

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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JUN 03 2016

SC Court of Appeals

Appeal from Florence County
William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER M. PETERSON,

APPELLANT

APPELLATE CASE NO. 2015-001359

MEMORANDUM OF LAW IN SUPPORT OF
APPEAL, ANDERS' BRIEF, PRO-SE

CHRISTOPHER M. PETERSON
Appellant Defender
Lieber Corr. Inst.
P.O. Box 205
Ridgelyville, SC 29472

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TABLE OF AUTHORITIES

Feagin v State, 198 G.2. App. 460, 461 (1) 462 S.E. 2d 80
State v. Bostick, 392 S.C. 134, 708 S.E. 2d 774 (2001)
State v. Gore, 758 S.E. 2d 717 (S.C. App. 2014)
Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 -

Other Authorities

Fed. Rule Crim. Proc. 52 (b)
Criminal Law Key 1030 (1)
cf. A.B.A., ABA Standards for Criminal Justice Prosecution Function and Defense Function
3-5, 8 (2) (3d ed. 1993)
Constitutional Law Key 268 (5)
Criminal Law Key 700 (3)
U.S.C.A. Const. Amend. 4, 5, 14

STATEMENT OF ISSUE ON APPEAL

I. Did the trial court err by refusing to direct a verdict of acquittal as to the charges of Murder, Armed Robbery, Attempted murder, possession of a weapon during a violent crime and conspiracy where the state failed to present any direct or substantial circumstantial evidence other than hearsay that Appellant unlawfully killed Luther Lisbort with malice aforethought, either express or implied and or took money from Luther Lisbort's apartment, in his immediate presence, and while armed with a deadly weapon and or attempt to kill David Lunn with malice aforethought, either express or implied and or conspired to commit the aforesaid crimes?

STATEMENT OF THE CASE

On August 29, 2013, Appellant was indicted for murder, attempted murder, and conspiracy. R. 611. On April 2, 2015, Appellant was also indicted for armed robbery from the same set of allegations. R. 609. On June 15, 2015, Appellant's case proceeded to jury trial before the Honorable William H. Seals, R. 1. Steven Deberry represented Appellant. Todd Tucker represented the state. R. 1.

After a three-day trial, Appellant was found guilty as charged. R. 601, 11. 4-23. Judge Seals sentenced Appellant to life imprisonment for the murder, thirty years' imprisonment for the attempted murder, and thirty years' imprisonment for the armed robbery. R. 605, 11. 20-23. Appellant was also sentenced to five years for the conspiracy charge R. 605, 11. 24-25. Appellant's sentences were to run concurrently. R. 606, 1. 1.

Appellant appealed his convictions and sentences. This Memorandum of Law and Anders' Brief follows.

STATEMENT OF FACTS

On April 10, 2013 without probable cause Investigators Chad Collins and Thomas McFadden embarked upon an expedition for the purpose of obtaining evidence in the hope that something might turn up. The manner in which the Investigators detained Appellant gives the appearance of having been calculated to cause surprise, fright and confusion. While Respondent elected to open the arguments by misstating material facts regarding evidence trial counsel exposed Respondent's redundant hearsay claims. R. 48, 10-14, R. 50, 21-22, R. 51, 4-10, R. 54, 8-11. Thereafter the predictions of trial counsel began to manifest. R. 69, 1-7, 23-R. 70, 4, R. 77, 4-7, R. 90, 5-R. 91, 8, R. 98, 14-25, R. 101, 5-8, 12-R. 102, 2, R. 102, 14-R. 103, 3, R. 166, 10-14, R. 170, 18-21, R. 176, 8-9, 17-20, R. 180 2-R. 181, 24, 25-R. 182, 3, R. 186, 1-R. 187, 5, R. 180, 1-14, R. 191, 6-25, R. 194, 1-25, R. 187, 8-18. Thereafter trial counsel objected to Respondent's apparent violation of the hearsay rule which has long been recognized and respected by virtually every state based on experience and grounded in the notion that untrustworthy evidence should not be presented to the triers of fact. The trial court sustained the objection knowing that hearsay is without probative value and will not establish fact in issue even in the absence of a timely objection. R. 209, 24-R. 210, 2. Nevertheless Respondent continued to contravert the issue in bad faith knowing that Appellant was never positively identified and that Marcus Lisbon was inconsistent from day one and that investigator Thomas McFadden did not care about sending and an innocent Appellant to prison for crimes he didn't commit. R. 249, 16-R. 250, 12. After failing to positively identify Appellant or a gun in Appellant's hand Marcus Lisbon couldn't remember what he said, while David Lusk could not identify the attacker. R. 308, 25-R. 309, 17, R. 311, 13-16, R. 320, 11-14, R. 346, 5-13.

Respondent, in its malicious intent to prosecute Appellant, provided Reginald Johnson with a vibrant incentive to testify falsely to which Mr. Johnson admitted. R. 399, 3-25, R. 428, 24-R. 429, 2, 14-21, R. 430, 14-20, R. 446, 14-15. Thereafter trial counsel renewed the sustained hearsay objection and made a motion for a direct verdict which was denied while Respondent suppressed favorable exculpatory evidence with the assistance of the

trial court. R. 448, 20- R. 449, 5, R. 529, 4-14, R. 530, 20-21. Thereafter trial counsel again renewed the sustained hearsay objection and motion for a direct verdict to which again the trial court denied. R. 532, 18-23.

During summations trial counsel reiterated his opening predictions while Respondent continued to misstate material evidence through its perverted idea of hearsay. R. 551, 23- R. 552, 16, R. 555, 17- R. 556, 20, R. 557, 16-22, 24- R. 558, 11, 17-18, R. 561, 7-13, R. 564, 22- R. 565, 12, 13- R. 566, 6, R. 569, 8-9, R. 570, 7-13, 21- R. 571, 3, R. 574, 22-25, R. 576, 7-12, R. 582, 16-17, R. 583, 23-24, R. 584, 11-19, R. 587, 7- R. 588, 6, R. 589, 7-19, 24- R. 590, 7, 12-24, R. 592, 17-18, R. 594, 15-20, R. 596, 3+15, R. 597, 1-11. Thereafter trial counsel renewed his sustained hearsay objection and motion for a direct verdict to which the trial court denied. R. 598, 7-8. Thereafter Appellant capitulated his innocence and trial counsel renewed the sustained hearsay objection and direct verdict motion to which the abusive trial court denied. R. 602, 18-22, R. 603, 1-4.

ARGUMENT

The trial court erred by refusing to direct a verdict of acquittal as to the charges of murder, Armed Robbery, Attempted Murder, possession of a weapon during a violent crime and conspiracy where the state failed to present any direct or substantial circumstantial evidence other than hearsay that Appellant unlawfully killed Luther Lisbani with malice aforethought, either express or implied and or took money from Luther Lisbani's apartment, in his immediate presence, and while armed with a deadly weapon and or attempt to kill David Lunn with malice aforethought either express or implied and or conspiracy to commit the aforesaid crimes.

Appellant was entitled to a direct verdict of acquittal as to the charges of murder, Armed Robbery, Attempted Murder, possession of a weapon during a violent crime and conspiracy. The state failed to present any direct or substantial circumstantial evidence other than hearsay that Appellant killed Luther Lisbani, took money from Luther Lisbani's apartment, in his immediate presence while armed with a deadly weapon, attempt to kill David Lunn and or engaged in conspiracy.

The Charges of Murder, Armed Robbery, Attempted Murder, possession of a deadly and conspiracy.

Effective trial counsel preserves claims to be considered on appeal. See e.g. Fed. Rule Crim. Proc. 52(b); see Criminal Law Key 1030(c) (contemporaneous objection is required to properly preserve error for appellate review). See R. 209, 24-R. 210, 2, R. 532, 18-21, R. 598, 7-8, R. 603, 1-2.

Trial Counsel: Objections, Your Honor

The Court: Sustained

Trial Counsel: This is hearsay

The Court: Sustained

Trial Counsel: At this time, I would like to renew all objections and motions of any kind that I've made throughout this trial and before this trial.

Trial Counsel: I'd just like to renew any and all objections and motions prior -- made prior by myself during this trial, and also renew my motions for a direct verdict.

Trial Counsel: And I'd just like to renew all my prior objections and motions as of this time.

Trial Counsel: We would just renew all motions and objections we made this far.

Hearsay is without probative value and will not establish fact in issue even in the absence of a timely objection. Peggin v. State, 178 G.2. App. 460, 461 (1) 402 S.E.2d 80. See State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2001)

In this case the state presented entirely circumstantial evidence that the defendant committed murder. 392 S.C. at 140, 708 S.E.2d at 777. The trial court denied the defendant's direct verdict motion based on the state's presentation of the following evidence: (1) the victim's personal items were found in a burn pile in a neighboring home owned by defendant's mother; (2) a heavy petroleum product was used as an accelerant in the burn pile and the defendant's mother testified that she was afraid

to use such accelerants and did not use them; (3) a pattern of gasoline was found on the defendant's shoes and was used as an accelerant to start a fire in the victim's home after her assailant struck her; and (4) blood was found on defendant's jeans and the DNA expert testified she could not conclusively state that the blood found on defendant's jeans was not the victim's, even though she could exclude 99 percent of the population.

Id., at 141-42, 708 S.E. 2d at 778. On this evidence, which is far more substantial than the evidence presented against Appellant the Court of ~~Appeal~~ reversed the trial court, finding the state had not presented substantial circumstantial evidence sufficient to submit the case of the jury. *Id.*, at 142, 708 S.E. 2d at 778.

In Appellant's case the state introduced over trial counsel's sustained hearsay objection hearsay testimony and misstated evidence. See *cf.* ABA, ABA Standards for Criminal Justice Prosecution Function and Defense Function S-5.8 (a) (3d ed. 1973) ("The prosecutor should not intentionally misstate the evidence or mislead the jury as to the inferences it may draw.") A prosecutor's misrepresentation of material evidence can have significant impact on jury deliberations "because a jury generally has confidence that a prosecuting attorney is faithfully observing his obligation as a representative of sovereignty.

See State v. Gore 758 S.E. 2d 717 (S.C. App. 2014). (If a deliberate falsehood or reckless disregard for the truth has been established, the court must exclude the false material in arrest warrant Affidavit, and consider the remainder of the affidavit to determine if it is sufficient to establish probable cause exist after the false material is omitted from the analysis, the arrest warrant must be voided And the fruits of the search & arrest (warrant) excluded to the same extent as if probable cause was lacking on the

the Affidavit. U.S.C.A. Const. Amend. 4 (R. 249, 15- R. 250; 12, R. 429, 14-21, R. 446, 13-15).

Appellant over this error is plain and obvious, See Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493. (An appointed attorney must advocate his client's cause vigorously and may not withdraw from a nonfrivolous appeal - appointed counsel must present on appeal all nonfrivolous arguments requested by his client. See R. 529, 444, R. 530, 20-21 (Note: Suppression by prosecution of evidence favorable to defendant upon request violates due process, where evidence is material either to guilt or punishment, irrespective of good faith or bad faith of prosecution. U.S.C.A. Const. Amendments 5, 14. Constitutional Law Key 268 (5); Defendant's failure to request favorable evidence does not leave government free of all obligation to disclose such evidence to defendant under Brady. U.S.C.A. Const. Amendments, 5, 14. Criminal Law Key 700 (3)).

CONCLUSION

For the reasons argued above, Appellant Christopher Peterson respectfully requests this court to direct a verdict of acquitted as to the charges of Murder, Arson Robbery, Attempted Murder, Possession of a Weapon and Conspiracy in Appellant's case.

Respectfully Submitted
S/Christopher Peterson
Christopher Peterson
Appellant

This 26 day of May

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CERTIFICATE OF SERVICE

Appellant hereby certifies that a true copy of the MEMORANDUM OF LAW IN SUPPORT of Appeal, Answer's Brief, Pro-Se in the above reference case has been served upon Tiffany L. Butler, Esquire, at South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211-1589 and upon Donald J. Zelenka Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia S.C. 29201 this day of 26, May 2016

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