STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

R. Knox McMahon, Circuit Court Judge

THE STATE,

Respondent,

V.

Anthony M. Porterfield,

Appellant,

Appellate Case No. 2015-000631

Pro-Se Supplemental Brief of Appellant

By: Anthony M. Porterfied
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STATEMENT OF THE CASE

In October of 2012, the grand jury for Richland County, indicted Appellant for two counts of Kidnapping (2012-GS-40-5294); burglary in the first degree (2012-GS-40-5295), and armed robbery (2012-GS-40-5296).

The State was represented by K. Luck Campbell and Meghan L. Walker, which called the case to trial by jury on February 23, 2015. Anastasia L. Walker, Robert L. Bank, Jr., and John W. Tate, represented the Appellant.

On February 27, 2015, the jury found Appellant guilty as charged. And on MArch 6, 2015, Judge McMahon, sentenced Appellant to thirty (30) years imprisonment for each offense, and ordered the sentences to be served concurrently.

Appellant filed a motion pursuant to Rule 29 for a new trial. R. 1024-1025. Judge McMahon "allegedly" heard the motion on March 6, 2015. R. 1026. (For which Appellant was not present). According to the record before this court. The State was represented by Campbell and M. Walker; and A. Walker, Bank and Tate represented Appellant. R. 1026. Judge McMahon, was said to have denied the motion for a new trial on the record.

Appellant timely filed a notice of appeal. And after Appellate Defender Ms. Susan B. Hackett, filed an Anders brief. This pro-se supplemental brief follows.

ISSUES FOR CONSIDERATION.

1. Whether the lower court erred when it denied defense motion for a directed verdict?(Tr. tr. p. 546-553, lines 1-25.) 25).

2. Whether the lower court erred when failing to have the defendant present to "aid and assist" the defense attorneys, during the adjudication of the Post-Trial Motion, which deprived the appellant of Due Process of law?

3. Whether appellate counsel should have filed a merits brief as opposed to an Anders, in light of the issues exposed?

SUMMARY OF FACTS IN THE CASE

The case stems from a electronics repairing business owner, Mr. Gulzar Nathani, that operated such out of his home. Appellant had previously met the business owner at a flea market, that the business owner would frequent in the course of doing business. Tr. tr. p. 257.

Over the course of several months, Nathani and Appellant continued their business relationship. Appellant had only seen Nathani's daughters maybe once or twice, while doing business at the home. And such was from a distance, "as it was a custom of this family", not to allow its woman to be in the midst of business deals of the men.

On June 27, 2012, Rabia and Sobia, the daughters of Gulzar Nathani, were at home alone while the father , mother and son, were at the flea market. Tr. tr. p. 190-191 line 15. At approximately 2:00 p.m., their home business was allegedly robbed by two armed black men. Rabia told the jury that she was familiar with some of her father's business associates, including Appellant. Tr. tr. p. 189, lines 6-13. And that on June 27, Rabia and Sobia, went to Chic-fil-A to get some food. Tr.tr. p. 191, lines 16-20. And when they returned, they noticed a gold or champagne colored sedan parked in their driveway, and two black men were in the car.

The daughters also claimed the two black men entered their home and robbed them at gunpoint. Tr.tr. p. 195, line 22, p. 198 line 21.

Further, one of the two daughters claimed one of the men was Appellant. Of which, was at work, witnessed by many, during the time the daughters said they were being robbed by Appellant.

Rabia did not identify Appellant as one of the robbers when she called 911. Tr. tr. p. 200, lines 10-11. However, days later, Rabia and Sobia identified Appellant's photograph from a line-up conducted by polce. Tr. tr. p. 200, line 20; Tr. tr. p. 202, line 11. Additionally, both identified Appellant during the course of trial. Tr. tr. p. 203, line 17; Tr. p. 204, line 4; Tr. p. 243, line 4- tr. p. 244, line 2.

Again, according to the State's evidence in the case, the robbery occurred at approximately 2:00 p.m.. Tr. tr. p. 70, lines 1-2. Tr. p. 272, lines 2-11.

Appellant presented an alibi defense. On June 27, 2012, Appellant went to work at 8:00 a.m. Tr. tr. p. 690, lines 6-14. Appellant's roommate TK was moving out and had requested access to the apartment on that day to retrieve some furniture. But based on a prior fall out between TK and Appellant, Appellant felt it was in his best interest to accompany TK in the apartment, to assure none of Appellant's items come up missing.

Appellant went to his boss at work, for permission to leave a little early to accomplish this goal of going with TK to the apartment. Tr. tr. p. 690-691. Appellant left work with TK prior to 12:00 p.m., where Appellant and witnesses place him back on the work site prior to 2:00 p.m.

While at the apartment, the two moved some of TK's belongings, Tr. tr. p. 696, lines 12-25.

During this time, Appellant contacted Nazirah Gale to pick him up from the apartment and take him to work. Tr. p. 697, lines 1-25. Gale did as Appellant asked. Appellant estimated he returned to work around 12:45 p.m.. Tr. tr. p. 699, lines 3-5.

Although Appellant used the company's old machine for clocking in and out that day, he gave his time card to his boss when he returned from meeting with TK because he was a few minutes late. Tr. tr. p. 694, lines 5-23; Tr. p. 699, lines 6-13.

Nazirah "Na Na", who normally picked Appellant up from work, confusingly thought she had (like any other day) picked Appellant up from work on June 27, 2012, between 12:00 and 12:20. Tr. tr. p. 580, lines 7-19. When actually, Appellant left with TK. Gale "Na Na" met Appellant at the apartment, and is who brought Appellant 'back to work', around 1:00 and 1:30 p.m. Tr. tr. p. 581, lines 1-25; p. 582 and 583.

Appellant's co-worker, Adrian Deberry, recalled Appallant leaving work around lunchtime to deal with TK moving out of the house. Tr. tr. p. 650, lines 18-22. According to Deberry, a young woman called "Little Mama" picked Appellant up from work during lunch. Tr. tr. p. 688, lines 13-19. [1].

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1. Please note "Little Mama" and "Na Na" are one in the same.

Another of Appellant's co-workers, Hakeen Coffeil, recalled Appellant asking for a longer lunch break towards the end of June 2012. Tr. p. 793, lines 17-20. He remembered Appellant made the request to deal with his roommate TK moving out. He remembered Appellant returning to work between 1:00 and 1:30 p.m.. According to Coffeil, a female picked Appellant up from work.

Finally, Appellant's boss, Aaron Griffin, also recalled Appellant taking an extended lunch on June 27, 2012, to handle his roommate moving out. Tr. tr. p. 817, lines 19-20; 818, lines 11-16. He remembered Appellant left around 11:30 a.m. and was gone for approximately thirty-five or forty-five minutes. Tr. tr. p. 826, lines 7-21; p. 834, lines 19-24. According to Griffin, a female picked Appellant up from work that day. Tr. p. 827, line 18-; 828, line 22. Griffin also presented Appellant's time card showing three entries on Wednesday: 8:07, 11:12 and 4:32. Tr. p. 1021. Griffin explained this often happened when someone forgot to clock in or out for lunch. Tr. p. 830, lines 4-10. He would indicate the number of hours worked in handwritten form and sign the time card. Tr. tr.p. 830, lines 10-14.

Not only the above testimonies corroborated Appellant's alibi defense however. There were more employees that made statements, in which were not called to testify (beating a dead horse), in which corroborated the defense's alibi. Thus, could it be said beyond a reasonable doubt, "that all these people having no interest in the outcome of the proceedings". Were incorrect when stating

Appellant was at work during the time the crime occurred. In the face of "a sole alleged eye-witness", which finds Appellant resembled the suspect which robbed them, in light of police persuasion.

WHETHER THE LOWER COURT ERRED WHEN IT DENIED DEFENSE'S MOTION FOR A DIRECTED VERDICT?

The criterion for denying a directed verdict motion in South Carolina is well established. A case should be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. See State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002) and State v. Zeigler, 364 S.C. 94, 102, 61 S.E.2d 859 (Ct. App. 2005).

However, the defendant is entitled to a directed verdict "if the State fails to produce evidence of the offense charged". Weston, 367 S.C. at 292; State v. Moore, 374 S.C. 468, 649 S.E.2d 84, 86 (Ct. App. 2007); State v. Crawford, 362 S.C. 627, 608 S.E.2d 886, 889 (Ct. App. 2005).

In ruling on a motion for directed verdict, the trial court is concerned only with the existence or non-existing of evidence, not its weight. Weston, 367 S.C. at 292.

A directed verdict motion should be granted when the evidence "merely raises a suspicion of the accused guilt". State v. Arnold,

361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004); State v. Stanley, 365 S.C. 24, 42, 615 S.E.2d 455, 464 (Ct. App. 2005).

When reviewing the denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the STate. Weston, 367 S.C. at 292. The court may reverse the trial court's denial of a motion for a directed verdict if there is no evidence to support the court's ruling. Weston, at 292 (citing State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002).

Concomitantly, the court may reverse the trial court's ruling denying a motion for a directed verdict if the ruling is based on an error of law. State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003).

Here Appellant argues the error of law occurred when the State "failed to prove beyond a reasonable doubt", that the defendant was at the crime scene, and thus, committed the crimes during the time "several witnesses stated he [the Appellant] was at work.

The solicitor attempted to cloud the jury's view of the evidence by focusing on the fact that over time, witnesses was confused as to "who picked Appellant up from work". And posited such confusion to "the lack of credibility of those witnesses". However, neither witness was confused "as to why Appellant took a early lunch break". And the fact that Appellant returned to work "with the person they assumed Appellant left with". And at 2:00 p.m., "that Appellant was back at work".

Not once "did the solicitor accuse nor charge either witness with perjury". Nor even attempted to argue "the witnesses was either confused about Appellant being at work on the day in question, at 2:00 p.m. And for those reasons, "there did not exist any reliable evidence, 'at all', that Appellant committed the crimes charged".

Moreover, with the "burden of proof" upon the State, particularly its the burden "to disprove the alibi". The State failed in this respect as mentioned above. The solicitor didn't even attempt (for some odd reason), to discredit a single witness that stated; "appellant was indeed at work at 2:00 p.m., when the crimes took place".

Thus, such is tantamont to "no evidence at all", where the State fails to produce evidence which disproves Appellant's alibi. Weston, 367 S.C. at 292. And instead, the case was submitted improperly to the jury "based on the weight of the evidence", rather the existence or non-existing of evidence thereof. In otherwords, the State went into the prosecution fully aware of the rules governing a alibi defense. And it decided "not to even attempt to disprove the witnesses that eye-witnessed Appellant being at work at 2:00 p.m.".

In United States v. Mulderig, 120 F.3d 354 (5th Cir. 1997), a conviction in a circumstantial evidence case will be reversed if the evidence "equally points to a theory of innocence and guilt". And that's exactly what we are dealing with here. In fact, when

the alleged victims made the "initial police report". Appellant's name was not mentioned. Except for police coercion to identify a subject in the photo-line-up. The truth would have revealed, "Appellant was not at the residence of the victims on the day in question.

For these reasons above, Appellant respectfully moves this Court of Appeals for the rejection of the Anders brief, with instructions to file a merits brief in accordance with these grounds for reversal of the conviction and sentence.

WHETHER THE LOWER COURT ERRED IN CONDUCTING A POST TRIAL HEARING WITHOUT THE DEFENDANT BEING PRESENT?

At the core of the Due Process Clause of the Fifth and Fourteenth AMendmants, "is the right to notice and a meaningful opportunity to be heard". See Elliott v. Martinez, 675 F.3d 1241 (10th Cir. 2012).

Here, trial counsel caused to be filed on March 6, 2015, approximately seven (7) issues of a post-trial setting. And according to information and belief, these issues were resolved outside of Appellant's knowledge. Where Appellant was not afforded the right to notice of such hearing, nor the opportunity to be heard, or to aid and assist his attorney. For this deprivation of due process, Appellant moves to "preserve the seven issues" raised within the post-trial motion, and has not voluntarily

abandoned them.

WHETHER APPELLATE COUNSEL SHOULD HAVE FILED A MERITS BRIEF OR ANDERS BRIEF IN THIS CASE?

This pro-se brief is being respectfully brought before this Honorable South Carolina Court of Appeals. As a result of Appellate counsel's conclusion; that the appeal has no merit. The Appellant firmly disagrees with and rejects that notion.

In accordance with Anders, the Court noted beginning with Griffin v. Illinois, 351 U.S. 12 (1956), "that equal justice was not afforded an indigent appellant where the nature of the review-depends on the amount of money he has", at 19, and continuing through, Douglas v. California, 372 U.S. 353 (1963), this Court has consistently held invalid those procedures "where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshaling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself".

For those reasons, Appellant argues that the trial court's denial of his motion for directed verdict was directly appealable within a merits brief. To permit effective appellate review, as opposed to not even mentioning such within the Anders brief. For this reason, the Appellant has been deprive of Due Process of law and his right to a effective appeal. Rendering counsel's poor

representation a violation of Appellant's Sixth Amendment right to effective assistance of counsel.

Wherefore, based on the issues raised herein, the Appellant respectfully request this court to find "that this case does present merit", and therefore such a brief consistent with this court's findings should be filed. And any further relief deemed just and proper by this Honorable Court.

Respectfully Submitted,

/s/ Anthony M. Porterfied

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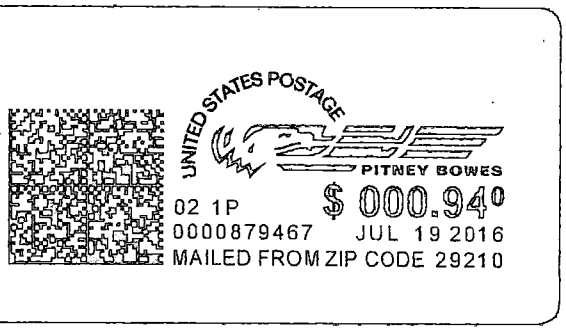

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