

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Union County

John C. Hayes, III, Circuit Court Judge

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MAY 02 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CRYSTAL GAIL CALICUTT,

APPELLANT

APPELLATE CASE NO. 2015-002608

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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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 charge of arson in the third degree when the State failed to present any substantial evidence beyond a reasonable doubt that appellant committed the crime?

STATEMENT OF THE CASE

Appellant was convicted of arson in the third degree after a jury trial held before the Honorable John C. Hayes, III from December 8 – 10, 2015, in Union County. Appellant was sentenced to ten (10) years, suspended upon service of three (3) years with five (5) years probation thereafter plus restitution. Erik Delaney, Esquire was the defense attorney. John C. Anthony, Esquire was the deputy solicitor.

This appeal follows.

ARGUMENT

The trial court erred in denying the motion for a directed verdict to the charge of arson in the third degree because the State failed to present any substantial evidence beyond a reasonable doubt that appellant committed the crime

The deputy solicitor in his opening statement told the jury that John Falls was seeing two women. One was appellant and the other was Rhonda Johnson. Ms. Johnson set Mr. Falls up in a house on Church Street in Buffalo, South Carolina. He spent time there with appellant. On November 23, 2013, he went out with Rhonda Johnson and told appellant he was going to get some money from Johnson and he would take appellant out later that evening. After midnight she got a call from Mr. Falls. He told her he was being chased by the police and she needed to get out of the house. A short time after she left the house a witness saw the house on fire. (R. p. 70, line 25 – p. 72, line 5).

During the trial Kay Corbett testified that she owned the house of 217 Church Street. (R. p. 79, ll. 10-12). Rhonda Johnson had rented the house from her in the past. She told Kay Corbett about Josh Falls and he began renting the house. In the early morning hours of November 24, 2013, Ms. Corbett received a call from Barbara Ramsey who lived next door to the house and told her it was on fire. (R. P. 81, line 10 – p. 82, line 25). Bryan Gardin, Chief of the Buffalo Fire Department, said he got a call at 12:42 a.m. about the fire and responded to the scene. (R. p. 85, line 19 – p. 87, line 10).

Josh Falls testified that Rhonda Johnson paid the rent for him. She stayed there sometimes but appellant stayed there with him mostly. (R. p. 111, ll. 9-13). She was at the house on the day of the fire. (R. p. 112, ll. 17-21). They were both high from taking pills and smoking pot. (R. p. 114, ll. 1-12). While Josh was away from the house that

evening he called appellant and told her the police were looking for him and she needed to get out of the house. (R. p. 119, ll 19-23). While keeping away from police Josh talked to appellant on the phone. She told him that it came over the scanner that there was a fire on Church Street. When she was at her mother's front yard she told him she heard a big boom. She said it looked like his house on top of a mountain on fire. (R. p. 121, line 16 – p. 122, line 3). Appellant picked up Josh with his mother's jeep. (R. p. 123, ll. 15-19). He said appellant told him they were going to think she caused the fire because she was the last person at the house. (R. p. 124, ll. 19-20).

Agent Keller with the SLED Arson Investigation Unit testified that the fire originated on the front portion of the house. (R. p. 226, ll. 21-24). It occurred in the front half of the living room area where the sofa was. (R. p. 237, ll. 14-18; R. p. 248, ll. 16-18). At first he could not determine if the fire was intentionally set. (R. p. 255, line 23 – p. 256, line 3). In one interview with appellant she took away any accidental ignition sources in the living room and what she was telling him did not line up with what he observed from the scene. (R. p. 261, ll. 13-16) Appellant was interviewed again on December 9. (R. p. 264, line 24 – p. 265, line 2). On this last interview appellant admitted she had candles burning in the living room. (R. p. 268, ll. 5-15). But she tried to say the candles were on the other side of the living room. (Tr. p. 269, ll. 9-18). She admitted to using drugs that day. (R. p. 269, line 24 – p. 270, line 7). After this last interview Agent Keller concluded that arson was involved and that there were no accidental ignition sources in the living room. (R. p. 273, line 5 – p. 274, line 1). He decided to charge appellant with arson. (R. p. 276, line 25 – p. 277, line 9).

After the State rested, defense counsel moved for a directed verdict that motion was denied. (R. p. 328, line 16 – p. 329, line 21). 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,

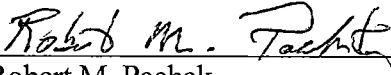
cert. denied, 420 U.S. 945 (1974). “If the evidence is consistent with both innocence and guilt it cannot support a conviction.” United States v. Varoz, 740 F.2d 772, 775 (10th Cir. 1984); United States v. Ortiz, 445 F.2d 1100, 1103 (10th Cir 1971). Guilt is only to be found when there is a “rationally supportable state of near certitude.” Evans-Smith v. Taylor, 19 F.3d 899, 906 (4th Cir 1994).

In this case the evidence only raised a suspicion of guilt. State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011). Appellant was targeted because she was the last known person to leave the house and because the investigation could not find evidence of an accidental source of the fire. That is not substantial evidence of guilt.

CONCLUSION

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

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of May, 2016.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Crystal Gail Calicutt 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 John C. Hayes, III, which was held on December 10, 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 Crystal Gail Calicutt.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of May, 2016.

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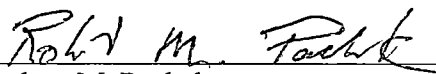
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) Trial Transcript dated December 8 – 10, 2015;
- (2) True-billed indictment

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

May 2nd, 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."

May 2nd, 2016



Robert M. Pachak
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 Justin Hunter, 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 Crystal Gail Calicutt, #366366 at Leath Correctional Institution, this 2nd day of May, 2016.

Robert M. Pachak
Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of May, 2016.

Christian Ford (L.S.)
Notary Public for South Carolina
My Commission Expires: March 1, 2026.