STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRENT C. MCLAURIN, JR.,

APPELLANT

APPELLATE CASE NO. 2015-001147

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in failing to grant a directed verdict to the charge of entering a bank with intent to steal and grand larceny when the State failed to present any substantial evidence beyond a reasonable doubt the identity of the person who entered the bank?

STATEMENT OF THE CASE

Appellant, a 69 year old male, appeared pro se at a jury trial held before the Honorable John C. Hayes, III on May 18-19, 2015, in Pickens County on the charges of entering a bank with intent to steal and grand larceny. Appellant was found guilty as charged. Respective sentences of thirty (30) years and ten (10) years were imposed. John Dejond, Esquire was stand-by counsel. Brandi Hinton, Esquire was the assistant solicitor.

This appeal follows.

ARGUMENT

The trial court erred in failing to grant a directed verdict to the charge of entering a bank with intent to steal and grand larceny when the State failed to present any substantial evidence beyond a reasonable doubt the identity of the person who entered the bank.

On January 14, 2014, the SunTrust Bank in Pickens was robbed. The assistant solicitor admitted in her opening statement that the case came down to "who-did-it." (R. p.134, ll. 14-16) Faye Padgett, owner of an art gallery and gift store near the bank said two young guys around their twenties came in the store around mid-afternoon. They had been there a couple times before. They went back to look at the musical instruments. A few minutes later an older man in his sixties came in and he went over to where the young men were. The older man explained that the younger men wanted to buy guitars and he had to go somewhere and he left the store. (R. p. 140, l. 21 – p. 143, l. 20) On cross-examination she identified appellant as the older man. (R. p. 148, ll. 11-17)

Leslie Swayngham testified that she was parked out in front of the store. She saw the two younger men go into the store. Then she saw the older man go in. He looked middle aged. He was dressed neat and clean. He had on a dark hoodie and a blue shirt with a white V-neck t-shirt underneath. He had light brown to medium brown hair. Later she saw him exit the store. (R. p. 153, l. 6 – p. 156, l. 16) The man was also in blue jeans and tennis shoes. (R. p. 159, ll. 9-11)

Tracy Batson, a teller coordinator at SunTrust Bank, testified that she was at her teller window and a man came in with a black hoodie, white shoes, and blue jeans. He did not speak. He had envelopes in his hand and gave her a note. (R. p. 179, ll. 19-24) She was not able to see the suspects face. He had on sunglasses and he was wearing white gloves. His black hoodie was

pulled real tight covering a lot of his face but she did see a moustache. She said the envelopes the man had were manila envelopes. (R. p. 183, l. 14 – p. 184, l. 14)

Detective Byers testified that they were not able to get any fingerprints from the scene because the suspect was wearing gloves. (R. p. 221, ll. 15-25) He said from looking at the surveillance video you could see the suspect was wearing a black hoodie with white lettering across the front. He had bright blue jeans and white tennis shoes. (R. p. 223, ll. 18-24) He put out leads from the robbery and the two young men who were seen in the store earlier with appellant spoke to police and appellant was developed as a suspect. Appellant was staying at the Traveler's Inn off Augusta Road in Greenville. They went there. (R. p. 224, l. 6 – p. 225, l. 6) They had an arrest warrant. They noticed appellant's hair was gray and he did not have any facial hair. (R. p. 227, l. 13 – p. 229, l. 15) Pursuant to a search warrant they searched appellant's room. They did not find a hoodie, sunglasses, gloves, a bank note, or money. The police did take a green spiral notebook with white notebook paper with lines on it, manila envelopes, a razor, and a yellow metal watch. (R. p. 229, l. 23 – p. 237, l. 19)

Skylar Harris, one of the two young men who walked into the store earlier that day, testified but he could not place appellant in the bank. (R. p. 268, l. 23 – p. 277, l. 10) Jared Bearden, the other young man who walked into the store that day, also testified. He, also, could not place appellant in the bank. (R. p. 316, l. 25 – p. 325, l. 15)

The trial court erred in failing to grant a directed verdict to the charges against appellant. 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 form 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. Bostick, 392 S.C. 134, 708, S.E.2d 774 (2011) the court presented these facts:

> Polite was an older woman who served as the treasurer and secretary of her church. Her son, Rudy, lived with her in her house in Pineland, South Carolina, but her other son, Carl, lived two miles away. Typically, Polite would bring home a

briefcase containing money from the church on Sunday for deposit at the bank on Monday.

The fire department was called to Polite's house on a Sunday afternoon after her house caught on fire. As the fire department attempted to extinguish the fire, Polite's body was found in the kitchen and removed by firefighters. She had been struck in the head with a blunt force object, but a subsequent autopsy revealed that she actually died as a result of carbon monoxide from the fire. Rudy testified he had left the house earlier that day to go to an auto parts store to purchase a part for his mother's car. When he returned approximately an hour later, the house was engulfed in flames and it appeared ransacked when he looked through the window. He was present when the fire department kicked in the back door and found his mother's body in the kitchen. Arson investigators determined the fire originated in Rudy's bedroom, and gasoline was used as an accelerant.

Two days after the fire, investigators discovered the following items belonging to Polite in a burn pile at a neighboring house belonging to Bostick's mother: two sets of car keys, toenail clippers, pens, burned paper, a metal clasped ring of a purse, and a watch. It was later determined that a heavy petroleum product, such as kerosene or diesel fuel, was used as an accelerant in the burn pile. Bostick's mother, Louise, testified that she did not use kerosene or diesel fuel in the burn pile because she was afraid of those accelerants. The investigators also found a blood-splattered briefcase under Polite's kitchen table.

After interviewing Roger Bostick, the investigators asked for his clothing and shoes, which Bostick willingly delivered to them. Blood was found on his jeans, and a DNA analysis was performed and cross-referenced with a standard from Polite. The DNA analysis came back inconclusive, and the agent who reviewed the DNA analysis findings, Nancy Skraba, testified that while ninety-nine percent of the population could be excluded as contributing to the sample, she was unable to determine whether the blood sample actually came from Polite. The chemical analysis of the shoes revealed a relatively fresh pattern that matched gasoline. At the close of the State's case-in-chief, Bostick moved for a directed verdict, which was denied.

392 S.C. at 135-137, 708 S.E.2d at 775.

On appeal the court granted the directed verdict with the following reasoning:

> Analyzing the evidence presented by the State in the light most favorable to it, we believe the State's evidence here raised only a suspicion of guilt by Bostick. No direct evidence linked Bostick to the crime scene or the items found in the burn pile. Moreover, there was no testimony tending to establish that Bostick had control over the burn pile. When the State closed its case against Bostick, the following pieces of circumstantial evidence of his guilt had been presented: (1) Polite's car keys, calculator, and other items from her home were found in the Bostick family's burn pile; (2) the fire in the burn pile was accelerated with either kerosene or diesel fuel, and Bostick's mother did not use those accelerants when she burned things in the pile: (3) Bostick had a pattern that matched gasoline on his shoes and gasoline was the accelerant used for the house fire; and (4) while the DNA from the blood found on Bostick's jeans excluded about ninety-nine percent of the population, the blood could not be matched to Polite's DNA. In addition, the weapon used to beat Polite in the head was never introduced into evidence. Finally, no evidence was introduced concerning Bostick's knowledge that Polite may have had money in the briefcase or if indeed any money was in the briefcase on that particular Sunday. The evidence presented by the State raised, at most, a mere suspicion that Bostick committed this crime. Under settled principles, 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). Therefore, we find the circuit court erred in failing to direct a verdict in favor of Bostick.

392 S.C. at 141-142, 708 S.E.2d at 778.

In appellant's case the State only raised a suspicion of guilt based on weak circumstantial evidence. No one identified the suspect in the bank as appellant. Being in the vicinity of a crime scene does not make one guilty.

CONCLUSION

A directed verdict should be granted in appellant's favor.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of October, 2016.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brent C. McLaurin, 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 John C. Hayes, which was held on May 18-19, 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 Brent C. McLaurin, Jr..

Respectfully Submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 25th day of October, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter 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 Initial Brief of Appellant and Designation of Matter have been served on Brent C. McLaurin, Jr., #166894, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 25th day of October, 2016.

Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of October, 2016.

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