriend's house, co-Defendant Jerry McKnight told Jonathan to stop the car. ROA ___, Tr. 222, ll. 4-5. Jonathan then testified that he witnessed the co-Defendant, Jerry McKnight, go to the back passenger side of the car, ask the victim to get out, and when she refused, pull her out and shoot her. ROA ___, Tr. 222, ll. 16-25, Tr. 223, ll. 1-4. He then saw the Defendant take the gun, reload, and "shoot a couple more times." ROA ___, Tr. 223, ll. 15-17. After he drove them back to the Pantry gas station, Jonathan witnessed the Defendant get out of the car with a black trash bag where he put the victim's belongings. ROA ___, Tr. 225, ll. 12-14, 19-20.

Thus, here, the State presented almost exclusively circumstantial evidence. Other than Jonathan McKnight, who gave 3 inconsistent statements, no one saw the Defendant at the scene of the crime or commit the act. The remaining evidence consisted of witnesses such as Jamal Pearce, Sandra Hughes, Derrick Sumter, and Stephon Green testifying that the Defendant owned a gun, allegedly sending a text saying he was thinking about killing a girl, and identifying a jacket in evidence as looking like the Defendant's jacket.

Other than Jonathan McKnight, no one can place the Defendant at the crime scene. No witness can place the Defendant with the gun at the time of the crime. None of the alleged text messages were saved or presented as evidence. Even the witnesses who believed State's Exhibit 18 to be the Defendant's jacket could not testify as to whether he wore it that night or whether he took it to the crime scene.

As in Arnold, Bostick, and Odems, the State's evidence here merely raises a suspicion of the Defendant's guilt, and that is insufficient evidence to send the case to the jury or for a conviction. Even examining the evidence in the light most favorable to the State, there is

almost nothing but circumstantial evidence. And, this circumstantial evidence is not substantial circumstantial evidence essential to prove guilt beyond a reasonable doubt, such that

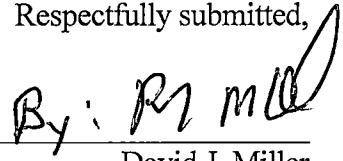
Every circumstance relied upon the State be proven beyond a reasonable doubt; and ... all of the circumstances proven be consistent with each other and taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis.

Odems, 395 S.C. at 590.

CONCLUSION

Because the State failed to present substantial circumstantial evidence of the Defendant's guilt, the trial court erred by denying the Defendant's Directed Verdict Motion. Therefore, the Defendant respectfully requests this Court to reverse his conviction and grant defendant a new trial.

Respectfully submitted,

By: 

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ATTORNEY FOR APPELLANT

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Bryant McKnight sets forth:

1. He is a private sole-practitioner and has been appointed counsel for Appellant.
2. Between mid-November 2015 and the present date, he has reviewed the entire trial transcript of Appellant's trial before the Honorable Maite Murphy, which was held March 2-6, 2015. He has further met with Appellant to discuss this matter; conferenced with co-defendant's counsel on this appeal; conferenced with Chief Appellate Defender, Robert Dudek, and, in undersigned counsel's opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), he believes there is no arguable legal issue to brief for this Court. Counsel has briefed the only potential issue that arose during the trial of this case.

WHEREFORE, counsel respectfully asks the Court to relieve him as counsel for Appellant, Bryant McKnight.

Respectfully submitted,

Bj:

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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 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 Bryant McKnight, #304720 at Broad River Correctional Institution, this 28th day of March, 2016.

Susan B. Hackett for

David J. Miller

Attorney for Appellant

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of March, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2026.

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."

March 28, 2016

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